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Living Trust

Overall

A living trust is also known as a revocable or inter vivos trust, which creates a fiduciary relationship between the trustee and beneficiaries. The trustor/settlor creates a revocable trust with the trustee and the trustee has equitable duties to manage the trust properties for the settlor to benefit the persons named in the trust. A living trust should not be used to substitute a will.

Creation Requirements

To create an inter vivos trust, the following elements must be established in the Declaration of Trust:

- Intent of the parties to create a trust, which may be shown by a declaration of trust by the settlor or by circumstances which show that the settlor intended to create a trust;
- A definite subject matter or trust property;
- Ascertainable beneficiaries;
- A trustee;
- Specifications of a trust purpose and how the trust is to be performed; and
- Delivery of the trust property to the trustee during the settlor's lifetime.

A trust need not be witnessed or acknowledged.

Revocation and Termination

If the trust instrument reserves the power to amend or modify, a settlor may modify or revoke trust at any time without beneficiaries' consent. Any modification or amendment of a trust must be executed with the same formalities as the trust instrument. A trust can only be revoked during the settlor's lifetime. A revocation clause in the settlor's will can't revoke the trust. A trust can be specified to carry out a material purpose and be terminated upon the completion of the purpose.

Properties held in joint names

Properties held as "joint tenancy with right of survivorship" or "tenancy by the entirety (between husband and wife)" need not be transferred to the trust account because the ownership will transfer to other co-owners upon the death of one owner unless both/all owners to the jointly-held property die simultaneously.