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## ESTATE PLANNING WITH LIVING TRUSTS

### **Reasons for having a Living Trust**

A Trust is a substitute for a Will and a conservator and as such can eliminate the need to use Probate Court in administering your assets if you become disabled, incompetent or die. This may reduce the expense of administering your estate.

Your assets can be professionally managed for your spouse and children or others when you are no longer present. Time demands may prevent you from giving your financial affairs the attention they require or you may want to travel, or you do not feel quite as sure of yourself or your health as you once did.

A Trust may permit you to increase the estate that your family will receive by possible reduction or elimination of estate taxes through the latest tax saving techniques. It may also help reduce the risk of inexperienced and unskilled management of property by allowing you to select today an asset manager for the future. A Trust has the benefit of continuity of financial management; there is no need for your assets to be laboriously collected and taken to a court or unknown property manager.

A Trust may permit you to avoid the publicity of probate on your death, incapacity or disappearance and thereby preserve the privacy of your affairs.

### **The Need for Planning**

Planning for and managing an estate requires time and specialized knowledge. You may feel that your family or beneficiaries may be ill-equipped to accept the responsibility of settling your estate. Even more importantly, your family or beneficiaries may not be prepared to deal with the undesirable publicity, administrative and investment problems that could result upon your disappearance, incapacity or death.

### **What is a Trust?**

A Trust is a written expression of your desires as to the management of assets during your lifetime if you become incapacitated, and to whom the assets pass upon your death. Put another way, it is an arrangement under which one person gives some part or all of his money, securities, real estate, or other property to another as trustee. Those who are to receive benefits from the Trust are known as beneficiaries. The arrangement establishes: (1) Who the beneficiaries will be, what each will receive, and when they will receive it; (2) How much investment authority will be given to the trustee to meet the needs of the beneficiaries; and (3) What the duration of the Trust will be within the limits allowed by law.

## **How the Living Trust Works**

A Living Trust is created during your lifetime, usually for your own benefit for as long as you live; and after that, for the members of your family or other designated beneficiaries of your choice. You, as grantor, transfer assets to another party, known as a trustee. The Trust can be effective immediately for the management of your assets, thereby relieving you of the details of that responsibility. Income can be made payable to you and you can withdraw any or all assets as you desire. Assets transferred to a Living Trust need not pass under a Will, which results in both a savings of probate administration expenses, and the uninterrupted management of the assets upon your death. Living Trusts appeal to a wide range of people, because they can be structured to provide a broad range of benefits. They can accomplish almost any financial protective purpose, help secure tax savings and be a means of providing daily support for your family now and in the future.

## **Can a Living Trust be Changed?**

Your Living Trust can be made revocable or irrevocable depending upon the objectives that you want to achieve. A Revocable Living Trust offers the flexibility of revision. As conditions in your life change, you can alter or terminate it at any time during your lifetime. A Living Trust that you create for your own benefit is usually revocable, contains safeguards in the event of illness, or incapacity, and may continue after your death for the benefit of others. If it continues after your death, it normally becomes irrevocable at that time.

Another form of Living Trust is an Irrevocable Living Trust, which cannot be changed or revoked once it has been established. One advantage of an Irrevocable Living Trust is that it can be established in such a way that it is not subject to estate taxes at your death, unlike a Revocable Trust. For this reason, Irrevocable Living Trusts are often used to hold life insurance meant to pass outside of the insured taxable estate. Irrevocable Living Trusts are also used to hold property for those who are not well equipped to manage their own investments. While there may be some advantage to this type of Trust, careful consideration should be given to its lasting effects before you enter into such an arrangement.

## **The Creator of the Trust can also be the Trustee**

The Self-Trusteed Living Trust' is the popular variation of the Living Trust. You serve as the initial trustee of your Trust during your lifetime. Assets previously held in your sole name are registered in your name as trustee of the Trust. This action eliminates the expenses and publicity of probate procedures upon incapacity or death. Should either of those events occur, the successor trustee you previously selected continues the administration of the assets for the benefit of you or your beneficiaries. All of the other advantages of the Living Trust apply under a Self-Trusteed Living Trust.

## **Placing Assets in the Trust**

Funding the Trust can be as simple as re-titling your bank accounts, bonds, stocks and real estate. Beneficiary designations can be used to put life insurance and corporate "fringe benefits" such as profit-sharing, pensions, and group life insurance, in the Trust. Insurance and fringe benefits can be the most important assets of many individuals and can guarantee security when used in a Living Trust. Placing life insurance proceeds in a Living Trust by naming the Living Trust as a beneficiary has, long been recognized as a sound way to provide experienced management for these large lump-sum payments. You, as owner of your insurance policies,

delegate to your trustee responsibility for managing the proceeds for your beneficiaries without waiting for the probate of a Will or other steps which must be taken by a Personal Representative (formerly known as "executor"). Assets transferred to the trust will not be subject to probate upon your disability or death.

The funding process **must** be pursued when a trust is used in conjunction with estate planning to lessen the impact of the Federal Estate Tax. Reducing the tax when planning the estate of a married couple can only be accomplished if each spouse has a share of the total estate set aside in his and her estate. Failing to divide the assets will likely lead to all assets remaining with the surviving spouse and incurring a substantial estate tax. The tax only applies if the total estate exceeds a money amount set by the law. The amount is expected to change each year until the year 2011. Gifts made during life may reduce the ceiling.

It has become increasingly popular for individuals to use the Living Trust in combination with a "Pour-Over" Will to achieve flexibility in their total estate plan. The so-called "Pour-Over" Will may be used with most of the above forms of Living Trusts. For example, Mr. Smith's Will, drawn by his estate planning lawyer, directs that his probate estate is to be distributed ("poured-over") into his Living Trust established during his lifetime. At her discretion, Mrs. Smith may, by use of a "Pour-Over" Will, add her securities and other holdings to the same Living Trust after her death. During the period of Trust administration, the family property is managed as a cohesive unit.

### **Selecting Your Trustee**

A trustee, particularly one who acts after your death or disability, should be available and willing to devote specific attention to your property. The trustee should be skilled in investment management or have access to those who are so skilled. A trustee may be required to act for long periods of time. A trustee must keep abreast of all aspects of the job, including the financial markets, and changes in tax laws - which continue to become more complex. A trustee acting after your death or disability must be able to deal fairly and impartially with your beneficiaries. The innumerable steps a trustee initiates and continues during the management of a typical trust arrangement makes the job a challenging one. Trust management is a varied and demanding job making the selection of a trustee crucial.

A family member can serve as a trustee after your death or disability. A trustee is not under court supervision, and a bond is only rarely required; a trustee must be selected with the knowledge that he or she has access to all of the assets. The trustee must be a person who can be trusted.

### **What is the Best Approach to Creating a Living Trust?**

You should meet with an attorney to discuss your estate plan and the advantages of a Living Trust. The attorney who will prepare the Living Trust document that will give force to your estate plan is essential to the planning process. Your life insurance agent, financial planner, trust officer and accountant can also be helpful. Together, this team of experts can help you create the best plan for your family. Just as important as selecting the proper Trustee is selecting the proper estate planning attorney. While a well planned Living Trust document can be just a few pages long, well chosen words can insure that your intentions and planning objectives are met. It is advisable to contact an attorney who specializes in estate planning.

If you have any additional questions, please feel free to contact Attorney James D. Hubbert at the address and telephone listed above.

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