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WHY HAVE A REVOCABLE LIVING TRUST?

Estate planning is the planned protection for yourself, your family and your assets from court intervention and unexpected loss of control costly fees.

Whether you are just starting out as a new homeowner or you have been accumulating assets over a lifetime, having a plan in place that mitigates costs, provides protection for your spouse and children, or simply insulates your estate against exorbitant costs and court intervention, is essential.

The estate plan goal is to; provide protection for your minor children, spouse, and those you love; enjoy the assets you have accumulated during your lifetime; maintain control of them during your lifetime; and have complete control in the event of an untimely disability, health crisis or death.

Sometimes people put off their planning because they cannot decide who should be named or who should administer their personal or estate matters. We have a motto for that. Our Motto: "The worst decision you make on you very worst day, is better than the decision the court makes for you, on their very best day"™

Colleen Marie is a bonded and insured LDA, Legal Document Assistant, registered in San Diego, California, allowing her to assist clients in the entire State of California. She is also a licensed, bonded, and insured Insurance Agent & Broker therefore she is able to assist in the self-directed preparation, funding, and the administration of Estate Planning Documents. Her practice was established in 1994. Colleen is a Voting Member, on the Board of Directors, of CALDA, the California Association of Legal Document Assistants , www.CALDA.org, a Certified Estate Planner and NICEP member, the National Institute of Certified Estate Planners, www.nicep.org, a Member of the NEA, the National Ethics Association, www.ethics.net and an Affiliate Member of the ABA, American Bar Association, www.americanbar.org.

As an LDA, Colleen Marie provides services directly to the consumer. Colleen is also a Paralegal. She graduated Valedictorian and has provided estate planning services for attorneys, as a vendor, for many years. **Colleen Marie is not an attorney and cannot give legal advice, nor can you consider anything she says as legal advice.**

EFFECTIVE ESTATE PLAN GOAL SETTING

Your plan will effectively address 4 main areas of concern; the transfer of titled property;



the control of asset distribution; the avoidance of probate; and the avoidance of a conservatorship.

Should you become incompetent or pass away, you will not be available to sign documents to transfer titled property. If you are holding title to property in your name it will be necessary to transfer that title to effect a distribution. Distribution is specified by state law, specified in your Will, or specified in your Revocable Living Trust.

The transfer process using only your Will requires the court's approval and supervision. This process is called PROBATE. Probate is mandatory with or without a Will. A Revocable Living Trust avoids probate, however, a Trust created by a Will, also called a testamentary Trust, **does not** avoid probate.

If you experience a disability that threatens your ability to competently and effectively manage your assets, even if temporary, there is a process known as a CONSERVATORSHIP.

This process is initiated by a friend, relative or state agency.

This process is much like a probate in that it places the control and supervision of your property under the court's authority while you are living.

PROBATE AND CONSERVATORSHIPS

Your estate is dramatically affected because of conservatorship, probate, taxes, and the loss of privacy and personal control over your assets. Creating a plan for avoiding probate, conservatorship, and loss of asset control, as well as, maintaining privacy and minimizing the tax ramifications should be your goal.

Clearly, death is inevitably unavoidable. However, **the unnecessary loss of privacy and control of your assets, unnecessary taxes, unnecessary probate, conservatorship fees, commissions, and the mandatory publicity of personal estate facts could be avoided by using a REVOCABLE LIVING TRUST.**

In California, when you die with or without a Will, if you own real property (land or real estate, even a manufactured or mobile home is considered real estate in some states) worth **\$58,000** (fifty-eight thousand dollars) **OR** if you **do not** own real property **but instead own personal property (savings, stocks, bonds, cash, and other liquid assets) worth \$184,500**, then the state mandates a Probate.

HOLDING PROPERTY IN JOINT TENANCY

Many people believe that joint tenancy is a way to avoid probate. In some situations joint tenancy will convey property without probate. However, joint tenancy presents major disadvantages. It supersedes your Will. The joint tenant automatically gets your portion even if your Will names your children, a relative, friend or charity. For property that passes successfully via joint tenancy, avoiding probate, there is a probate problem created for the eventual beneficiaries of that property. Many times, the surviving spouse does not understand that the "probate machine" will eventually catch up.



There are also hidden tax considerations. If the surviving spouse enters into joint tenancy with another person, that person may be subject to a gift tax for their percentage of tenancy, again, a very costly alternative.

Joint tenancy limits planning for potential disability or incompetence of your spouse. As a matter of law, an incompetent person cannot enter into a contract. The court must appoint a conservator who would act in place of your spouse in making financial decisions for your spouse. For example, if your spouse was in an accident and remained unconscious, you will not be able to lease or sell your property, unless it was approved by the court appointed conservator. Such a process takes away your freedom, privacy, is costly and time-consuming.

Your children's inheritance is endangered by the joint tenancy (or anyone else you have intended to benefit) because the remaining party can do with the property what they wish, often leaving your good intentions aside along the way.

Joint tenancy does not allow for the family's future financial planning, leaving the remaining party (regardless of his or her skills) to manage the assets. On the other hand, a Revocable Living Trust would allow you to appoint a trustee who was capable of the management while your beneficiaries enjoy the full ownership benefits. Your estate plan contains solutions and provisions designed to maintain control over your assets.

When a common disaster occurs where both tenants die simultaneously or within a short time of one another, it triggers a cause for probate and can result in major tax ramifications. In addition to these disadvantages there are other unpleasant aspects of joint tenancy that include; liability for the joint owners; estate tax consequences; income and gift tax consequences, to name just a few.

THE COST OF PROBATE:

Check current legislation for up-to-date figures.

Law sets the costs. However, the court has the power to order additional fees for extraordinary costs.

Probate fees are based on a percentage of the gross estate with no regard for the debt load.

The following is an estimate of what the basic fees could come to. Law sets them (statute). Extraordinary costs are beyond these. These estimates are considered conservative. *These fees are updated in compliance with law regularly, therefore, a probate attorney has information on the most current fees. **These fees can be charged by both the attorney and executor which can double the fees stated below, in addition to the costs!**

Unfortunately, in making the valuation, **the court does not consider the debts of the estate to offset the gross valuation, and thus determines the fees based upon just the gross valuation of the**



assets in probate. For example, if a house is appraised at \$500,000 but has an outstanding mortgage of \$300,000, the house is still valued at \$500,000 for the purposes of calculating statutory probate fees.

Statutory probate fees under §10810 are as follows:

- **4% of the first \$100,000 of the estate**
- **3% of the next \$100,000**
- **2% of the next \$800,000**
- **1% of the next \$9,000,000**
- **0.5% of the next \$15,000,000**

*Note that the above-referenced calculations may have to be done twice: once to calculate the attorney's statutory fee and once to calculate the executor's statutory fee. See the example calculations below.

Probate Statutory Fees

BASED ON THE GROSS VALUE OF AN ESTATE

- **\$500,000 \$13,000 x 2 = \$26,000**
- **\$600,000 \$15,000 x 2 = \$30,000**
- **\$700,000 \$17,000 x 2 = \$34,000**
- **\$800,000 \$19,000 x 2 = \$38,000**
- **\$900,000 \$21,000 x 2 = \$42,000**
- **\$1 Million \$23,000 x 2 = \$46,000**
- **\$5 Million \$61,000 x 2 = \$122,000**

The best thing is to avoid probate by creating a living trust.

Do not confuse these fees with taxes. Income, estate taxes and costs are paid above and beyond the Probate Costs and Fees.

The average estate takes 6 months to three years to settle.

Publicity of the entire estate including what the person owned and its value, as well as indebtedness is a matter of public record. Loss of control over the assets is a costly fate. With the proper planning of a Revocable Living Trust there is no reason for selling a person's assets upon death and taking whatever someone else is willing to pay at an estate sale.



THE REVOCABLE LIVING TRUST SOLUTION

To avoid probate, problems with conservatorship and to minimize the tax consequences, there is a legal entity that accomplishes all. It is a personal legal instrument called a ***REVOCABLE LIVING TRUST***.

The Revocable Living Trust is a document prepared by you for your estate while you are alive. A Revocable Living Trust allows you to control your assets while you live, and control the distribution and administration of your assets after your death in the exact manner that you intended.

If you become incapacitated during your lifetime, the Revocable Living Trust and the supporting documents provide for your spouse or another person to handle all your affairs as you would have done, without court intervention, delay, or expense.

The Trust is funded by the transfer of your assets to the Trust. It is a relatively simple procedure. Any asset that is registered should be transferred. Such assets include your house, any real property, stocks, bonds, deeds, checking accounts, savings accounts, automobiles and other personal property.

FUNDING & TAX QUESTIONS

Do you have to pay taxes upon death?

California has no state estate tax, instead it levies fees under the Probate statutes. There is, however, a federal estate tax. Those range from 18%-40% depending on the size of the estate. The federal exemption for each person of approximately 11 million. Do not become disillusioned by this. It is not surprising to see how quickly this exemption is exceeded when you are a real estate property owner.

Should you be concerned about estate planning if your estate is less than The federal exemption?

Yes, you may be exempt under the federal estate tax guideline, but the State will still levy Probate fees! It is cost effective to spend a little on estate planning and save a lot later.

How can you benefit from a Revocable Living Trust?

A properly funded Trust will avoid the State of California Probate fees, entirely and privately. In addition, the Federal Estate Tax Exemption, should it apply, is increased. The federal exemption allows a married couple, with a net estate of up to 22 million, to pass it along federal estate tax free. A single person can pass \$11,000,000 federal estate tax free.

The Trust will avoid a conservatorship, allowing your estate to be managed without court intervention. The Trust can provide for the education, support, and maintenance of your loved



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ones long after you are gone. ** These exemptions vary – see your tax professional regarding the exact figures.

How do I fund the Trust?

The Trust is funded by the transfer of title to the Trust. You maintain complete control as the trustee and beneficiary. You will have named successor trustees and beneficiaries to replace you so they may enjoy the benefits of the Trust. Your tax considerations are real and must be considered when planning. You should have liquid cash available to pay these fees or the estate will have to be liquidated to meet the obligation. Life insurance is an inexpensive way to purchase the cash you will need to create the liquid asset needed to cover the tax considerations. Be mindful of the need to add property to the Trust as it is acquired. Any property left outside the Trust may be probated if it exceeds the state threshold. A review should be done annually to update and make sure all your property is properly funded.

We care about you.

It is our goal to assist you in the gathering of information and the placement of the best solutions for your estate plan. We look forward to working with you toward a well-planned future.

The standard Trust package includes the Revocable Living Trust, Certificate of Trust, Durable Power of Attorney(s), Medical Power of Attorney(s), Transfer of Personal Property into the Trust and Pour Over Will(s).

A careful review of your existing insurance policies and how they will affect your estate planning is included at no additional charge. This consultation is free.

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LEGAL DOCUMENT ASSISTANT

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Fees will be discussed on a case-by-case basis for a complete package.

Standard Package Includes:

Trust Document - TP

Certificate of Trust - TP

Power of Attorney of Property (Durable or Springing - Separate document for each spouse)** TP

Power of Attorney for Health Care (Separate document for each spouse)** - TP



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Will (Separate document for each spouse)**

Pour Over Will (Separate document for each spouse) -TP

Transfer of Personal Property -TP

Deed - added Funding

Separate fees for Notary and Funding

Products and packages tailored to meet your needs.

Funding is structured per case at an additional cost.

** Documents every adult in California should have, regardless of estate size.

TP – Documents in a Standard Trust Package