

WHY YOU SHOULD USE A LIVING TRUST TO OWN YOUR US PROPERTY?

If you own or are purchasing US property, a living trust should be an important part of your US estate plan. In general terms, a living trust is a written legal document in which assets are transferred immediately in the trust in accordance with the directions given by the settlor or grantor of the agreement. It is completely flexible to suit your needs and family situation. With a living trust, your assets are put into the trust, administrated for your benefit during your lifetime, and then transferred to your heirs upon your death. Typically, you will be the trustee as well as the sole beneficiary during your lifetime and by doing so, there are no management fees, loss of control and no tax filing obligations. As trustee, you will maintain full powers to sell, lease or mortgage the property. Such a trust may be amended or revoked by you at any time.

WHAT ARE THE BENEFITS OF A LIVING TRUST?

A living trust can help ensure that your assets will be managed according to your wishes – even if you become unable to manage them yourself. In event of your incapacity, you can name a trustee to take over the trust's management for your benefit. And at your death, the replacement trustee – similar to the executor of a will – would then gather the trust's assets, pay any debts, claims and taxes, and distribute the assets according to your instructions. Unlike a will, however, this can all be done without court supervision or approval. Other advantages include creditor and spousal protection for the heirs as well as the inclusion of US estate tax provisions which can defer or avoid US estate tax on death.

AVOID GUARDIANSHIP IF YOU BECOME INCAPACITATED

In case of your incapacity to manage your own living trust as the trustee, your designated successor trustee would manage the trust's assets for you. For all assets outside of the living trust, the US court will need to appoint a guardian to manage the assets for you. Guardianship proceedings are designed to help protect you in times of vulnerability or incapacity of managing your assets. However, they are also public in nature and can be costly because of the substantial court and medical intervention. In addition, conservatorship proceedings may be less flexible in managing real estate than a well-designed living trust.

AVOID PROBATE UPON DEATH

Upon your death, the assets held in your living trust could be managed by the successor trustee and distributed according to your directions without court supervision and involvement. This can save your heirs time, money and frustration. And because

the trust would not be under the direct management of the probate court, your assets and their value (as well as your beneficiaries' identities) would not become a public record. If your assets (those registered in your name alone) are not in a living trust upon your death, they would be subject to probate under State laws where the property is situated.

Probate is a court-supervised process for transferring assets to the beneficiaries listed in one's will. It can take more time to complete than the distribution of property held in a living trust. In addition, assets tied up in probate may not be as readily accessible to the beneficiaries as those held in a living trust. And the cost of a probate is often far greater than the cost of managing and distributing comparable assets held in a living trust. Once your living trust has been executed, it is important that your assets be transferred to the trustee of your living trust. Deeds to your real estate must be prepared and recorded.

If you have a living trust, a US Pourover Will would typically also be prepared stating that all your individually owned US assets should be transferred to the trustee of your living trust after your death and dealt with accordingly. However, this does not mean that your beneficiaries can avoid going through probate for these assets.

It is important to note that a living trust will not avoid US estate taxes. A living trust may contain provisions that can postpone, reduce or even eliminate estate taxes. The living trust itself will not file income tax returns, and all income and deductions related to the trust's assets are reportable on your individual income tax returns.

OTHER ESTATE PLANNING DOCUMENTS

A durable power of attorney for property management could be helpful if you ever become incapacitated. It deals with assets that were not transferred to your living trust before you became incapacitated and any assets that you receive afterward.

You might also consider setting up an advance health care directive, durable power of attorney for health care. This allows your attorney-in-fact to make health care decisions for you when you can no longer make them for yourself. In your advance health care directive, you may state your wishes regarding life-sustaining treatment, organ donation and funeral arrangements as well. A health care directive also allows an authorized agent to access your medical information, which could be important in light of privacy laws.