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• **Living Trusts do not avoid public disclosure.**

Living Trusts are often advertised as ensuring a right of privacy. **This is not so!**

An Inheritance Tax Return must be filed with the Register of Wills of your county. The return lists all assets in the trust and all other taxable assets, such as joint accounts. The return also lists the beneficiaries and their respective shares.

There are other events, such as a transfer of realty or litigation, which would also cause a Living Trust to be a matter of public record.

• **Living Trusts do not avoid court supervision.**

Any creditor, heir, or party in interest may, through litigation, seek protection of the court. Absent litigation, court involvement in the probate process is minimal and serves to ensure orderly and just transfer of estates at death.

• **Living Trusts do not avoid delay in administration.**

There are time constraints in the probate process, but a simple administration can be completed in less than a year. However, the personal representative can, and often does, make advance distributions during the administration.

**FINAL DECISION CONSIDERATIONS**

A consultation with an attorney is strongly advised before going to the expense and burden of a Living Trust.

You should first consider the cost of setting up the trust and your loss of the use of that money during your lifetime.

You should also consider the cost and bother of transferring the assets to the trust, which must be done to be effective. This is an extra step that is not required with probate.

There is also the burden of maintaining the trust as a separate entity during your lifetime.

Other factors include your age, whether out-of-state realty is involved (in which case a trust may be advisable), the cost of probate (which in Pennsylvania is minimal), the ability and integrity of the contingent trustee who will make distribution, whether a business is involved, and the extent and expense of attorney involvement.

**To consult an attorney about a Living Trust, call the Westmoreland Bar Association's Lawyer Referral Service at 724-834-8490, or obtain a referral online at [lrs.westbar.org](http://lrs.westbar.org).**

**If you feel you are the victim of aggressive or improper marketing efforts, call the Pennsylvania Attorney General's Consumer Protection Hotline at 1-800-441-2555.**

**THE TRUTH ABOUT LIVING TRUSTS**



**How Pennsylvanians can protect themselves and their families through proper estate planning.**



*This information is brought to you courtesy of the Westmoreland Bar Association*



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## HOW IS PROPERTY TRANSFERRED?

Property can be transferred in several ways at death, including:

- Joint ownership, such as a house owned by husband and wife;
- Contract law, such as an insurance policy, and;
- Probate, which serves to pass title to assets decedent held in his or her own name to the heirs.

## WHAT IS PROBATE?

In probate, a will is presented, or “proved,” to the court (the Register of Wills in Pennsylvania) and accepted if valid. If there is not a will, property distribution is made under the intestate laws of the state.

In either case, an administration is raised and a personal representative is appointed by the Register of Wills to administer the estate. This entails, at a minimum, collecting the assets, paying the just debts and taxes and making proper distribution to the heirs.

## WHAT IS A LIVING TRUST?

Trusts have existed for hundreds of years. A trust is created by a transfer whereby the interest in property is split between the legal title and the beneficial estate.

In a typical arrangement the trustee holds legal title to the property and

holds it for the benefit of the beneficiary (often the income interest) and the remaindermen (those who take the property at termination—usually the beneficiary’s death).

Trusts are either inter-vivos (created by a deed of trust) or testamentary (created by will).

A Living Trust is a an inter-vivos trust. The phrase has no legal meaning; it is simply a term coined by marketers and promoters of these arrangements.

Living Trusts are usually sold to avoid probate. A person creates the trust with himself or herself as trustee and appoints a trustee (usually a child) to distribute the trust property at death. This arrangement is really a trust in name only.

When used in this brochure, the term “Living Trust” is confined to those revocable trusts where the creator is sole trustee with distribution at death.

## AVOIDING PROBATE

While Living Trusts are sold with the idea of saving money (principally legal fees), their use should be tempered by these considerations:

- Setting up a trust can cost several thousand dollars, much more than a simple will, which usually costs a few hundred dollars. Companies that market these trusts typically have their customer sign preprinted forms that are not tailored to individual situations and needs. Often there is no personal attorney involvement.

- At death, there will still be a need for an attorney to assist the trustee in performing some or all of the following duties. These duties must be performed whether or not probate is avoided.

Among the duties that **always** need to be addressed are to:

- hold and properly invest trust assets
- prepare the death tax return(s)
- prepare decedent’s final income tax return(s)
- prepare fiduciary income tax return(s)
- collect life insurance and medical claims, and assure continued casualty protection
- collect debts due decedent
- pay just debts and expenses
- consider disclaimers and renunciations
- fairly distribute and obtain receipts for household goods and personal effects
- account for all receipts and disbursements to the heirs
- distribute assets properly and obtain releases

Among the duties that **may** need to be addressed are:

- paying the family exemption, if applicable
- spousal election to take under or against the estate

- advertising an estate, to protect it from creditors
- conducting an inventory of any safe deposit box
- operation of business
- possession, insurance and maintenance of realty

In summary, there will be fees for services after death which, with the cost of the Living Trust, may equal or exceed an attorney’s fee for normal probate.

## WHAT LIVING TRUSTS DO NOT DO

- **Living Trusts do not avoid death taxes.**

Some people think that assets placed in a trust are not taxable at death. **This is not so!**

Assets in Living Trusts are fully taxable for the Pennsylvania Inheritance Tax and the Federal Estate Tax. The assets are taxable because the trust is revocable, or the creator has retained the right to the income, or for other reasons.

- **Living Trusts do not defeat claims of creditors.**

One cannot insulate oneself from creditors by placing assets in a Living Trust. As long as the creator has the right to revoke or amend the trust, the assets are subject to claims just as they would be if they were solely owned.

*continued on panel 5*