



TRUSTS: What Are They? Do I Need One?



NANCY M. RICE,
ESQUIRE, CELA

At the end of my series of articles discussing the “Top 3” estate planning documents everyone should have (Advance Medical Directive/Living Will, Durable Power of Attorney, and a Last Will and Testament), I mentioned that my next article would focus on “TRUSTS: from the Suze O-recommended Revocable Trusts through Special Needs Trusts, with emphasis on the “WHY’s and HOW’s”. I won’t be able to get to Special Needs Trusts in this article, but will address them in the future.

You will note that I did not include Trusts in the list of documents everyone should have. Revocable “Living” Trusts have become increasingly popular as substitutes for wills in

estate planning. Many people believe that by creating a Trust, naming themselves as Trustees, and transferring their assets to the Trust, they will save taxes, simplify the administration of their estates, and save money for their children or other beneficiaries. Others believe that if they set up and fund such a trust, their assets will be protected if they need to go into a nursing home.

Unfortunately, these beliefs are not based in fact. Some of these “myths” are untrue in all cases, some are untrue because of the state you live in. Read on:

Myth # 1

Living Trusts Save Taxes.

This is absolutely wrong. All of the assets in a living Trust are subject to both State Inheritance tax, the Federal Estate Tax, and here in this wonderful state, the New Jersey Estate Tax.

One of the reasons this is so is that a Trust which you set up, you control (as Trustee), and you are the beneficiary of (during your lifetime) is considered to **be you** for tax purposes. Kinda makes sense, doesn’t it?

If you want to argue that assets should not be taxed at your death, you have to really give them away! If you want to

use a Trust, it has to be irrevocable, you cannot control it, and you cannot (in most instances) be a beneficiary at all!

A living Trust is also treated as you for income tax purposes and thus saves no income taxes during lifetime.



Myth # 2

A Revocable Living Trust is Cheaper to Administer than an Estate.

This may be true for residents of some states (e.g., Florida), but the generalization is wrong more often than it is right.

In New Jersey, Pennsylvania, and many other states, the much-feared **PROBATE** of a Will” usually takes less than an hour and does not require a lawyer (am I really telling you this??)

The real work in the administration of an estate is the collection of the decedent’s assets, the payment of debts and death taxes, and the distribution of the remaining assets according

to the Will. The administration of a Living Trust is almost exactly the same, because the Trust assets must be collected, the debts and death taxes must be paid, and the remaining Trust assets must be distributed. The *only* advantage of a living Trust is that if the decedent was *not* the Trustee, the time and expense of searching for assets might be avoided. That advantage must be weighed against the time and expense of transferring assets to the Trust during lifetime, as well as the inconvenience and loss of control if you are not the Trustee during your lifetime!

Because the steps necessary to settle a Trust are similar to the steps necessary to settle an Estate, the legal fees should be about the same, especially in New Jersey.

Myth # 3

A Living Trust can be Distributed Faster than an Estate.

This is also wrong. There is no law preventing an Executor from distributing all or any part of the estate at any time, as long as the Executor is willing to assume the risk of loss if there are additional debts or taxes, or if the distribution is incorrect.

The Trustee of a living Trust is also liable for debts and taxes, and may delay distributing assets for the same reasons.

As a practical matter, most Executors are reluctant to distribute assets until the death taxes have been settled, which can take from nine months to two years, and there is no reason for the Trustee of a living Trust to distribute assets any more quickly.

Myth # 4

Even if it might do no good, a living Trust will do no harm.

Not necessarily. In their desire to avoid the alleged evils of “probate,” many people jump out of the frying pan and into the fire, running directly into the arms of charlatans who are eager to sell “packages” of living Trusts for exorbitant fees. And those Trust

documents may be poorly written, with the result that large fees have been paid for documents that actually result in unnecessary taxes, legal fees, or court costs.

And the probate system is not without its advantages, because it requires notices to beneficiaries and a clear remedy if the estate is not distributed according to the will. In their desire to avoid probate litigation, many people create Trusts that give fewer rights to their beneficiaries and so, if the Trustee turns out to be dishonest or hostile, the beneficiaries of a living Trust may find themselves hampered by the Trust document in their attempts to recover their inheritances.

Most importantly, if clients (incorrectly) believe that the Trust will protect their assets or save taxes, they will be less likely to ask questions and discover the problem before it is too late.

Q *When would a Revocable Living Trust be appropriate?*

A In my practice, I utilize RLT’s when people would prefer that others not be given the opportunity to see what their Wills say (because Wills are public records, recorded when probated, and RLT’s are not); and when clients own real estate in states where probate is difficult, especially Florida (so that we avoid the need to probate the Will in NJ and then again in another state, which is required to transfer real estate only).

Nancy Rice has been practicing Estate Planning and Elder Law in New Jersey and Pennsylvania since 1986; she was Certified as an Elder Law Attorney in 1997; and since 1999, she has maintained offices in Camden and Cape May counties, specifically in Haddonfield and Ocean City. Call 609-398-3447. www.RiceElderlaw.com Nancy@RiceElderlaw.com

618 West Ave
Second Floor
Ocean City, NJ 08226

Nancy M. Rice
Esquire, CELA

Certified as an Elder Law Attorney by the National Elder Law Foundation



Estate/Trust Administration
Guardianships
Will Contest

Special Needs Trust
Medicare, Medicaid, Long-Term
Care & Disability Planning

618 West Avenue • 2nd Floor, Ocean City, NJ 08226 • 609.398.3447
49 Grove Street • Haddonfield, NJ 08033 • 856.673.0048
www.RiceElderLaw.com