

Living Trusts: Why You Might Need One – Mullooly Asset Show Ep. 55 - Transcript

Tom Mullooly: In episode 55, we're going to talk about some of the pros and cons that come with living trusts. Welcome to the Mullooly Asset Show. I'm your host, Tom Mullooly and this is episode number 55. In these videos that we're putting together, they're all based on topics that come from you, from our listeners and watchers of these videos. If you have questions, financial planning questions or investment questions, get in touch with us. You may see it on a future video. Tim, what are we going to be talking about today?

Tim: What are the benefits of having a living trust?

Tom Mullooly: Okay, that's a good topic. Let's talk about some of the pros and cons of a living trust. I don't know if there really are too many cons, so to speak, of a living trust. I think the biggest con, negative, if you want to find one is that I think a lot of people who don't have a living trust don't understand them. I also think that people who have living trusts, a lot of them don't understand them either. Let's back up a second here and talk about why you would have a living trust.

This is a problem of a problem of a problem. A lot of folks don't understand the process behind going through probate. When someone passes away, their estate has to go through probate. What does the probate court do? All it does, the probate court, is it gets an inventory of your assets and your debts, and it outlines a way, a process for your creditors to be paid in a timely fashion and also for the proper distribution of the remaining assets to your heirs or beneficiaries.

So, probate court really unwinds and unravels all the stuff that happened right up until your death. When you have an estate that goes through probate, understand that one of the things you have to do is list, inventory, all of the assets and all of the debts that belong to you. So all of that becomes a matter of public record. Do you want to have a public record saying that you owe a million dollars to Visa and MasterCard? Probably not. It's also no one's business where your assets are. It's another opportunity for someone to stick their nose in where they shouldn't be. Mama was always right; mind your own business. It makes a lot of sense and it's good advice. But you have to understand the process behind probate and what probate is to gain a better appreciation for a living trust.

Let's talk about a living trust. It's a legal document and it's not something that's created upon your death. It happens now, today. That's why it's called a living trust. It doesn't take the assets upon your death and pour them into a trust. It happens right now. There's a lot of mistakes that people make when they have living trusts. I think a lot of folks just don't understand primarily how they work.

One of the things that I've heard people say is that I've got a living trust so I don't have to worry about estate taxes. No, no, no. Your estate could still be subject to estate taxes. Now, true, you need to

have an estate of over five million dollars, but depending on the state you live in, like New Jersey, you could still be subject to estate taxes as well. It's important to understand that, at least in 2017.

Assets, like I mentioned before, they're not going to pour over at death. You need to title the assets now. If you've got an investment account, get your copy of the trust document to your advisor and they can re-title your account or open a new account in the name of the trust. That's very, very important.

The other things that I'll tell you is that if you don't put all of your assets into the name of the trust, you're still going to have probate. You're still going to have to go through it. So if you have a car and you just forgot to change the title, or if you have something else that's titled in your name, a vacation home or some other asset that you have that is not titled properly, you're going to go through probate, and some of the stuff is going to get listed. It's, again, nobody's business.

So it's very important when you're building these trusts that you can customize these and make them really work for you. My recommendation for you is to not download something off of the internet and just fill out a few forms and call it a day. These can be highly customized documents. You really need an attorney who specializes in trust. If you don't know one, get in touch with us. We can give you the names of a couple of them who we think would be of good help to you.

One of the other benefits about living trusts that a lot of people don't even think about is no one plans on getting sick, no one plans on getting disabled, and certainly no one thinks they're going to become senile or incapacitated. But guess what? In a living trust, you can outline exactly who's going to be responsible for your financial affairs if something happens to you. If you get sick, if you get disabled, or if you become mentally incapacitated. That is really, really important.

The living trust is going to be able to ... It's one of the only estate planning tools that can dictate these things that happen before you die, and it also can have an orderly list of who gets what in terms of distributing assets after you pass away. Sometimes a will won't even be able to do that, so don't think a will is going to cover everything. You're best off having a legal document like a trust that can itemize exactly what your wishes are. That's really important.

Now, having a trust, still, like I said before, it doesn't absolve you of having to pay estate taxes. It's, again, one of those big misunderstandings that people have about living trusts. If you've got questions about living trusts, about saying a mouthful like revocable versus irrevocable, pour-over trusts, questions like this, financial planning topics, get in touch with us. We'd be happy to answer your questions. You may even see it on a future video, and we appreciate you watching episode 55, and keep those questions rolling in. Look forward to seeing you on number 56.