

in comparison to many other states. Personal representatives (formerly executors) named in wills to administer estates are given much flexibility in decision-making, and the probate court does not become involved in each detail of the estate administration process.

Does having a revocable living trust reduce taxes?

No. Michigan does not have an estate tax. The federal estate tax is the same, regardless of whether assets are administered through a revocable living trust or a will. For the provisions of a living trust to control, a trust document must be prepared and your assets must be transferred to the trust during your lifetime. This can involve transfer costs and significant legal fees. On the other hand, a living trust may reduce or eliminate court filings fees incurred after your death with a will. After death, both trustees of living trusts and personal representatives under wills require legal advice as to the proper payment of taxes and creditors, distribution to beneficiaries, document interpretation, and other issues. Also, a will is advisable even if you have a living trust to provide for the administration and distribution of assets not transferred to the trust during your lifetime. Note that the reasonableness of legal fees charged to trusts is judged by the same rules of professional conduct as legal fees charged to estates.

Will and Trust Products —Badges of Legal Fraud

As mentioned earlier, Michigan has experienced a significant increase in the deceptive sale of will and trust products to the public. Unscrupulous people and organizations are selling these products primarily to the elderly. Badges of fraud found with will and trust products and issues for the public to be aware of are:

- Unsolicited mailings or telephone calls. Will and trust document sellers offer a “unique seminar” or a personal visit to your home. Estate planning is important. Something as important as making sure that your hard-earned assets are distributed properly should not be left to chance or to some out-of-town salesperson.
- Make sure you know with whom you are dealing. Is the person who is selling you a will and trust product someone from your community? With estate planning, you are not simply buying documents but expertise and follow-up. Make sure the seller is not going to be living out of the country next year.
- One size does not fit all. Many will and trust sellers use a single trust form for everyone. An experienced estate-planning lawyer in your community will be able to look at your unique situation and recommend estate-planning options.
- Watch for false representations.
 - Exaggerated claims of “the evil” of probate.
 - Lawyers are “the sharks.”
 - This is the “best” trust money can buy.
 - The IRS is the “devil.”
- Ask what the documents will cost. The charges of these will and trust product sellers can be twice as much as what a qualified attorney in your community would charge for an estate plan.
- Are other products being sold? Often will and trust product sellers are attempting to sell investment products. The investment products being sold very often generate large fees to the sellers of these products. Ask if the seller is licensed to sell financial products. Better yet, if someone is selling both will and trust kits and investment products, throw the mailer away or hang up the telephone.

Your estate plan (ensuring assets go to the right persons) is important. Be wary of unsolicited mailings and telephone calls, know who you are dealing with, and ask about the cost early on in the discussion.

State Bar of Michigan Lawyer Referral Service

(800) 968-0738

<http://www.michbar.org/programs/lawyerreferral.cfm>

The State Bar of Michigan Lawyer Referral and Information Service (LRIS) is designed to assist anyone who wants to hire an attorney and can afford to pay for legal services.

State Bar of Michigan Unauthorized Practice of Law

(517) 346-6333

<http://www.michbar.org/professional/upl.cfm>

It is the unauthorized practice of law for a person to exercise legal discretion on behalf of another person, or practice law for another person, when he or she is not legally authorized to do so.



© STATE BAR OF MICHIGAN 2009

This pamphlet may be purchased individually or in bulk from the State Bar of Michigan Membership Services Department
306 Townsend Street
Lansing, Michigan 48933-2012
www.michbar.org

You may call
1-800-948-1442 ext. 6326 to obtain price information.

Unaltered reproduction of this pamphlet is permitted for noncommercial use.



BUYER BEWARE

We have witnessed in Michigan a significant increase in the deceptive sale of Will and Trust products to the public. The document sellers often not only are attempting to sell “estate planning documents” but are selling investment products with annuity contracts being their #1 recommendation.

The Truth About Probate in Michigan

How does the probate process begin?

When a person dies owning assets in his or her name alone, an estate must be started by a personal representative to handle the decedent’s assets and take care of settling the decedent’s affairs. This is called the probate or estate administration process. The personal representative can be an individual or corporation (such as a bank or trust company).

What happens after an estate is started?

The job of the personal representative is to settle the decedent’s affairs by notifying beneficiaries, gathering assets, paying debts and taxes, accounting for all estate transactions, and properly distributing the estate. The personal representative is the only one legally authorized to deal with the assets of the estate and handle matters of estate administration.

Why is there a probate process?

Reasons for the probate process include prevention of fraud and protection of creditors and rightful beneficiaries of estates. Beneficiaries are entitled to notice of the estate administration and an accounting of all estate transactions. They also have access to all documents filed by the estate. The probate process in Michigan is an efficient way to protect beneficiaries and creditors and to assure proper distribution of estate assets.

Do all of a decedent’s assets go through probate?

No. Assets held in joint ownership between spouses or with others with right of survivorship pass automatically to the survivor and may not be subject to probate. Bank accounts held in joint ownership or in trust

for another are also not subject to probate. Assets with designated beneficiaries such as life insurance policies, annuities, transfer on death accounts, IRAs, and various retirement plans pass to named beneficiaries and are usually not subject to probate. Finally, assets held in a trust are governed by the terms of the trust rather than the decedent’s will and pass outside the probate process. It is important to note that assets controlled by the decedent at death, even if not subject to probate, are still subject to all the same death taxes as probate assets.

What are the costs of probate?

In Michigan, the costs of probate include filing fees, publishing notice to creditors, and the court inventory fee. In addition, legal fees are paid, on an hourly basis, to the attorney handling the estate work, which may include preparation of various death and income tax returns. The personal representative may charge a reasonable fee.

Does probate take a long time?

In Michigan, probate need not and normally does not take long. Personal representatives are accorded broad powers to accomplish the administration of estates expeditiously. They are empowered to handle most details (liquidating assets, paying debts and expenses, etc.) without seeking court approval for each and every transaction.

How does the probate process end?

The probate process ends upon receipt by the beneficiaries of their proper share of the estate and release of the personal representative from further responsibility for the administration of the estate.

The Truth About Living Trusts

What is a living trust?

A “living trust” is a legal entity to which your assets (bank accounts, securities, house, etc.) can be transferred and managed by a person, including yourself, or corporation (such as a bank or trust company) called a “trustee.” The trustee manages your assets in accordance with written instructions contained in a trust document. Living trusts can be revocable or irrevocable.

Are living trusts something new?

No. Living trusts have existed for centuries. They are more formally called “inter-vivos trusts.” Living trusts traditionally were and still are used for the management of assets of those requiring or desiring such services.

Why am I hearing so much about living trusts now?

Today, revocable living trusts are heavily marketed as substitutes for wills, often using exaggerated examples of costs and delays in the administration of estates under wills (sometimes called the “probate” process) as a sales tactic. Publicity has arisen from these sales activities as well as from press coverage of fines and other sanctions imposed by the Michigan attorney general on certain vendors of living trusts.

Do I need a revocable living trust?

The answer depends on your unique family situation, financial position, and goals. Watch out for vendors with a one-size-fits-all approach. In Michigan, the benefit of creating a living trust for the sole purpose of avoiding probate is at best modest and often illusory. This is because in Michigan, probate entails relatively moderate cost and less time