

**FIVE REASONS MARRIED COUPLES SHOULD
AVOID JOINT LIVING TRUSTS
(SAME-SEX, LGBTQ+, QUEER AND
HETEROSEXUAL)**



FIVE REASONS COUPLES SHOULD AVOID JOINT LIVING TRUSTS

Generally, trusts contains instructions as to how assets are to be managed and distributed on disability or death.

A joint trust implies that it is a trust held for the benefit of both spouses. Instead, spouses may elect to have their own separate trust. Five reasons for this are:

1. Psychologically Neutral

Often, married couples want to view assets as “ours” as opposed to “what’s mine is mine alone”.

2. No Tax Advantages in Separate Property States

In an equitable distribution state, like New York State, that also uses spousal elective share on the death of one spouse, not all assets in a joint trust receive a step-up in cost basis for federal capital gains tax purposes on the death of one or both spouses. Further, not all assets pass-through to the surviving spouse.

3. Creditor Protection

Separate trusts for each spouse provides increased protection from creditors during the lifetime of the Trustmakers. By using two separate trusts, if one spouse is sued, only the assets of that trust would be at risk - as long as spouses are not jointly liable to the judgment creditor.

4. Administrative Costs

Separate trusts are usually less costly to wind down upon the death of the first spouse. Unlike joint trusts, the assets do not need to be traced back to the surviving spouse.

5. Trust Changes

When the Trustmaker dies, the trust becomes irrevocable. Thus using a joint trust has the potential to limit the flexibility that a surviving spouse has over the remaining terms of the trust.

Of course, all this will depend on whether your State implements Separate Property, Community Property or Equitable Property rules. **Contact CLPC for help.**