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Your Source for ESTATE PLANNING - ELDER CARE LAW & ADMINISTRATION - WILLS - TRUSTS

FEATURE

## I'M A SURVIVOR . . . AND NOW I HAVE MY OWN TRUST?

**Many married couples share almost everything, including finances.** This may be reflected in their estate plan by using one joint living trust instead of two separate trusts. Separate trusts can provide greater flexibility, but a joint trust can be structured so that when one spouse passes away, the trust is split into two sub-trusts: a **survivor's trust** and a **decedent's trust**.

This arrangement provides the surviving spouse with the same versatility that separate trusts offer. The surviving spouse has full control over their survivor's trust, but may have limited control over the deceased spouse's accounts and property that make up the decedent's trust.



### Decedent's Trust and a Survivor's Trust

A survivor's trust is a middle ground between a joint trust and separate trusts. If a couple chooses to combine their assets (accounts and property) into a joint revocable living trust, both spouses will usually be named as trustees and beneficiaries. The joint trust can further stipulate that when one spouse passes away, the trust divides into subtrusts. One of those subtrusts can be a survivor's trust. A second subtrust, the decedent's trust, will also be created to hold and manage assets owned by the decedent.

### How a Survivor's Trust Works

A typical joint trust arrangement lists four types of property, depending on the state in which you live:

- Joint assets
- Community property
- First spouse's separate property
- Second spouse's separate property

When the first spouse dies, the survivor's trust receives one-half of the community property, one-half of the joint property, and all property identified as the separate property of the surviving spouse. The deceased spouse's half of the community property and joint property, along with their separate property, may be funded into the decedent's trust with its own set of instructions. The trust agreement could also state that all of the deceased spouse's property will go into the survivor's trust instead of going into a separate subtrust.

### Reasons to Have a Survivor's Trust

Regardless of exactly how the joint trust assets are allocated, a crucial distinction is that a survivor's trust is revocable, while the decedent's sub-trust is irrevocable. This means that the surviving spouse retains full control over the survivor's trust. They can alter the terms of the trust however they want. For example, they can add and remove assets, change beneficiaries, appoint new trustees, or terminate the trust. The surviving spouse can also completely change the terms of the survivor's trust in its entirety.

While the surviving spouse may be the beneficiary of the decedent's trust, the surviving spouse will likely have less control over the management of assets in the decedent's trust. This allows the deceased spouse to put protective measures in place while they are alive to make sure that their assets are managed the way they want and that someone cannot change the rules after they pass away. This can be helpful for clients who are worried about their spouse remarrying after their death and to ensure that assets that remain at the surviving spouse's death go to a predetermined person.

The purpose of any trust is to take care of loved ones and protect assets from costly probate and taxes.

**To discuss an estate plan that meets your goals, please schedule your appointment with our Estate Planning attorneys - 724-375-4005.**

### UPCOMING IN-HOUSE SEMINARS [LIMITED SEATING]

- January 31, 2024 - Asset Protection / Elder Law
- February 7, 2024 - Estate Planning
- March 20, 2024 - Asset protection / Elder Law

Register On-line OR Call 724-375-4005.

