

THE LEGAL ASSISTANCE OFFICES OF
III CORPS, 1ST CAVALRY DIVISION, 4TH INFANTRY DIVISION (MECHANIZED)
FORT HOOD, TEXAS 76544

LIVING TRUSTS

I. INTRODUCTION - A revocable life time trust, sometimes called a "living trust," is a very popular, but often oversold, estate planning tool. In essence, a trust is a legal entity that acts as your "alter ego" much as a family business is just a legal manifestation of your own efforts. You are the creator of the trust (sometimes referred to as Grantor, Settlor, or Trustor, but referred to in this fact sheet as Trustmaker) as well as its principal beneficiary. In most cases, while alive and competent, you are also the manager of the trust (referred to as the Trustee).

You can reserve the right to amend or revoke the trust in whole or in part and to withdraw property from or add property to the trust. The trust will also continue to take care of your property if you should become physically or mentally unable to do so yourself. The trust can also act as a will substitute wherein upon the death of one of the Trustmakers, the trust instrument can provide for the disposition of the deceased Trustmaker's share. The trust generally ends with the death of the second spouse, but may be set up to continue for the children's benefit rather than them receiving the funds outright.

II. REASONS FOR USING REVOCABLE TRUSTS

A. Disability or Incompetency - perhaps the principal non-tax reason to have a living trust is in the event of incompetency or disability. A revocable trust can be used as a comprehensive alternative to or in conjunction with a durable power of attorney. If the trust is fully funded with all of the property of the Trustmaker, a costly and inconvenient court-supervised guardianship can be avoided. All of the property will continue to be managed by the Co-Trustee (or successor Trustee, if the Trustmaker had been serving as the sole Trustee).

B. Probate - Probate is the legal process of authentication of the will, passing of property to the heirs, and administration of the estate at passing. Although Texas has many shortcuts and inexpensive and simple procedures, it still can be avoided through the use of a living trust. If all the Trustmaker's property is in the trust it will pass immediately as per the trust agreement, and there will be no property subject to probate administration. These savings can be multiplied when a Trustmaker owns real property in another state, a potentially costly and time consuming ancillary probate. Furthermore, a probate proceeding is a matter of public record, whereas the provisions of a trust are private, known only to the Trustmaker, the Trustee, and the beneficiaries.

C. Taxes and Other Reasons - For estates over \$625,000 (increasing over the next several years to \$1,000,000), living trusts can also result in significant savings on death taxes. For example, on a joint marital estate of \$900,000, including

the full value of life insurance policies, retirement funds, and homes, the savings can amount to \$100,000! A revocable trust is also a useful tool for keeping community and separate assets segregated. For example, a revocable trust is useful for a client whose assets far exceed his or her investment abilities or who travels a great deal or is otherwise unable or disinclined to manage the assets effectively.

III. NEED FOR A WILL

The Trustmakers also should have simple wills, commonly called "pour-over" wills, that provide for the transfer to the trust of any property owned at death that has not been transferred to the trust previously. Consider this a safety net in case all the property is not transferred to the trust (and there are times when this is in fact advisable).

IV. CONCLUSION

A living- trust can be an excellent vehicle to avoid substantial death taxes, avoid the legal costs and delays associated with Guardianships and probate, and to allow for unique conditions and controls to be placed on property. However, the costs associated with those alternatives are often greatly exaggerated by salesmen who solicit your home. In most cases they are not even attorneys! To see if a living trust is right for you, you should consult with an attorney who concentrates in that area of law and compare it to what local fees and costs are for such things as probate as well as the cost for living trusts. Often you will find that they are not anywhere close to what has been represented by these salesmen.

FOR ADDITIONAL INFORMATION CONTACT THE LEGAL ASSISTANCE OFFICES ON FORT HOOD: III Corps, Building 1001, Room C224, 287-7901/3199; 1st Cavalry Division, Building 28000, Room 1155, 287-6060; 4th Infantry Division (Mech), Building 410, Room 175, 287-1850