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Estate Plan – Legal Document Preparation

What is a Will?

A Will is a legal document declaring how an estate is to be administered and distributed after death. The Will states who the Personal Representative (Executor) is and outlines powers, so he or she can administer the Will. The Will can also designate a guardian for minor children if there is no surviving parent.

Are You Concerned About Probate? If Not, You Should Be!

When Robert Smith's father died he left his home, business, a mountain cabin and other property (assets) to his son through a Will. The Will had to be probated, a process that took over two years and cost the estate a significant amount of money. In the meantime, because the assets were frozen in Probate, the business went defunct.

What is Probate?

Probate at death is the legal process of administering an estate upon your passing. It involves demonstrating to the Probate Court that a Will is valid, cataloging the belongings of the deceased, payment of debts and taxes, transferring titles on assets, and distributing the assets to the beneficiaries. The probate process can cost between 5 percent and 10 percent of an estate's value.

Years ago the probate process was conceived as a systematic way of transferring the property of a deceased person to his or her heirs. It was designed to protect the heirs. Today it has become a legal nightmare for families with lawyers, administrators, clerks, guardians, appraisers and bonding companies all getting a share of the estate.

When an individual or married couple have passed away and their estate is worth over \$75,000 in personal property or \$100,000 in real property (called the small estate allowance), it must go through Probate in most situations. This small estate allowance varies from state to state.

If you die without a Will (Intestate) the local Probate Court will appoint an administrator for your estate. Also, the Probate Court will determine who the beneficiaries are and determine guardianship for your minor children.

Disadvantages of Probate

- * **Expensive:** In most states, fees are set by law as a percentage of the gross estate. Attorney fees for administering a Will through Probate may range from 5% to 10% of your estate. If the estate is worth \$100,000, it may cost your estate between \$5,000 and \$10,000 in attorney fees, court costs, administration fees, etc.
- * **Public:** Probate proceedings are a matter of public record therefore, anyone can find out the size of your estate. Often unscrupulous people get the public records from the Probate Court proceedings and take advantage of grief-stricken family members.
- * **Lengthy:** On average it can take one to two years to settle an estate, in the meantime, for the most part, the estate is “frozen” to the beneficiaries.
- * **Traumatic:** Probate proceedings cause loved ones undue grief while dealing with the affairs of the estate.
- * **Out-of-State Probate:** Probate can occur in every state where Real Estate and or personal property is owned.
- * **Probate is Particularly Harsh on a Business:** Most businesses come to a halt because of the frozen assets.

What is Living Probate?

Living Probate occurs when you are unable to make decisions for yourself and you do not have the appropriate Powers of Attorney (Medical and Financial) documents set up for your family. Without these documents your family will have to petition the Probate court to have a family member appointed as your Medical and or Financial Power of Attorney. The Court will make the decision on who will be the Power of Attorney, not you. The family will have to hire an attorney to petition the court which will cost time and money.

A Revocable Living Trust Portfolio Avoids Living and Death Probate

A Revocable Living Trust is a legal entity (instrument) used to hold title to assets such as real estate, stocks, bonds, bank accounts, etc. Many people who wish to spare their loved ones the delay and expense of Probate are looking to the Revocable Living Trust that allows you to leave your property to your heirs without having to go through the Probate Court, thus making the funds available for distribution immediately after your death.

How Does a Revocable Living Trust Work?

When you create a Revocable Living Trust you usually name yourself as the Trustee. By designating yourself as Trustee you have complete control over the assets you transfer into the Trust. You can spend, save, invest or give away your assets. You can revoke or modify the trust agreement at any time without restrictions, thus, the Revocable Living Trust allows you to manage your property during your lifetime and appoint whomever you choose (Successor Trustee) to manage the Trust upon your death. At that time, the Successor Trustee transfers ownership of Trust property to the beneficiaries named in your Trust without the expense, delay and publicity related to Probate Court proceedings.

Example: Had Robert Smith's father had a Revocable Living Trust, with his son as Successor Trustee and Beneficiary, when his father died, Robert, with the authority granted by the Trust document, could have, quickly and easily, transferred ownership of the assets to himself, thus saving time, expense and the loss of the family business.

Advantages of a Revocable Living Trust

- * Avoids the expense, delay and publicity of Probate.

- * Avoids your being placed under a court-appointed Guardian if you are physically or mentally handicapped during your life and cannot manage your affairs. A Revocable Living Trust allows your family to avoid the humiliating, lengthy and expensive Conservatorship proceedings. (A Conservator and Guardian can be appointed in the Revocable Living Trust.)

- * A Revocable Living Trust allows you to manage your assets while you are living and control how your estate is managed and distributed after your death. Upon your death, your Trust can provide for your children by distributing assets to them at any legal age you choose.
- * Your spouse and your children from a previous marriage can be provided for fairly under the terms of a Revocable Living Trust.

- * A Revocable Living Trust is difficult to challenge or contest. A disgruntled heir would have to hire an attorney and file a civil suit. Since the assets of the Trust are not frozen, the assets may be distributed and the Trust dissolved long before the disgruntled heir has a chance to act. If that were the case, he or she would then have to sue each beneficiary separately.

- * Minimizes emotional stress on your family.

- * Easy to set up and maintain.

- * Can reduce or eliminate estate taxes.

JOINT TENANCY: A Poor Substitute for a Revocable Living Trust

What is Joint Tenancy? Joint Tenancy means that, at least, two people hold title to an asset with Rights to Survivorship. Therefore, if one of the Joint Tenant(s) dies, the surviving Joint Tenant(s) receives the property without going thru Probate. If a husband and wife own assets as Joint Tenants there will be no Probate on the first spouse to die, but **there will be** Probate proceedings upon the death of the second spouse.

There are disadvantages to Joint Tenancy. First, Joint Tenancy can possibly create a large capital gains tax liability for the surviving spouse or other Joint Tenants. Second, the individual loses control of the property. It cannot be sold without the consent of the other Joint Tenant(s) and each is responsible for the debts and taxes. Third, if one Joint Tenant is sued the entire property is in jeopardy.

A Revocable Living Trust and TAXES

* A Revocable Living Trust has no effect on your **Income** taxes. There are no advantages or disadvantages in regards to income tax. As Trustee you continue to report all Trust transactions on your regular income tax return.

* The Federal Government has given every person a federal exemption of \$5,340,000 dollars (2014) **for Estate Tax** purposes. If your estate (property your own) is less than the federal exemption at the time of your death there will be no Federal Estate Taxes owed, however, anything over the above the \$5,340,000 (single person) or \$10,680,00 (married couple) will be taxed at the horrendous rate of 40%.

(By the way, all assets are counted in the \$5,340,000 exemption, including the face value of life insurance policies.)

However, **there is a way that the Federal Estate Taxes can be eliminated or substantially reduced** by holding assets in a Revocable Living Trust rather than Joint Tenancy with Rights of Survivorship, by using an “A-B” LIVING TRUST.

If a couple has an A—B Living Trust, they can pass up to \$10,680,000 dollars (2014) tax-free to their children. Using this method, each trust (A Trust and B Trust) can use the full \$5,340,000 million dollar Federal Estate Tax exemption. The surviving spouse can use the income for life from the ‘A’ Trust, and also have the right to access the principal of the ‘B’ Trust if necessary. When the second spouse dies, both trusts go to the heirs. According to a tax attorney, without the A-B Trust the heirs would pay approximately 2.5 million dollars in Federal Taxes on an estate over the federal estate tax exemption.

Do You Need a Revocable Living Trust if Your Estate is Worth Less Than \$5 Million?

YES, do not be lured into a false sense of security if your estate is worth less than the 5,340,000 (2014) federal estate tax exemption. There is still a need for a Revocable Living Trust.

Remember, Probate and estate taxes are entirely different from one another. Your estate would still need to be probated assuming it was valued at \$75,000 or more in most cases.

Remember too, you would still need court supervision for Conservatorship or Guardianship if you were to become incapacitated during your lifetime and you did **not** name a Guardian or Conservator in a Trust document.

With a Revocable Living Trust you can leave your family everything you own probate free and be in control of your assets throughout your lifetime. For most people having a Revocable Living Trust helps most individuals enjoy peace of mind.

A Complete ESTATE PLANNING PORTFOLIO Should Contain These Documents

* **Revocable Living Trust:** A Living Trust is a legal entity (document) established by you to hold title or ownership to your property (assets).

* **Certificate of Trust:** Summary of Trustee powers for use in dealing with Banks, Brokers, Insurance Companies, etc. The Certificate of Trust verifies that a legal Trust has been established and sets forth the name of your Trust, and who the Trustees and Successor Trustees are.

***Schedule of Trust Assets:** Used to list all assets (property) that you have transferred to your Trust.

***Specific Distribution Pages:** Used to gift personal property (i.e. china, jewelry, antique furniture, etc.) to a specific individual.

***Pour-Over Will:** Transfers any assets to the Trust at the time of your death that have not been appropriately titled into the Trust. **Assets that have not been appropriately transferred to the Trust can go thru probate.**

* **Durable General Power-of-Attorney:** A legal document that authorizes the person you designate to make financial, legal and business decisions for you in the event you cannot make them for yourself. The individual you name (**Personal**

Representative) will have the power to transfer any assets to your Trust that you have neglected to place into your Trust. These assets can then be managed and passed on to the beneficiaries you name in your Trust.

* **Medical Power-of-Attorney:** A legal document naming someone to make medical decisions on your behalf if you are not capable of making these medical decisions yourself.

* **Living Will:** A declaration stating your wishes in regards to artificial life support, if you have a terminal illness or are in a permanent vegetative state, and your physician states there is no chance of recovery.

* **Deed Transfer Documents:** The documents necessary to transfer your real estate assets into the Trust.

* **Trust Funding Instructions:** Instructions on how to fund (transfer) all property you own into your Trust.

Parties to a Revocable Living Trust Portfolio

Settlor(s): The Settlor is the individual or individuals who create the Living Trust. The Settlor(s) place the appropriate assets into the Living Trust, which in turn make these assets probate free. The Settlor can also be known as Grantor, Trustor, Donor or Trustmaker.

Trustee(s): The Trustee is the individual or individuals who handle the administration of the Trust and all assets transferred to your Trust. When the Trust is created, the Trustees are usually the same individuals as the Settlor(s). For a married couple, usually both husband and wife act as Settlers and Trustees. The Trustee(s) have absolute power over Trust assets with the freedom to do as they wish with these assets until their death.

Successor Trustee(s): The Successor Trustee is the individual you name to succeed you as the Trustee of the Trust upon your death or incapacitation (if you are single) or upon the death or incapacitation of both spouses (if married). Upon your death

the Successor Trustee can immediately step in and have the same powers that you as Trustee had to buy, sell, borrow against, and transfer the Trust assets per the directions you stipulated in the Trust document. Upon your death, the Successor Trustee is in charge of paying all debts, taxes and creditors, and then liquidating your assets, and distributing those assets to the beneficiaries named in your Trust.

Beneficiary: The beneficiary or beneficiaries named by you in the Trust are the individuals legally allowed to receive your assets.

Personal Representative (Pour-Over-Will aka Last Will & Testament): A Personal Representative is someone you name in your Will to manage assets (upon your death) that were left out of the Trust for whatever reason. Remember, some assets left out of the Trust can or will go thru Probate if they had not been transferred to the Trust appropriately. The Personal Representative is responsible for managing these assets thru the Probate process.

Agent/Successor Agent (Durable Power of Attorney): The agent for the Durable Power of Attorney is the individual you name to make legal, financial and business decisions for you in the event that you cannot make these decisions for yourself. This individual can transfer the appropriate assets to the Trust that are not held by the Trust at this point in time.

Personal Representative (For a Medical Power of Attorney): The Personal Representative for a Medical Power of Attorney is the individual you name to make medical decisions for you in the event that you cannot make these decisions for yourself.

Personal Representative (For a Living Will): The Personal Representative for the Living Will is the person(s) you authorize to implement your wishes under your Living Will, when you can no longer speak for yourself.