Do I Need a Living Trust?

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Many clients come to see me requesting a living trust, as they are led to believe it is better than their old will. Unfortunately, despite better education in the marketplace, living trust packages are still being marketed to seniors by non-lawyers and even a few lawyers. The sales pitch is often made at "elder seminars" and in retirement homes. The sales pitch is reliant upon elder consumers' fear of probate, courts, taxes, long-termcare costs and death and often discourage getting independent legal advice. Your best protection is to do your research and understand what you are getting into. Talk with a local lawyer before you get scammed and throw your money away.

I admit that I have created many living trusts for clients, but for 90% of my clients, a will is more than sufficient. A living trust is an agreement involving three parties: the settlor (you), the trustee or trustees who agree to manage your assets as directed by the terms of the trust (many times you/spouse), and the beneficiaries. The most important thing to remember is that the person setting up the trust can revoke (cancel) the trust at any time. However, a living trust becomes irrevocable (cannot be changed) when you die, even if your spouse survives you (unless it is a joint living trust).

Under the right circumstances, a trust can be very effective and a proper part of someone's estate plan. So when is a trust appropriate? For any client who intends to retain his or her out-of-state real estate (shore home, cabin, etc.), it makes a lot of sense to have a trust hold this real estate, as probating a will in two states can be expensive and requires hiring two attorneys. A trust is also a very good vehicle to allow a trustee to handle your finances with more specific instructions than provided in a durable power of attorney. Trusts can also be very good tools to use in second marriages where the current or backup trustee is a child from a first marriage and not the spouse. Consistent with the sales pitch, the trust will avoid probate, assuming you have placed all of your accounts and assets into the trust, with the exception of those with designated beneficiaries (i.e., IRAs, 401(K)s, life insurance, etc.). Avoiding probate means you avoid having to submit the will at the Register of Wills and avoid probate fees, which in Pennsylvania are less than $500 for a million-dollar estate and less than $750 for a two-million-dollar estate. While one of the myths of trusts is that it is private because it does not have to pass through probate, this is somewhat of a misnomer, as the trustee will have to file an inheritance tax return, which typically will need to have the trust attached to it.

Unfortunately, no estate planning document can avoid the area where most fees and costs are incurred—family conflicts. While trusts serve a purpose in some circumstances, for most people with relatively modest estates, wills are quite adequate. They are generally less complicated and certainly less expensive than a trust, which many times ranges from $500 to $2,000.