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NEWSLETTER

LIVING TRUSTS - DO THEY REALLY AVOID PROBATE?

"...avoid Probate, keep your affairs private, and protect your estate from disgruntled heirs."

Forbes Magazine (August 1995)

"...if you think trusts are merely for the extremely wealthy, guess again."

Retirement Bible (2001)

"A Living Trust Can Be Key To Peace Of Mind."

Kiplinger's Retirement Report (June 2002)

Listen to what experts are saying about Living Trusts. A Living Trust is one of the few vehicles used in protecting an estate (whether big or small) from Probate and Estate Tax.

Living Trusts are used to prevent Probate...

Many of you might think of an Estate Plan as having a "Will." However, you may not understand the tax and probate implications involved in not having a Living Trust when you own a substantial amount of property. By substantial, I mean owning real estate with a market value of \$100,000.

One of my main objectives is to make sure my clients understand the tax laws and how it impacts their Estate Plan.

However, Estate Planning is not just a Will, nor is it only a matter of tax issues. It touches the most personal aspects of our lives - financial, personal and family.

They are the most private parts of our lives...something we rarely think about!

Be Proactive!

First thing clients must do is be proactive. The meaning of proactive is to not wait until death is imminent to draw up a Will. Being proactive means having emotional security of knowing things are in good shape. Don't procrastinate and be one of the 70% of the US population without a plan. After all, failing to plan is planning to fail!

Your next step is to create an effective estate plan. To do so, you need to know what your objectives are. There are two objectives to an effective estate plan - the financial objective and the personal objective.

The financial objective is determining how much you want to leave to your kids or loved ones. The personal objective is determining how you want your children raised.

However, you don't just decide to whom you want to give it - you decide how you want to give it. Do you want to give it outright, or do you want to give it in trust? If in trust, do you want to distribute 1/3 of your assets to your children at the age of 21, 1/3 at the age of 25 and the final distribution at the age of 30? This method is used so that the beneficiary will not squander all the assets at once, and ensures that they are properly taken care of throughout the following years. Or, you can have it structured where the trustee will distribute the income only if the beneficiary needs it for his or her education or health needs.

These are questions I ask all my clients to think about because they are the most important provisions of the entire trust - it reflects how you desire your worldly possessions to be distributed upon your passing.

**You can structure your trust any way you wish -
all you need is imagination!**

I can provide a Will for you. Is this Will actually your Estate Plan? Yes! It's a part of your Estate Plan. But the only effect a Will has is to make sure that your beneficiaries actually receive your property. Without a Will, the government decides who receives your possessions you've worked so long and hard to acquire. In essence, the government has created an Estate Plan for you.

If you don't mind the government and other attorneys, executors and administrators taking a bite out of your Estate, then read no further!

To schedule an appointment with an attorney means you have moved beyond the reactive stage - now you are proactive! You are proactive because you care about your family and their wellbeing!

Defining your objectives is your first step. Once you have gone through your objectives, the next step is to get your family involved and provide them with information.

Discussing your Estate Planning issues can be uncomfortable and can cause some tension and conflict. However, as I mention to my clients, although it can be an uncomfortable situation and can cause tension, in the long run, it probably is best that these discussions take place because you would have addressed these conflicts before your death.

I guarantee that the tension and conflict you experience during your estate planning stage will be a fraction of the tension and conflict that would arise at your death if you did not discuss the issues.

You must involve your family in order for your Estate Plan to be effective. Not doing so can cause greater heartache for the entire family. You might hesitate talking with your family about the issues. However, doing so might also bring you personally closer to your family.

**REVOCABLE LIVING TRUST!
SAVE THOUSANDS IN PROBATE COSTS AND ESTATE TAX!
SIGNUP, ORDER THE PACKAGE AND YOU TOO CAN BE SAVED FROM THE HASSLES.**

Sound familiar? These promises...are they true?!? Should I have one? Will it really save me from Probate and Estate Tax?

Well, the answer is not that simple. Let's see what a Living Trust really is. A Living trust is created to hold and manage your property during

your lifetime and to provide the manner in which to distribute your assets upon your death. The trust can be changed or cancelled at any time. You can take property in and out of the trust as you desire. The trust holds legal title to your assets, but is ignored for tax purposes.

Let's take the case of David. Let's assume David transfers title to his home, brokerage account and bank account in the name of the trust. Title to David's home would be in the name of the trust and no longer in David's name. It would be titled as "David's Revocable Living trust dated January 1, 2005, David M. as trustee." David does the same for the brokerage accounts as well as his bank accounts.

So, what has David accomplished with this trust? At the very least - Probate!

I would like to think of Probate as the process of allowing someone else to transfer your assets you designate in your Will. If there is no Will, to those the government deems to be entitled to the property through intestate succession laws. If your property is in trust, then there is no need to go through Probate because the trust provides how the Trustee is to distribute the property upon your death. If you never transferred your property to the trust, your Will is filed for Probate.

Probate is costly!

By placing all your assets in a trust, you can avoid the needless expense and delay of probate! Since Living Trusts avoids probate, it would save you time and money. Unlike states like Texas, Probate in California is extraordinarily expensive. California Probate fees are fixed by statute and are based on the value of your estate. The following chart shows how much your family will pay in probate fees should it be required to go through Probate:

Gross Value of Probate Estate	Total Estimated Average Probate Costs	Probate Costs as Percentage of Estate
\$50,000	\$4,500	9.0%
\$100,000	\$8,500	8.5%
\$200,000	\$15,000	7.5%
\$300,000	\$22,000	7.3%
\$400,000	\$28,000	7.0%
\$600,000	\$40,000	6.7%
\$800,000	\$50,000	6.3%
\$1,000,000	\$60,000	6.0%
\$1,200,000	\$70,000	5.8%

Let's learn from Richard and Pam, husband and wife. Richard and Pam own a home, which is worth \$1 million in today's market. Let us assume that that both Richard and Pam purchased this home in December 2004. They used \$100,000 as a down payment to purchase this house and took out a mortgage of \$900,000. As stated, this home is worth \$1 million. Unfortunately, Richard and Pam die in a car accident in January 2005, leaving PJ (their only son) to inherit all their assets. Both Richard and Pam only created a Will - not a Living Trust. Therefore, the Will will be probated. When the Probate Court values their assets (primarily their home), the Court looks at the value of the home (\$1,000,000) - not the equity it has built (\$100,000). Looking at the chart above, the Probate court will require PJ to pay approximately

\$60,000 in probate fees. These fees could have been eliminated had Richard and Pam created a simple Living Trust.

Does a Living Trust truly save you thousands of dollars and prevent your estate from going through Probate? The answer is an unequivocal YES!

Probate is time consuming!

Probate can take anywhere from 6 months to 4 years depending on how large your estate is, and whether anyone contests the Will that is being probated.

It also minimizes the likelihood of a Will Contest. If you anticipate Will Contests, consider a Revocable Living Trust. If a Will Contest is filed when the property passes through Probate, the Will is not admitted through Probate and the Independent Executor isn't appointed. In fact, if there is a Will Contest, the Estate is practically Frozen!

The cost of a Will Contest is even greater. It is more difficult to Contest a Revocable Living Trust because there was no Will that was filed which the contestant can challenge.

Do You Truly Save Estate Taxes?

If you plan on avoiding Probate, a Trust IS needed. However, should you not care about paying probate fees, which I highly doubt is the case, a trust may or may not be needed to avoid paying Estate tax. But to discuss estate tax demands a newsletter of its own. My office would be happy to provide a newsletter on avoiding Estate Tax.

A Living Trust works very well for many families. So, in answering the question we posed initially - whether Living Trusts truly avoids probate - the answer is an unequivocal YES!

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