



OLD NORTH STATE TRUST, LLC

COMMON MISCONCEPTIONS ABOUT LIVING TRUSTS

Intervivos or living trusts are extremely useful tools to manage family funds. But it seems there are many misconceptions about living trusts and how they can benefit someone from a current investment and future orderly beneficiary asset distribution perspective. Some of the more frequently asked questions and some basic answers to those questions about living trusts are addressed in this article.

1. What is the difference between a living trust and a testamentary trust?

A trust is an arrangement in which you transfer assets to a separate legal entity (the trust), created by a legal document that is administered by a fiduciary (the trustee), and for a specific purpose and beneficiary (yourself or another person). A **living trust** is simply any trust you create during your lifetime. A **testamentary trust** is a trust created by a Will. A revocable living trust is a trust that allows you complete control since you can revoke the trust or amend the terms of the trust agreement.

2. Is it hard to establish a Living Trust?

No. Once you determine the purpose, the trustee, and investment goals you desire to achieve, your attorney can prepare the appropriate trust agreement. You execute the agreement as creator (grantor) and fund the account with the assets you desire.

3. Do I have enough money for a trust?

Another misconception! Living trusts are not just for the rich. Unfortunately, this misconception is perpetuated by the large banks and trust companies that cater only to the very wealthy. Old North State Trust, LLC is not like that. The great majority of our clients do not classify themselves as rich or have multi-million dollar trusts. We serve clients that need a trustee that they can count on to be around for the duration, desire to have their estate plan in order to ease the burden on the family at their death, safeguard their retirement nest egg, and provide investment management.

4. Is a living trust expensive if managed by a trust company?

No. Our clients often find that our annual charges as trustee are actually less than they were being charged for investment or mutual fund services. When establishing a living trust, there is a one time cost of paying the attorney to prepare the trust agreement. This expense could range from a few hundred dollars for simple plans to a few thousand dollars when complex estate planning techniques are required. But this planning could save thousands of dollars for your children or other heirs. An upfront investment can be an extremely cost conscience decision later on.

5. Can a living trust avoid probate?

Yes. When someone dies, their Will must be proven valid (probated) since the Will generally controls the estate settlement process. Because a living trust is a separate legal entity, assets that have been placed in the trust are not subject to probate when the grantor of the trust dies. Therefore, the instructions contained in the trust agreement can be carried out immediately and usually this means estate settlement costs are reduced as well. **Also, unlike the terms of your Will, which become a matter of public record once the Will is probated, the terms of a living trust agreement remain private between the trustee and your beneficiaries.**

6. Does a revocable living trust save estate taxes?

No. Although assets placed in a revocable living trust are removed from your probate estate, they are not removed from the assets that must be included for estate tax purposes. Currently, for the year 2010, the estate tax has been repealed. Unless Congress passes legislation to extend the tax law passed under the Bush administration, the estate tax equivalent exemption will revert to the year 2002 level of \$1,000,000 for 2011; therefore, your taxable estate would have to exceed this amount to require an estate tax liability. However, there are some estate planning techniques that utilize trusts in a way that will help minimize estate taxes. If your estate exceeds the estate tax equivalent exemption amount, there are opportunities using a living trust where a married person can shelter death taxes.

7. Does a Trust fail due to my mental or physical incapacity?

No. When a grantor/beneficiary experiences diminished mental or physical capacity, this is when a Trust becomes an even more valuable financial tool. The trustee is authorized to make payments to or for the direct benefit of the beneficiary to meet their support, maintenance, and general welfare during their incapacity. Important bills such as personal income tax payments, insurance, property taxes, utilities, medical, mortgage, and recurring monthly expenses can be paid by the trustee until such time as the beneficiary has made a full recovery.

8. Can I retain any control if I establish a living trust?

Yes. You can keep as much control as you want. Generally, the grantor of a living trust retains the power to change trustees, terminate the trust, withdraw the assets and amend the trust agreement. Remember, living trusts are flexible, useful tools.

Please call any of our Trust Officers at Old North State Trust if you would like to know more about the advantages a living trust can offer you.