HOW CAN TICOR HELP YOU UNDERSTAND LIVING TRUSTS?

A living trust is an estate planning document you create that will transfer assets to your trust which will be transferred to your beneficiaries after you pass on.

Unlike a will, which takes effect upon your death, a living trust takes effect once you have signed the document. Your trust becomes the owner of your property and the trustee you designate will disburse your assets to your beneficiaries at the time of your death.



WHAT IS A LIVING TRUST?

Sometimes called an Inter-vivos Trust, the Living Trust is created during the lifetime of the settlors (as opposed to being created by their wills after death) and usually terminates after they die and the body of the trust is distributed to their beneficiaries.

CAN I HOMESTEAD PROPERTY WHICH IS HELD IN A TRUST?

Yes, if the property otherwise qualifies.

WHAT WILL THE TITLE COMPANY REQUIRE IF A TRUSTEE HOLDS THE TITLE TO THE PROPERTY WHICH IS PART OF THE TRUST?

A certification of trust containing the following information:

1. Date of execution of the trust instrument.
2. Identity of the trustor and trustee.
3. Powers of the trustee.
4. Identity of person with power to revoke trust, if any.
5. Signature authority of the trustee.
6. Manner in which title to the trust assets should be taken.
7. Legal description of any interest in the property held by the trust, and
8. A statement that the trust has not been revoked, modified, or amended in any manner which would cause the certification to be incorrect and that the certification is being signed by all currently acting trustees of the trust.

WHAT WILL THE TITLE COMPANY REQUIRE IF ALL THE TRUSTEES HAVE DIED OR ARE UNWILLING TO ACT?

If the trustor is not able to do so, or the trust provisions prohibit the trustor from appointing a new trustee, the court may do so.

CAN SOMEONE ELSE HOLD TITLE FOR ME "IN TRUST?"

Some people who do not wish their names to show as titleholders make private arrangements with a third party trustee; however, such an arrangement may be illegal, and is always inadvisable because the trustee of record is the only one who is empowered to convey, or borrow against, the property, and a title insurer cannot protect you from a trustee who is not acting in accordance with your wishes despite the existence of a private agreement you have with the trustee.

IS A TRUST THE BEST WAY TO HOLD MY PROPERTY?

Only your attorney or accountant can answer the question; some common reasons for holding property in a trust are to minimize or postpone death taxes, to avoid a time consuming probate, and to shield property from attack by certain unsecured creditors.

WHAT TAXES CAN I AVOID BY PUTTING MY PROPERTY IN TRUST?

Married persons can usually exempt a significant part of their assets from taxation and may postpone taxes after the first of them to die passes. You should check with your attorney or accountant before taking any action.

The information contained in this flyer has been supplied by CLTA: www.clta.org

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