

A Brief Overview of

Wills Versus Living-Trust Estates

A Contribution To

"Options for Safe, Secure and Legal Asset Preservation

for

Post-Resuscitation Access"

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Thank you Cairn!

First, it would be most appropriate to whole-heartedly thank Cairn Idun for the completion of the compendium of information (of which this "Wills Versus Living-Trust Estates" is intended to be a part) that is to become available for the benefit of all cryonicists. It was through her resourceful creativity and tireless effort that an original simple idea has blossomed into what it has become today: the collected shared works of many cryonicists who have seriously addressed these issues over extended periods of time. Cairn accomplished this Herculean task at some considerable effort, and at some considerable sacrifice to a number of her own personal goals. Thank you Cairn!

Some Definitions:

Will: A law statement determining distribution of deceased's property: a statement of what you want to happen to your property after you are pronounced deceased, or a legal document containing this statement. (1)

Trust: A legal arrangement where you (the "grantor") give control of your property to a trust, which is administered by a "trustee" for the "beneficiary's" benefit. The grantor, trustee and beneficiary may be the same person. The grantor names a successor trustee in the event of incapacitation or death, as well as the successor beneficiary. (2)

Living Trust: Is created while you're alive, and lets you control the distribution of your estate. You transfer ownership of your property and your assets into the trust. You can serve as the trustee or you can select a person or an institution to be the trustee. If you're the trustee, you will name a successor trustee to distribute the assets at your legal pronouncement. (2)

The living trust is sometimes referred to as a revocable living trust (revocable trust, inter vivos trust) because, during the life of the trust creator, it can be updated, altered, or cancelled by the creator.

What Are Potential Advantages Of A Living Trust?

Cost and Time: Major advantages of a Living Trust over a Will is Probate cost and time. When a person dies with only a Will, sometimes the entire estate is tied up for years in the legal process called Probate, where a Government attorney reviews the Will, gives people the opportunity to contest the Will, and, if uncontested, approves the estate to be dispersed within about 6 months. Even with no contests, Probate can be quite costly in Government fees and legal expenses. The Living Trust does away with Probate's legal entanglements. The Trust is drawn up, signed, assets transferred and, if no one contests the administration of the Trust, everything can be disbursed immediately after your death. (3)

Privacy: The terms of a living trust are contained in a private document, while the terms of a Will, including the names of the beneficiaries, become a matter of public record once the Will has been filed with the Probate court. In addition, other information filed with the court during the Probate process, such as the inventory of assets and the written account of all receipts and disbursements of the estate, also become a matter of public record. (4)

Control: The absence of any requirements to file a Will, or any other reports, with a court increases the independence and control of the trustee, as compared to a Will's executor. (4)

Personal Experience:

I was required to help resolve my parent's estate (with my two siblings), and my sister's estate (with my brother). My parent's estate was fully addressed with a living trust, my sister's with an attorney-prepared legal will. Both estates involved real property.

How did these two experiences compare?

The parent's estate settlement did not require court probate nor attorney fees, and all monies owed by estate debtors were paid to the estate quickly and without controversy.

The sister's estate required probate, even though the will was uncontested and so simple as to be easily stated in one sentence ("Divide my estate equally between my two brothers."). We were advised that a probate attorney would be about \$17,000, plus certain unstated additional related fees and costs. We elected to proceed without such an attorney, but nevertheless encountered a myriad of costs, such as the court-appointed referee for \$650 (who additionally had to have his paperwork prepared for him by us). Also, even after the probate

court's judge-signed Order of Final Distribution was issued, several estate debtors were slow to respond, taking over two years to fully pay.

As of this writing, I am therefore in the process of preparing a living trust for myself, based on one of the commercially-available living-trust kits. (5) I can not specifically endorse this particular living-trust kit versus others available, because I have not made an exhaustive comparative analysis of all available kits. The cost of this particular kit was under \$40. I understand that most family-law attorneys do not provide living-trust assistance because their income would be minimal, but my parent's living trust was prepared by their personal attorney for an estimated \$2000 a couple of decades ago.

Why Might a Cryonicist Wish to Consider a Living Trust?

Because of the special long-term investment needs as perceived by a cryonicist, the requirements necessary to protect assets over many decades and under difficult-to-foresee circumstances may best be based on the flexible and court-tested living-trust concept used as a basic foundation for a complete estate plan.

Potential advantages for the cryonicist's use of a living trust include the ability to personally prepare the trust quickly, as personally specified, and at minimal cost. These factors may be especially important to the individual who either now has no legal arrangements in place in regard to their post-mortem estate, or who currently has only a will.

Types of Living Trusts:

In addition to a regular Living Trust, which may be appropriate for a single individual of modest means, there is an A-B Trust which may be considered for a couple, and a Legacy Trust which may be considered for large complex estates. These and potentially other types of trusts should be carefully considered before selecting the most appropriate for the individual's specific circumstances.

What Does a Living Trust NOT Do?

In and of itself, the living trust does not address all issues relating to assuring long-term post-mortem asset access after cryopreservation recovery. Therefore the living trust is best viewed as the initial foundation of a complete plan for "safe, secure and legal asset preservation for post-resuscitation access".

For More Information (2):

AARP: 1-888-687-2277; www.aarp.org. Ask for a copy of Product Report: Wills & Living Trusts. AARP does not sell or endorse living trust products.

The American Bar Association: Service Center, 541 N. Fairbanks Ct., Chicago, IL. 60611; 312-988-5522; www.abanet.org/publiced/publicpubs.html

Council of Better Business Bureaus, Inc.: 4200 Wilson Blvd., Suite 800, Arlington, VA 22203-1838; 703-276-0100; www.bbb.org

The National Academy of Elder Law Attorneys, Inc.: 1604 North Country Club Rd., Tucson, AZ 85716; 520-881-4005; www.naela.org

The National Consumer Law Center, Inc.: 77 Summer St., 10th Floor, Boston, Mass. 02110-1006; 617-542-8010; www.consumerlaw.org

Google.Com

Notes:

- 1) Microsoft WORD dictionary.
- 2) <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro08.shtm>
- 3) <http://www.way2hope.org>
- 4) <http://www.ohioabar.org/pub/lawfacts/index.asp?articleid=12>
- 5) The Alpha Living Trust Kit, authored by Kermit Burton, The Alpha Non-Lawyer Series of Self-Help Legal Kits, 12th Edition, 2006, Alpha Publications of America, Inc., P.O. Box 12488, Tucson, AZ, 85732-2488. This kit contains sample (illustrative) and actual form blanks, along with guidance for the forms' completion, and related requirements (including filing and recording requirements, asset transfers, and further assistance).

Glossary

This Glossary was appended to the original document August 20, 2008.

AARP: Formerly the American Association of Retired Persons, is a United States-based non-government organization (a special interest group). According to its mission statement, it is "a nonprofit, nonpartisan membership organization for people age 50 and over ... dedicated to enhancing quality of life for all as we age," which "provides a wide range of unique benefits, special products, and services for our members." AARP operates as a non-profit advocate for its members, one of the most powerful lobbying groups in the United States, and also sells insurance, investment funds and other financial products. AARP claims over 38 million members, making it one of the largest membership organizations for people age 50 and over in the United States. Membership is expected to grow significantly as baby boomers age. Wikipedia.

Court Order: An official proclamation by a judge that defines the legal relationships between the parties to a hearing, a trial, an appeal or other court proceedings. Such ruling requires or authorizes the carrying out of certain steps by one or more parties to a case. A court order must be signed by a judge and must be notarized.

The content and provisions of a court order depend on the type of proceeding, the phase of the proceedings in which they are issued, and the procedural and evidentiary rules that govern the proceedings.

An order can be as simple as setting a date for trial or as complex as restructuring contractual relationships by and between many corporations in a multi-jurisdictional dispute (i.e., different states or countries). It may be a final order (one that concludes the court action), or an interim order (one during the action). Most orders are written, and are signed by the judge. Some orders, however, are spoken orally by the judge in open court, and are only reduced to writing in the transcript of the proceedings; see "[Probate] Court Order of Final Distribution". Wikipedia.

Estate: Law: A term used in common law to signify the total of a person's property, entitlements and obligations. Wikipedia.

Executor of a Will: Law: The person responsible for the implementation of a will: the person named in a will or appointed by a court to carry out the instructions contained in a will. Adapted from Encarta.

Inter Vivos Trust: See "Living Trust".

Living Trust: (Inter Vivos Trust) is a trust created during a person's lifetime.

In the United States, a living trust refers to a trust that may be revocable by the trust creator or settlor (known by the IRS as the Grantor). Living trusts are often used because they may allow assets to be passed to heirs without going through the process of probate. Avoiding probate will normally save substantial costs (the probate courts, in some states, charge a fee based on a percentage net worth of the deceased), time, and maintain privacy (the probate records are available to the public, while distribution through a trust is private).

Living trusts also can be utilized to plan for unforeseen circumstances such as incapacity or disability.

The grantor / settlor may also serve as a trustee or co-trustee. In the case where two or more co-trustees serve, the trust instrument may provide that either trustee may act alone on behalf of the trust or require both co-trustees to act/sign. The trust instrument may also provide that the other co-trustee shall act as sole trustee if the grantor becomes incompetent and is unable to continue administering the trust.

Despite the advantages, there are also some negative aspects to a living trust in the United States. Beneficiaries do not save on federal estate or state inheritance taxes. Setting up a trust may be expensive, and the expense is immediate, not delayed until after the grantor's death. However, in the long run depending on the circumstances, the expense is usually substantially less to set up a trust and the estate administration is generally much faster when compared to probate.

Living trusts generally do not shelter assets from the U.S. Federal estate tax. A married couple having a trust can, however, effectively double the estate tax exemption amount (the amount of net worth above which an estate tax is levied) by setting up the trust with a formula clause. A formula clause takes advantage of the unlimited spousal deduction allowed under the internal revenue code. When the first married individual dies, the trust pays out to the beneficiaries an amount up to the total unified credit. The amount is set by the formula clause, not strict dollar amounts, because the unified credit increases over time. Without a formula clause, the unified credit could be wasted. The remaining amount of the estate (after the unified credit is exhausted) is paid to the spouse. Thus, when the first spouse dies, no estate tax is owed (just as if the individual died intestate – without a will). However, when the second spouse dies, the distribution to the trust beneficiaries is subject to that decedent's unified credit. The rest is subject to estate tax. If the married couple had died intestate, the first decedent's unified credit is lost because everything is transferred to the spouse upon his/her death. A formula clause is necessary only if the value of the estate is larger than the amount of the unified credit.

For a living trust, the grantor / settlor will often retain some level of relevance to the trust, usually by appointing himself as the trustee and / or as the protector under the trust instrument (in jurisdictions where protectors are recognised). Living trusts also, in practical terms, tend to be driven to large extent by tax considerations. If a living trust fails, the property will usually be held for the grantor / settlor on resulting trusts, which in some notable cases, has had catastrophic tax consequences. A living trust is not under the control and supervision of the probate court, and property held by such a trust is not part of a decedent's probated estate. Wikipedia.

Living will: A legal document expressing the desires of the author with regard to medical decisions, invoked in the event that the author is incapacitated and unable to act on their own behalf. Wikipedia.

Probate: Is the legal process of settling the estate of a deceased person, specifically resolving all claims and distributing the decedent's property under the valid will. Probate is a service that a Surrogate Court provides to confirm the validity of a deceased person's will. Once a will has been probated by the court, everyone can rely on its authenticity. Probate protects the instructions of the deceased, confirms the executor as the Personal representative of the estate, protects the interests of family members who may have claims against the estate, and protects the executor against claims and law suits. Wikipedia.

[Probate] Court Order of Final Distribution: The probate judge's proclamation of the partitioning of an estate: the dividing up of the estate of somebody who has died, among people who are entitled to receive a share; see "Court Order". Adapted from Encarta.

Referee: Law: Person who reviews case: the person appointed by a court to review and make a report or judgment on a case. Adapted from Encarta.

Trust: Trust law: Where money or property is owned and managed on behalf of another. Wikipedia.

Will: Law: A legal document expressing the desires of the author with regard to the disposition of property after the author's death; see "Living Will". Wikipedia.