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TRUST ADMINISTRATION V. PROBATE

The way people plan for their passing is changing. People are more proactive than ever in trying to make things easier on their loved ones rather than just saying “I’ll be dead, it’s their problem.” Part of this proactive planning includes the increased use of Living Trusts over the older more traditional Last Wills as the primary estate planning vehicle.

Using a Living Trust allows you to avoid probate for part or all of your assets. When legal title to your assets is owned by your trust, then the administration and distribution of your assets upon your death is simpler, quicker, and more cost-effective compared to going through probate. To learn more about the probate process, check out our article entitled, “Wait...My Will Goes Through Probate.”

So, what happens in a trust administration? The process is relatively straight-forward. Your successor trustee will meet with the attorney who will review the trust. They will discuss the assets, the trust terms, the legal process, and the fees required to administer the trust. Then, the attorney will discuss what work needs to be completed by the trustee and what work will need to be done by the attorney.



Trust administration is not court-supervised. In fact, the goal is to avoid the court system entirely. Yet, the purpose of trust administration is similar to a probate—transfer property from the decedent (the person who passed away) to the beneficiaries named in the trust.

This may or may not be an advantage depending on how your trust was drafted. Remember, say trust is like saying car. It takes working with a skilled and qualified estate planning attorney to ensure your trust delivers on the promises made. So, what are a few of the things that could go wrong without court supervision?

DOES YOUR TRUST HAVE A TRUST PROTECTOR?

Not every trust has trust protectors, but should they? Trust protectors can resolve disputes between beneficiaries, assist trustees in administering the trust, and provide a checks and balance system to ensure the trust is properly administered. Further, trust protectors do not have to serve unless they are called upon by a trustee or beneficiary. Is a trust protector right for your trust?



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Lindsay M. Harris
is the owner & lead
succession planning
attorney at Harris Law
& Co.

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Without court supervision, there may not be a good dispute resolution procedure in the trust if the beneficiaries disagree with the trustee. Although my team’s trusts always include dispute resolution procedures to help ensure assets are not needlessly squandered in legal and court battles. Not all trusts are created the same.

There may also not be a system of checks and balances if your trustee is not acting pursuant to the trust’s terms, whether intentional or not. This is why selecting your trustee, successor trustees, and trust protector is incredibly important. Proper drafting can build in a cost-effective and fair checks and balance system.

The inherent privacy afforded to trust administrations may foster baseless assumptions and cause family disputes. Secrecy from the public and “google” is a great feature of a living trust. But this privacy may cause issues among your beneficiaries and the trustee. Is your trustee also a beneficiary? Then, you may want to consider what information the trustee needs to share with the beneficiaries. There is likely a middle ground that will help ensure your beneficiaries still feel like part of the process and know the administration is being handled appropriately while still not being in charge or able to make decisions. This is another reason why selecting the right trustee is so vital.

Trust administration is also more cost-effective and quicker than probate—roughly half the cost and half the time. Probate fees are generally determined based on the value of assets in the estate. This is usually a fixed percentage regardless of the time actually spent probating the estate by the personal representative and the attorney. Imagine if the estate owns real estate or a business. Probate fees for a house valued at \$250,000 are around \$12,500 by the time the attorney and personal representative are paid. Trust administration fees on the other hand are usually determined by the amount of time the successor trustee and attorney spend working on the estate. In addition, there are no court filing fees in a trust administration. So, the same trust administration with a house valued at \$250,000 may result in closer to \$5,000 in legal and personal representative fees. At the end of the day, you worked your whole life to ensure your loved ones were taken care of, not your attorney. While good legal advice is essential, there is no point in paying over double for what most consider an inferior process.

If you need help administering a trust, want a second-opinion, or want to ensure your trust is set up to provide a smooth transition to your loved ones, give us a call to schedule a consult at 605-777-1772. Plan for the worst, hope for the best, be prepared for everything in between.

**This article is for general informational purposes and is not intended to give legal advice. Please consult with an attorney about your situation.*