

Kathleen Martin is an attorney with O'Donnell, Weiss & Mattei, P.C., and a newspaper columnist for The Mercury, which gave permission for this article to be reprinted.

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Are living trusts better than wills in Pennsylvania?

It is not unusual for older persons (and younger folks) in Pennsylvania to wonder if they should have a Living Trust. They may have heard that Living Trusts will avoid the need for probate, which on its face sounds like a good thing. They may also have heard that such a vehicle will protect assets for the next generation better than a Will. A sales person may have approached them, and suggested that a Living Trust is the way to go. It is very important to be informed as to the facts regarding Living Trusts, and to consult with an attorney before buying such a product from a sales person.

Living Trusts avoid probate: It is true that the *intention* of a Living Trust is the avoidance of probate. However, in Pennsylvania, probate is easy, not time consuming, and not expensive. There are other states where a Living Trust is very helpful, such as Florida. So if the only reason to spend significantly more money on a Living Trust as opposed to a Will is to avoid probate, think carefully. Living Trusts are expensive to prepare, often overly complicated for those of average means, and many times do not avoid probate, which was the stated intention. The only way for a Living Trust to be completely effective in avoiding probate is for the owner to title every asset in the name of the Trust, such as the bank accounts, motor vehicles, real estate, etc. (everything that does not have a valid beneficiary listed) initially and to continue to do so thereafter. Anything that slips by will result in the need for probate after all.

Living Trusts will avoid inheritance tax: This is false. A Living Trust does not save one cent in inheritance tax, and does not make estate administration easier. Some aspects of estate administration may be avoided since probate is potentially avoided, but most of the normal estate administration is still necessary, including the filing of an inheritance tax return. In fact, the trust administration may take more time, as many financial institutions and brokerage companies do not know how to react to a Living Trust.

Living Trusts will protect assets from nursing home costs: This is also false. The Trust must be irrevocable and in place for more than five years before the initial nursing home admission to protect assets. A Living Trust is revocable, meaning that it can be changed by the owner or owners at any point during their lifetimes. In a Medicaid situation, titling the family home in the name of the Living Trust is an issue for the spouse who stays home. The house, which is ordinarily owned by husband and wife, is now owned by the Trust, destroying the valuable protection that is normally afforded to the spouse who remains in the community, i.e. complete protection of that valuable asset. If the house is owned by the Trust, the house becomes an available asset.

Before considering a Living Trust for yourself, or even if you already have one, be sure to consult your attorney to make sure that you understand what you have and what you need. Some groups that sell Living Trusts are not attorneys (they state that they consult with an attorney), and they are really about selling deferred annuity products on which there is often a large commission. A deferred annuity is generally an inappropriate financial product for an older person, especially after retirement. An attorney versed in estate planning and elder law can provide you with the realities of Living Trust ownership.