

Do I have enough Assets to have a Trust?

If it is your desire to make it easy and inexpensive for your loved ones to settle your estate after you are gone you may need a Revocable Living Trust. Preparing and funding your Trust with your assets will allow your children to avoid the court-supervised process called Probate. Although it may be advisable for your children to consult with an attorney to administer the trust estate after your death, they can perform most of the duties required without court supervision and therefore much more economically.

Many clients believe that if they just own their home with few other assets that they are not “wealthy” enough to justify having a Trust. If one just owns an average home valued at \$600,000 the executor and attorney fees incurred to get through the probate process is at least \$30,000 and approximately a year before the probate can be settled and assets distributed to the heirs. A Trust estate with only the \$600,000 home as an asset can be resolved and the home distributed to the beneficiary within weeks at a fraction of the probate cost. (Note: Larger trust estates can take longer and vary based on the specific circumstance).

Many individuals do their own planning by placing that house in Joint Tenancy with the right of survivorship with a child. The intended result of avoiding probate can be achieved but with other unintended disasters. By placing an adult child on title to your home as a joint tenant you put your home at risk. If that child has financial problems that result in bankruptcy or gets sued, their interest in your home is at risk to creditors. In addition, if you change your mind you need that child’s signature on a deed to convey title back to you.

You also may have created a capital gain tax liability, which could have been totally avoided by use of the Trust as your estate-planning tool. Many times the tax liability created can be a greater amount than the probate cost that you were trying to avoid. In the example of the \$600,000 house, if it was purchased many years ago at \$100,000 your children will receive a stepped up basis of the value of the home as your date of death. Therefore if they then chose to sell the home they will have no capital gain tax when they sell the home at the date of death value. However, if your child is on title as a joint tenant he or she will avoid probate, but will only receive a stepped up basis for your one half of the date of death value. Therefore, in the example given, if the heirs choose to sell the home, they will incur a State and Federal capital gain tax of approximately \$60,000. (Beyond the scope of this article your tax advisor may advise you on how to defer this tax).

Every person and family circumstances are different and it is always best to consult with a professional Trusted Advisor. The best way to locate a trusted advisor is to speak to friends and acquaintances that are happy with their advisors and get a referral. Then interview a couple of advisors and select yours.

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