Why is a Living Trust an Important Estate Planning Tool for Landlords?
By Michael K. Elson, Attorney at Law

A living trust is a legal instrument that holds title to the personal assets of a person or family, including bank accounts, real estate, stocks, etc. Like a will, a living trust contains your instructions for the distribution of your assets after you die. A primary difference between a will and a trust is that a trust avoids probate, whereas a will does not. Probate of a will requires filing of a costly probate proceeding, newspaper publication notices, letters to all heirs even if disinherited and statutory waiting periods. Also, the records of the probate are public information.

Utilizing a living trust is a method of avoiding this expensive, cumbersome probate process. When a person's assets are transferred to their living trust during their lifetime, probate is avoided entirely. After the person who established the living trust (the Trustor) dies, the successor trustee(s), who are usually the adult children or relatives of the Trustor, distribute the trust assets to the designated beneficiaries. Because the living trust eliminates probate and, under many circumstances can greatly reduce estate taxes, it is possible to pass on a much greater portion of your assets to your heirs.

It is a common misconception that holding property in joint tenancy provides protections similar to a living trust. This is not the case. Joint tenancy only avoids probate on the death of the first joint tenant, but the surviving joint tenant will be left with a probate problem unless planning is implemented after the first death. This is typically not a good time for planning, due to the life changes and emotional trauma associated with the loss of a spouse. In addition, joint tenancy can also cause a loss of the step-up in basis on inherited property. In conclusion, the proper execution and funding of a well-drafted living trust, when both spouses are healthy, avoids probate, can substantially reduce estate taxes, and eliminates the possibility that a surviving joint tenant may be unable to complete future planning due to incapacity or an accident.

Benefits of a Living Trust:

- Probate is avoided, including multiple probates if you own property in other states.
- Probate entails public court proceedings which can last two years or more; whereas trusts are private and can be administered very quickly, which your heirs and successor trustee(s) will greatly appreciate.
- The individual(s) who set up the trust are the trustee(s) during their lifetime and have full control over the trust assets, including the power to easily change or revoke the trust.
- The trust for a married couple can be designed to maximize the estate tax exemption, which can result in a potential tax savings to the heirs of more than one million dollars.
- The trust does not cause a change in income taxes; tax filings remain exactly the same throughout the life of the Trustor.

- The trust can hold corporate stock or ownership interest of an LLC, so that the company and its assets will avoid probate.
- Living trusts can be established for individuals or as a joint trust for married couples, bringing all of your assets together under one plan.
- Prevents court control of assets at incapacity.
- Provides maximum privacy.
- Quicker distribution of assets to beneficiaries.
- Assets can remain in trust even after your death should you desire.
- Can reduce or eliminate estate taxes.
- Inexpensive, easy to set up and maintain.
- Can be changed or cancelled at any time.
- Difficult to contest.
- Prevents court control of minors' inheritances and guardianship proceedings.
- Can protect dependents with special needs.
- Prevents unintentional disinheriting and other problems of joint tenancy ownership.
- Peace of mind.

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