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PLANNING WITH REVOCABLE LIVING TRUSTS

What Is A Revocable Living Trust?

It's a simple idea and can be easily understood if we break it down to its lowest common denominator. A trust is nothing more than a contract. If you are married, it would be a contract between you and your spouse establishing a manager for your assets, stating how your assets would be handled while you both are alive, and what would happen to those assets upon your deaths. For example, John and Mary Doe transfer their assets to "John and Mary Doe, Trustees of the Doe Family Trust" for the benefit of John and Mary Doe during their lifetimes and then to their children equally. It can be individually tailored to suit your own family needs. These trusts are just as effective for single people as they are for married couples.

A living trust is one that is established while you are alive, and you would actually transfer assets from your individual names to your names as trustees of your own trust. For example, John and Jane Doe would transfer title to their house from "John and Jane Doe as joint tenants" to "John and Jane Doe, Trustees of the Doe Family Trust."

Living trusts are established during life for individuals who wish to avoid probate. Testamentary trusts are established at death; they spring out of your last will and testament. Testamentary trusts go through probate. Both testamentary and living trusts can save death taxes, but only the living trust avoids the agony and expense of probate.

The living trust is also revocable. In essence, you are the "captain of your own ship" setting its course. You can change any portion of the trust at any time or cancel the entire trust.

Revocable living trusts are sometimes known by other names. You may have heard of this concept as the "inter vivos trust." "Inter vivos" in Latin means among the living. Sometimes the revocable living trusts are called "grantor trusts," "AB trusts," "marital deduction trusts," or "probate avoidance trusts."

Why Consider A Revocable Living Trust?

John Wayne did not choose to have a revocable living trust. Therefore, his estate is a public record. The exact nature of his assets, to whom they were distributed, who he loved within his family

and who he didn't, are reviewable as a public record at the County Courthouse. He did not achieve privacy. The statutory probate fees for the attorney and the executor for John Wayne's estate were in excess of \$275,000, which could have been avoided with a living trust. And that doesn't include fees for "extraordinary" services.

Privacy.

Privacy is one reason to create a living trust. When Bing Crosby's first wife, Dixie Lee Crosby, died in the 1950s, he did not have enough cash to pay the death taxes after her death, so he had to sacrifice a number of his assets to pay taxes. In addition, Bing Crosby was very upset by the publicity generated by Dixie Lee's death. Publicity about her estate was obviously publicity about his estate because of the community property nature of their assets.

When Bing Crosby later planned his own estate he wanted to be sure he achieved privacy. He did not want anyone to know the size of the estate, or where it was going. When he died, there was no publicity about the size of his estate, or where his assets were going, because he had a "private will." Bing Crosby had established a revocable living trust.

Avoiding Probate.

Another reason to consider a living trust is to avoid probate. An individual usually has title to various assets, such as stock certificates, grant deeds, bank accounts, etc., in his name. When an individual dies, these assets must be changed so that the surviving family members can deal with the property. This title clearing process, known as probate, generally takes from eighteen months to two years. However, these time delays can be avoided by transferring the assets into a living trust. Rather than spending years transferring assets to surviving family members, it can be settled within a few months.

Another advantage of a living trust is avoiding the cost of probate. Probate fees are set by statute and are based on the gross value of the estate. Suppose an individual had a home, car, stocks and some cash in the bank. If this all added up to a gross estate of \$300,000, and if he had a mortgage against the house of \$100,000, then his net estate would be \$200,000. Taxes are based on the net estate. However, probate fees are based on the gross estate (\$300,000) and cost approximately five percent. In this example, probate fees would be about \$15,000. Yet, this \$15,000 expense could be completely avoided by transferring assets into a living trust before death.

Avoiding Guardianships.

A living trust allows you to avoid the problems of a guardianship. A minor who inherits property cannot deal with that property because of his age. The State of California will step in through a guardianship proceeding, take control of those assets, and transfer those assets to an adult to manage for the benefit of the minor.

The guardian of the minor is required to post bond, which is an expense the estate must pay on an annual basis. The guardian must give periodic accountings to the Court and explain how the money is being spent for the benefit of the minor. These periodic accountings are expensive because they are prepared by accountants, and presented to the Court by attorneys on a regular basis.

In addition, these guardianship proceedings are public. The worst part about the guardianship proceeding, however, is the fact that at the age of 18, the minor gets the assets free of any further control. What do you think an 18 year-old would do with \$200,000? Most 18 year-olds are not mature enough to handle large sums of money.

A better way to handle property going to a minor is to pass it to that minor in trust, wherein you, not the state, decide who will be the trustee and the manager of the assets for the benefit of that minor. You can waive the bonding fees, you can waive periodic accountings, you can make the money available to the minor for his college education, or for any medical needs or support, without allowing the minor to have control of the money until he is more mature. You determine at what age he will get the money. For example, you can say that after you and your spouse have passed on, that your estate will continue in trust for the benefit of the minor child. The minor child may have the right to use the money for his support and education, but he may not have the money for other purposes until he reaches a preselected age.

Avoiding Conservatorships.

Groucho Marx required a conservatorship because he became senile. Conservatorships, like guardianships, are proceedings whereby the State appoints a conservator to take control of the individual's assets because that individual is not able to manage his own assets. These conservatorship hearings are not just for the aged, but also for those who have premature heart attacks, strokes, and other health problems that prevent them from managing their own estate.

These incompetency hearings are usually embarrassing for the entire family. Often a court investigator will be called into the case to talk to the elderly individual, the family is called to court to testify, and a judge must make a decision as to whether or not that individual is competent to manage his own affairs. If that individual is not competent, then the court will appoint an individual to manage his affairs for him.

A court appointed manager must post a bond. Bonds are expensive and paid for out of the estate. A court appointed manager must make accountings to the court as to how the money is being spent for the benefit of the incompetent. These reports are done on a regular basis, prepared by accountants and always presented by attorneys. Like guardianships and probates, these conservatorships are also public. Your friends, your neighbors, and your family, can discover the details of your financial portfolio.

Why not avoid this potential problem by setting up a living trust stating that when and if you get to that point in your life where you can no longer manage your own affairs, then you want your good friend, John Doe, to manage your affairs for you?

Avoiding Out Of State Probates.

A living trust can also avoid a probate in other states. For instance, if you own a condominium in Hawaii and a farm in Iowa when you die, you will have a probate not only on your California assets, but you will also have a probate on the real estate you own in other states. You will have a triple probate, because the farm in Iowa and the Hawaiian condominium will also be going through probate. Why not avoid the triple probate by setting up a living trust in California and transferring not only your California real estate into that trust, but also all of your non-California real estate.

Avoiding Family Battles Over Your Plan.

If you think somebody may contest your estate plan, a living trust makes sense. A will is relatively easy to contest. A living trust is more difficult because there is no probate proceeding.

A Type Of Premarital Agreement.

A living trust can act as a type of premarital agreement in that it will keep separate property apart from marital assets.

Planning For Disabled Children.

In planning for the future of a disabled child, parents primary financial objective often is to preserve the public benefits (Social Security and/or Medi-Cal) to which their child is entitled by virtue of a developmental disability. This is generally a wise course to follow, unless your family is extremely wealthy or receives a huge settlement for the benefit of the disabled family member.

California law provides clearly that property held for an applicant under a trust to which the applicant has no access to principal, is exempt. A "Special Needs Trust" is one in which the trustee is given sole discretion to make distributions for the benefit of the applicant only after taking into account all other sources of income, including benefits under Medicaid. By someone other than the applicant creating the Special Needs Trust, a properly drafted document will make the assets of the Trust available to meet the needs of the applicant but not be deemed "available" within the meaning of the applicable regulations.

In the event the Special Needs Trust has the effect of rendering the beneficiary ineligible for the specifically-referenced state and federal programs the Trust may give the trustee the power to terminate the trust and distribute the assets to persons other than the beneficiary. All parents of disabled children should, at a minimum, consider the applicability of this type of planning to their particular situation.

Save Death Taxes.

A living trust can also save death taxes for a married couple. These tax savings are accomplished by including provisions in the Trust Agreement to take maximum advantage of both spouses' estate tax exemptions Under current law exemptions are as follows:

<u>YEAR OF DEATH</u>	<u>EXEMPTION AMOUNT</u>
2011 and 2012	\$5 million
2013 and after	\$1 million

Avoid The Gigolo And The Floozy.

Have you taken advantage of the "anti-gigolo" and the "anti-floozy" trust? This is an arrangement whereby you can pass your entire estate on to your surviving spouse to maximize the tax advantages and yet insure that at your surviving spouse's later death, your share of the estate will come back to your children and not go to a new spouse.

Be Your Own Trustee.

Who should the trustee be? Most clients choose to be their own trustees. If something should happen to one spouse, then the surviving spouse takes over. If the surviving spouse needs help, then an adult child, a bank or trust company can step in as the successor trustee.

What Assets Belong In Your Trust?

To take full advantage of the probate avoidance opportunity that the living trust offers, you should put all of your major assets into the trust. However, there are two assets that are normally not put in: 1) your automobiles, and 2) your retirement accounts.

Conclusion.

In conclusion, we all have a choice of how we plan our estate. We can plan it the smart way, avoiding probate, achieving privacy, saving time, minimizing taxes, avoiding the Groucho Marx problem, and avoiding guardianships; or we can plan it the **inefficient** way and not fully achieve our objectives. The same choices that faced John Wayne and Bing Crosby are the same choices with which we are all confronted.