Living Trust & Probate

Guide for Settling a Trust Estate

AmeriEstate

Legal Plan, Inc.

Introduction

What is a Living Trust and Probate?

Unlike a will, which determines how a person's property will be distributed upon his/her passing, a living trust provides after-death and lifetime property management guidelines. It names a successor in case someone is incapacitated or passes away. If someone is disabled by either an illness or an accident, a successor trustee comes in to manage the living trust property and to distribute the property according to the grantor's wishes.

Living trusts, also known as inter vivos, are different from wills in that they do not require the intervention of probate courts. Probate means that courts can decide if wills are valid or if they exist. Probate also determines decedents' beneficiaries or heirs, their property value, and matters dealing with property transfer to beneficiaries. The probate court's inconveniences, publicity, and unnecessary expenses are avoided when one decides to have a living trust.

Properly written and funded living trusts helps people to:

- Prevent their financial affairs from becoming public matters
- Plan for the management of their property in case of incapacitation
- Avoid probate on their assets
- Control their property in case of their demise

Welcome

About AmeriEstate

Providing a personalized approach to address the needs of everyday people.

We are AmeriEstate, an estate planning firm dedicated to providing a personalized approach to address the needs of everyday people. We specialize in advising and guiding people like you, parents, retirees, new homeowners, professionals, and business owners, helping you preserve and grow your assets over multiple generations

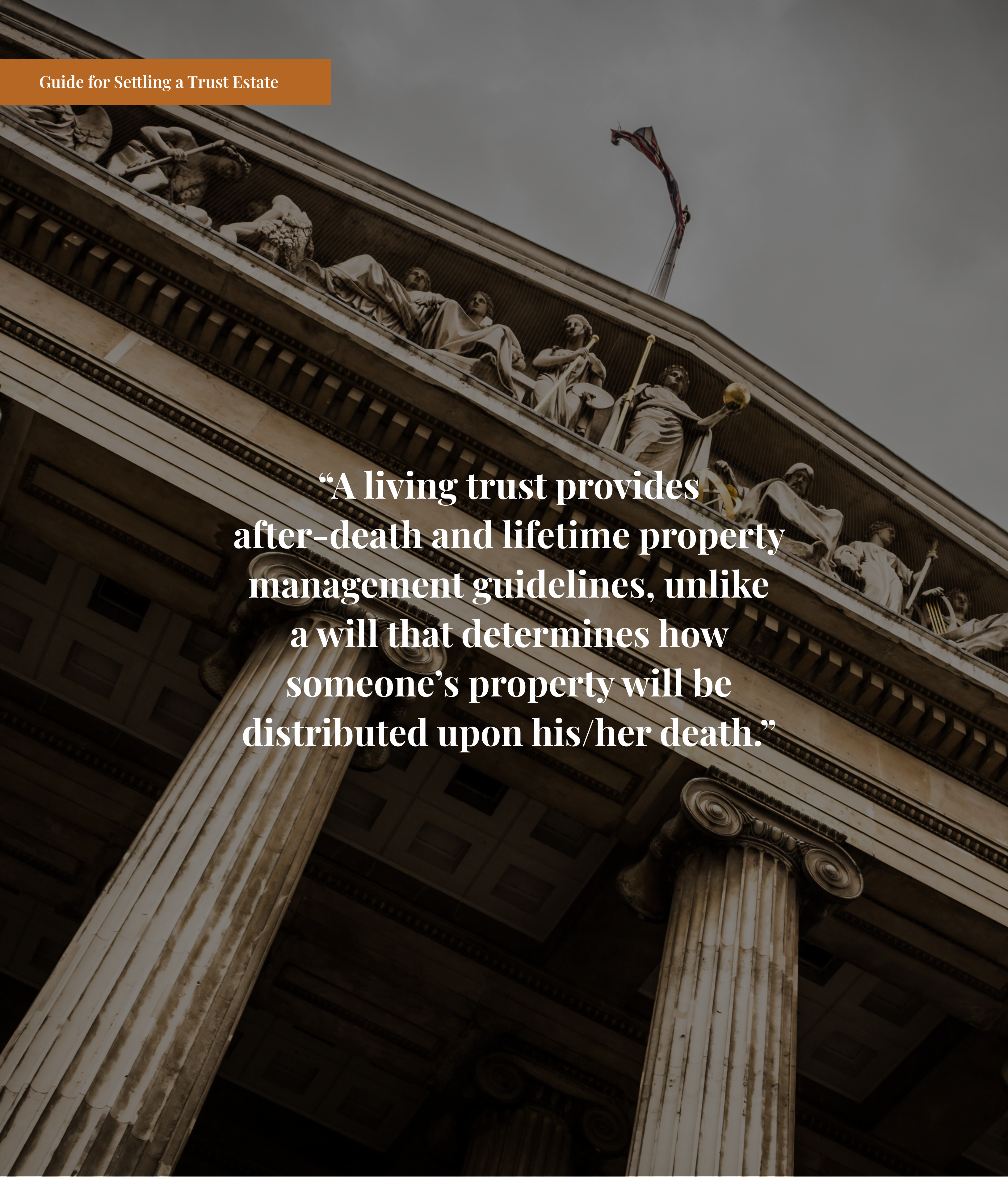
At AmeriEstate, estate planning is all we do. We aspire to give everyday people a customized strategy perfectly tailored to their needs allowing them to face the future with confidence and peace of mind.

What do Living Trusts Accomplish?

The main aim of living trusts is to save the decedents' family members from the agony of delayed probate court proceedings after a family death occurs. It is important to note that having a living trust does not stop one from having a will.

Living trusts also help people reduce or avoid income taxes, gift taxes, and estate taxes upon their death. In some cases, living trusts not only give assets to beneficiaries, but they also protect such assets from creditors pursuing a beneficiary.

Living trusts guarantee privacy, considering that they are not public records. In other words, people who are not beneficiaries or the public do not have the right to know about assets in a living trust.



“A living trust provides after-death and lifetime property management guidelines, unlike a will that determines how someone’s property will be distributed upon his/her death.”

Duties and Fiduciary Responsibilities in California

Most people tend to avoid trust administration because trusts avoid probate. Doing so can have serious repercussions to a trust, and a trustee should take immediate action upon the death of a grantor. All living trusts name a trustee who has specific duties and responsibilities towards the trust.

As a general rule, upon the demise of a grantor, the administration of a trust requires a personal representative to follow several steps to distribute and take care of the decedent's assets on behalf of the beneficiaries, especially if they are below the age of majority. The personal representative must follow the wishes of the decedent. Such wishes and guidelines are all centered around activities occurring in a trust after the demise of the decedent. If a trustee is unsure of the steps that he or she should take, he/she must read the trust instrument thoroughly to have an understanding of the intentions of a grantor.

Here is an overview of the steps that a trustee should take immediately after the demise of a grantor:

1. Give Notice

The **California Probate Code** requires a trustee to give notice of a trust administration to all legal beneficiaries and heirs. There is a legal form specifically meant for this purpose, and it must be mailed by post. Upon sending the notice, anyone who wishes to contest the trust should take action within 3 months of receiving the notice.

Trustees are also advised to notify all the creditors to a trust about the death of a grantor for the commencement of a creditor claim period. If the creditor claim period shall lapse without a creditor taking action against a trust, a trustee is not legally required to make any payments to such a creditor.

2. Identifying of Trust Assets

Trustees must identify all trust assets after the demise of a grantor so that the trustee is not held liable for the loss of trust assets. Trustees are responsible for ensuring that trust assets are not destroyed, lost, or stolen.

Duties and Fiduciary Responsibilities in California

3. Investment of Trust Assets

During trust administration, trustees have a fiduciary duty to ensure that all trust assets are invested reasonably and prudently. A trust's liquid funds should be invested in ways that minimize risks to ensure reasonable returns. Real property such as vacant homes that aren't used or occupied should either be sold or rented as soon as possible.

4. Obtain Titles

A trustee should obtain title assets in the name of a trust upon the death of a grantor. A trustee should also obtain titles not named in a trust that were intended to be included in the trust.

5. Obtain Appraisals

Due to the cost of basis adjustments of the income tax, it is crucial for a trustee to obtain appraisals for all trust assets within the shortest time possible. By doing so, a trustee will eliminate unrealized capital gains meaning that a trust will pay lower income taxes.

6. Debt Payment

For a trustee to avoid personal liability suits, he or she should pay the trust's creditors after they file a creditor's claim towards the trust.

7. Filing of Tax Returns

A trustee has a fiduciary duty to file all tax returns. This includes all taxes due from a probate estate, trust taxes, and the decedent's personal returns.

8. Preparation of Trust Accounting

The **California Probate Code** outlines a specific format in which trust accounting should be done. All trustees are required by law to prepare trust accounting under Section 16060–16064 of the California Probate Code. These sections require all trustees to provide information and accounts to trust beneficiaries regarding the administrative transactions of a trust. Trustees are expected to keep detailed and accurate records and produce them to the trust's beneficiaries upon demand.

9. Formulate a Distribution Plan

There are various ways that a trust can be distributed. Distribution is generally dictated by California laws as well as the instructions outlined in the trust documents. A trustee is expected to prepare reasonable distribution plans which minimize expenses.

The distribution plans should also be in line with the terms of a trust. Upon making a distribution plan, a trustee is expected to obtain the consent of all heirs and beneficiaries before taking further action.

10. Distribution of Trust Assets

To settle a trust, a trustee is required to take reasonable steps for distributing the trust. Such steps include the preparation of deeds and title transfers.

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Schedule a Free Consultation

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Types of Trust Assets

Trust assets can be real property, personal, or financial assets. Real property of a trust includes land and anything affixed to it, such as buildings. Personal assets of a trust are anything movable such as jewelry and vehicles. Financial Assets are also considered as trust assets, and they include businesses, stocks, bonds, or funds in trust bank accounts.

A third party generally controls trust funds according to the wishes of a grantor, including educational and living expenses.

Tax Matters in California Trusts

When it comes to California trusts tax matters, the state employs an analysis that considers the following factors:

- The trust's source of income
- The trust's beneficiaries' residence
- The trustees' residence

Compared to other states, California taxes the trust accumulated net income if all of its beneficiaries with vested interests in the trust and trustees reside in California. If some and not all of the vested beneficiaries or a trust's trustees live in California, the state taxes a proportional amount of its accumulated income. For instance, if two of the trust's four trustees reside in California (and a trust doesn't have a source of income in California nor does it have its beneficiaries with vested interests living in California), the state of California will tax 50% of the trust's accumulated net income.

The state of California also imposes "throwback" taxes on beneficiaries residing in California who receive trust distribution if:

- A beneficiary's previously unvested (contingent) interest in a trust becomes vested for distribution reasons.
- A trust has not been paying income tax already due to the state of California.

In other words, California trust beneficiaries are accountable for the failure of a trust to pay income tax previously owed to the state and for all income taxes that would have been due to the state had the beneficiaries already had vested interests in the distributed amount.

If a trust's settlor wishes to avoid a trust's income tax liability in California, he or she might select a non-California trustee to the extent reasonably possible. For instance, the trust settlor might choose a beneficiary residing in Washington over the one residing in California. With respect to corporate trustees, a settler must know that the trustee's residence is legally considered "where the trustee transacts most of the trust's administration."

If trust beneficiaries wish to avoid California's throwback tax imposed on anticipated tax distributions, they should relocate to a different state. To legally do this, they should follow the rules stipulated in the California Revenue & Taxation Code section 17745(e). They state that beneficiaries who wish to pursue this option should reside outside California for more than 24 months to avoid the throwback tax.

Reasonable Compensation for a Trustee Settling a Trust Estate

In most cases the language in a Trust simply states that the Trustee shall be entitled to "Reasonable Compensation" without stating a specific dollar or percentage.

There are different factors that should be considered in determining reasonableness of compensation, such as the degree of difficulty and novelty of the tasks required of the Trustee, the responsibilities and risks involved, the skill, experience, expertise, and facilities of the Trustee, time devoted to administering the Trust, time constraints imposed upon the Trustee in administering the Trust, and more.

Assuming the Trustee does not delegate substantial duties to an outside paid professional, the term "Reasonable Compensation" is generally determined to be the amount or percentage that is charged by a professional bank or other Trust administrator in the same geographic location where the Trust will be administered.

A Checklist for Settling a Living Trust

- [ ] Prepare an Inventory of the Estate Including All Assets and Liabilities
- [ ] Order five to ten Death Certificates
- [ ] Locate Living Trust & Original Will
- [ ] Keep accounting records of all of your expenses as trustee
- [ ] Consider Contacting an Estate Planning Attorney or Specialized Service Provider
- [ ] Get the Trust Tax Identification Number from the IRS
- [ ] Send out Statutory Notice to Beneficiaries
- [ ] File the Original Will with the probate court within 30 days of death
- [ ] Give Notice to the Department of Health Care Services
- [ ] Record an Affidavit of Death of Trustee if the deceased owned real property
- [ ] Report of Death of Property Owner
- [ ] File Claim for Reassessment Exclusion for Transfer Between Parent and Child
- [ ] File an Estate Tax Return
- [ ] File a final Income Tax Return
- [ ] File a Form 1041 Fiduciary Tax Return
- [ ] Distribute Personal Property
- [ ] Make Preliminary and Final Distribution to Beneficiaries
- [ ] Transfer miscellaneous assets using a Small Estate Affidavit
- [ ] Get a Receipt and Waiver of Further Accounting
- [ ] Complete/Answer any other questions and issues that arise during the course of administration

Services & Offerings

Estate Planning

AmeriEstate is the preferred resource for estate planning. We specialize in advising and guiding people like you, parents, professionals and business owners, helping you preserve and grow your assets over multiple generations.

Trust Settlement

At AmeriEstate we offer your heirs a complimentary consultation to discuss their options and provide proper guidance. We have worked with thousands of families to carry out your wishes. This is something that differentiates AmeriEstate from other trust providers; we are there every step of the journey.

Capital Gains Avoidance

AmeriEstate offers several products to address capital gain mitigation. This includes deferred sales trusts and charitable trusts.

Business Formation

The primary benefit to business incorporation is limited liability. When you own a small business, you will invest a lot of money into not only getting it launched, but in keeping it running smoothly as well. As the owner you are responsible for any debts and losses your business may accumulate along the way. However, when you incorporate, you are typically only held responsible for the amount of money you personally invest. Your personal assets typically cannot be used to satisfy the debts and liabilities of your business.

Thank You

Why Choose AmeriEstate?

Commitment to Service, Compassion and Education

We take the time to get to know each of our client's hopes, concerns, and legal goals. It is only after this extensive process that we recommend an estate plan to accomplish these objectives.

We are there, with an empathetic ear, to review and discuss all decisions needed to complete your estate plan.

And, we provide guidance and education every step of the way to ensure that your vision is achieved in the fastest, most economical way possible. We're not finished until you have zero unanswered questions and 100% satisfaction.

Contact

Schedule a Free Consultation

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Locations

Arizona
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Virgina