

incapacitated/disabled, using your assets to pay for your expenses. When you recover, you automatically resume control as the trustee. Successor trustees can be any adult child, corporation, relative, friend, etc. You choose now!

What Is Involved In Settling An Estate In A Living Trust?

With all your estate's assets in a living trust, i.e., "fully funded"; the surviving spouse and/or heirs can "settle" the estate by simply following the instructions in your living trust agreement document.

Do I Ever Need To Update My Living Trust?

You should review and update your living trust when there are changes in you family that may affect the documents and your estate planning decisions (such as marriages, divorces, births, deaths, purchase or sale of assets, etc.). We recommend that you review your documents regularly since tax and estate laws are frequently undergoing changes.

You Said A Lot About A Living Trust But Who Really Needs One?

The "fully funded" living trust is the number one way to avoid the nightmares of the probate court for anyone who owns real property in California that exceeds \$10,000 in Gross value (\$20,000 for a married couple) or who's Gross estate is over \$60,000 (\$100,000 for a married couple) in personal property with no real estate. Simply put, if you have children or loved ones – they will benefit from a living trust. If you are in a second, third, etc., marriage; your heirs from previous marriages will definitely benefit from your living trust. If you want to spread out the time distribution of the inheritance to your children, skip them all together and give your estate to your grandchildren, or you have disabled heirs; all will benefit by your thoughtful planning. You name today when you are capable and conscience who you want to receive your estate, in what amounts, under what terms, and who will do it for you.

(continued on next column...)

What's So Bad About Probate?

Remember, probate is the only legal process in which the Court assumes management and control over the assets of an individual after his/her death. The probate court also assumes financial and bodily management of incompetent persons and custody of minor children. These all seem like noble causes but the probate court's track record is horrible. Besides, probate is very expensive, lacks privacy, is very time consuming, etc. AARP in their monthly publication Modern Maturity reports that the average probate process in America can take up to two years and 5-15% of the gross value of an estate (before debts are paid) before it's completed.

I Have A Will, Won't That Do?

Contrary to what most people have heard and been led to believe over the years, a will is probably not the best way to plan your estate – primarily because a will does not avoid probate. In fact, as stated earlier, a will is a one way ticket to probate. All wills must be verified by the probate court before they can be enforced. Also, since a will only becomes effective after you die; a will offers no protection if you become physically or mentally disabled. This is a real concern to millions of older Americans because you could easily find yourselves under the control of the probate court for years before you die. Fortunately, there is a traditional alternative to wills and probate. It's called a revocable living trust. It avoids probate and makes sure your plans won't be altered by the court or greedy relatives at your death or disability.

Is A Living Trust Expensive?

It doesn't have to be! A well organized estate planning center such as The Baldwin Trust Group, A Partner of The Advisory Team, can do all the work for you. We take the application, prepare the documents, deliver them back to you, explain all the articles and associated documents, and provide free notary at time of delivery. A "fully funded" living trust is not expensive when compared to the cost of probate. How much you pay is dependant on how complicated your needs or plans are. Many people simply need a basic trust which can cost as little as \$800.00. Additional cost for multiple deeds,

Letters of assignment, timed distributions, special needs trust for disabled heirs, special provisions for non US citizen spouses, affidavits of death of a joint tenant, homestead deeds, inter-spousal or inter-family transfer deeds, etc., all add to the basic cost of a "fully funded" trust. Once the application is received and verified for accuracy; it only takes a couple of weeks to prepare the living trust, pour over wills, durable powers of attorneys, medical healthcare directives with right-to-die decisions and treatment preferences, guardianship appointment letters, deeds, etc. A Living Trust solves the major issues of your estate in an efficient manner:

- ◆ Elimination of Probate Court interference.
- ◆ No lengthy time delays – estate settled in days, not months.
- ◆ Allows you total control during you lifetimes and control transfers to your successors upon your death.
- ◆ Easy to administrate even after death.
- ◆ No court interference during a period of disability.
- ◆ Creates no new tax forms.
- ◆ 100% "step-up in valuation" of all assets in the estate at date of death of the first spouse or unmarried person solves the Gift and Capital Gain Tax problems.
- ◆ Double exemption from the Federal Estate Tax for couples.
- ◆ Provides for heirs of blended families to keep what's theirs and not lose it to a surviving step-parent's heirs.
- ◆ Allows for times distribution to heirs, disinheriting heirs or ex-spouses, and ensuring your heirs do not inherit a dime if they are on drugs, alcohol, etc.
- ◆ Prevention of your heirs losing their estate due to a judgment creditor.
- ◆ Uneven inheritances within the same family unit.
- ◆ Elimination/reduction of capital gains taxes.

Warning: Revocable living trusts DO NOT provide any degree whatsoever of asset protection against judgment creditors for the grantors of the trust. Additional legal entities such as family limited partnerships, irrevocable life insurance trusts, family corporations, and other forms of irrevocable trusts are available as required to protect the estate you are so diligently deciding to preserve. **Contact your**

2010

Why millions of Americans will want to DIE that year!

Baldwin Trust Group
6966 Sunrise Blvd
Citrus Heights, CA 95610
888-212-5132 / fax 916-729-7468



Economic Growth and Tax Relief Reconciliation Act of 2001

a.k.a. "Throw Mamma from the Train Act"

DEATH TAX: The estate tax is phased out over an 8 year transition period from 2002 to 2009; complete repeal occurs in 2010.

GIFT TAX: Remains in place with increased \$1 million lifetime exemption.

LIFETIME EXEMPTION: Increased in stages during the transition period from \$1 million to \$3.5 million for individuals dying prior to 2010.

ESTATE & GIFT TAX RATES: Lowered in stages to 45%; after transition period, maximum gift tax rate is maximum income tax rate.

CARRY OVER BASIS: After 2009, for income tax purposes, property received from lifetime and deathtime transfers takes a "carry-over" rather than "stepped-up" (or fair market value) basis. Each estate may increase the basis of certain property by \$1.3 million, with an additional \$3 million increase in basis allowed for certain transfers to a surviving spouse.

SUNSET PROVISIONS: Beginning 2011, the tax law reverts to the law prior to the 2001 Tax Act (all changes are eliminated) unless Congress acts to change the law again.

The History of Living Trusts

In early England, any peasant that died with a debt owed to the “Land Lord” would have their lands and property confiscated by the royalty and their family left out in the cold.

Those that wished to protect their property would deed their property to the church "In Trust." That meant that the family could live on the property for all their generations until no heirs survived. At that time, the church would inherit the property.

This practice was later included into the Statute of Uses and English Common Law as a proper means of holding property.

When America was formed we had no body of laws and so we adopted in toto the English Common Law and the concepts of probate, wills, and trusts. The first known trust written in America was by Patrick Henry for the governor of Virginia, Roger Morris. And through succeeding generations, the informed have used trusts extensively to preserve their wealth and avoid the nightmares of the Probate Court.

Won't Joint Ownership Avoid Probate?

You're half right! In reality, it just postpones probate. When one of the joint owners die, ownership does transfer to the other joint owner without probate. But ... when the “second” owner dies, or if both should die at the same time; the property must be probated before it can go to their heirs.

Why Would The Probate Court Get Involved If Someone Is Disabled Or Incompetent?

If your property must be sold or refinanced after you are disabled/incompetent; only the probate court can sign for you through a conservatorship/guardianship – even if you have a will (remember, a will can only go into effect after your death). This court procedure will not ,

again, will not replace probate at death – your family would have to go through probate twice. Simply stated, conservatorship/guardianship means that the Probate court will run your affairs instead of your loved ones if you are disabled and cannot sign for yourself. Here is an example of loss of control, ongoing costs, and endless complications.

What Is Double Taxation?

Property that is passed by Joint Ownership causes two forms of taxation. First is Gift Tax on the day it is given, and the second is a Capital Gain Tax on the day it is sold. This happens with bank or investment accounts as well as real estate. By putting your children on deeds or accounts, you may have created not only a sizable tax problem but also “joint and several liability” in the event any joint tenant is sued.

How Does A Living Trust Avoid Probate?

When you set up a living trust, you transfer all of your property, real and personal, from your name to the name of your trust; which you control – such as from “John and Mary Smith, husband and wife” to “John and Mary Smith, Trustees under trust agreement date 1/1/99.” Technically, you no longer own anything (everything now belongs to your trust, which you control). A trust is a “contract” between yourselves and therefore there is nothing to probate upon your incapacity, incompetence, or death. The concept is very simple but it is this simplicity that keeps you and your family out of probate court.

What About Federal Estate Tax?

Death Tax is one of the largest taxes you may ever have to pay. It starts at 37% and goes to a high of 60%. Without a living trust, if you are single or married (it doesn't matter) and your NET estate is valued over \$675,000 (including the face and cash value of any life insurance owned), you will be subject to this powerful tax. Many families are surprised that their estate is subject to this "Death Tax." Contrary to popular belief, a “Will” does not exempt you from the Probate system; it

is actually an engraved invitation to the nightmares of Probate. Fortunately, this lifetime exemption is raising to a whopping \$1 million dollars on January 1, 2006; unless Congress changes its mind again. What do you think?

The Choice is Yours!

Probate is often referred to as a voluntary tax. You can choose not to go through the costs and delays of the Probate Court; a hostile place where privacy, fees, and taxes are extracted based on the Gross value of your estate (encumbrances and debts are not taken into consideration) before your heirs get one cent.

Do I Lose Control Of The Property In My Trust?

Absolutely Not! You keep full control over your property. As trustee of your trust, you can do everything you could do before – buy and sell property, make changes, gift away property, take loans out again trust property, even cancel your trust at any time. Remember, it's “revocable!” Nothing changes but the names on the titles.

How Does A Living Trust Save On Estate Taxes?

If you are married and have an “A~B” living trust; both you and your spouse receive the \$675,000 lifetime federal estate tax exemption thus doubling your lifetime exemptions and allowing you to instead transfer \$1.35 million estate tax-free to your beneficiaries. This double exemption will save you over \$300,000 in estate taxes plus thousands of dollars in probate cost. Additional savings will be realized if you or your spouse were to become incompetent/incapacitated before death.

Is It Hard To Transfer Property Into My Living Trust?

No! Most estate planners, escrow officers, trust officers, financial planners, brokers, attorneys, insurance agents, and some CPA / tax prepares can help you. Make

sure to change titles on all real estate (both local and out-of-state) and other property with formal titles (checking, savings, stocks, CDs, insurance policies, mutual funds, etc.). Most trust documents contain “bills of transfers” for personal property such as jewelry, clothing, art, home furnishings, etc.

If I Have A Living Trust, Do I Still Need A Will?

Yes! You should have an instrument called a “pour over will” in case you have any property that you either forgot to place into the trust or just recently purchased and didn't have sufficient time to properly transfer title into the trust. This type of will “catches” the property not in the trust and sends it to your trust but probably only after it has gone through the probate process; but at least it can be distributed as part of your overall plan.

Should I Consider a Corporate Trustee Instead Of My Children?

Many people do select a corporate trustee such as a bank or trust company to act as their fiduciary successor trustee or co-trustee now. This is especially true if they don't have the time, ability, or desire to manage their own trust. Corporate trustees are in the business of managing trusts – they are reliable, objective, government regulated, and experienced investment managers. There are monthly fees but are usually reasonable.

If Something Happens To Me, Who Has Control Then?

If you selected a fiduciary corporate trustee as your successor trustee or co-trustee; they will continue to manage your trust for you. Of course, you can manage you own trust. You and your spouse are both trustees, so either can act alone and have instant control if one becomes disabled or dies. If something happens to both of you; your hand-picked successor trustees will step in either in order of selection or as co-trustees ~~ you make all the decisions. Successor trustees also step in while you might be temporarily