

OUTDATED OR "STALE" TRUSTS CAUSE PROBLEMS

Many trusts reviewed by our firm were originally adequate **but became almost worthless because** they had not been properly maintained or administered.

Some folks have been told that when they establish their Living Trust; "That's it - nothing else to do" ~ everything is protected, probate is avoided, they established Powers of Attorney in case of incapacity or incompetency and now they can just put the Trust on the shelf and forget about it. Sorry, NOT TRUE!

You may have originally acquired all of the necessary estate planning documents but **proper maintenance or administration of your Trust is necessary**. It's not tedious or difficult, but it does require attention to detail. Such maintenance may be necessary because of changes in economic and personal conditions or laws.

Proper attention to this necessary maintenance can save a great deal of time, money, and future problems.

The death of a Trustor (creator) of a living trust causes the most significant need for maintenance. Proper maintenance can eliminate capital gains taxes charged at approximately 30% [*20% Federal and 9-11% State*] and eliminate, or reduce, Federal Estate Taxes which start at 37 to 55 percent. In the case of married living trust portfolios; the death of a spouse will set in motion several things must be done quickly and correctly. Highly appreciated real estate property should be appraised at the time of death to establish a new "step-up" basis for the surviving spouse or beneficiaries. The trust may require division into the "AB" or "ABC" subtrusts, in which case, a Taxpayer Identification Number (TIN) will be required from the IRS for the "B" and "C" trusts.

Final tax returns are necessary. A regular final tax return must be filed by the due date of April 15 of the year following the death. In addition, if a decedent subtrust is established for an amount greater than the exemption equivalent, a separate Federal Estate Tax return (Form 706) is required within 9 months of death. Other tax returns may be required. Does this sound complex? It can be, but generally not. The most difficulty comes from ignoring these necessary requirements.

The death of a single or surviving Trustor may provide for the distribution of the trust estate and then the trust will cease to exist. Upon distribution of the assets, new deeds may be required and affidavits should be recorded to remove the decedents name from the deeds and property tax bills.

Change in your family or family relations is the primary cause for most changes of well-drafted family trusts. Marital dissolution changes the structure of the married trust and eliminates the need for the “B” or “BC” subtrusts which doubles the uniform tax credit allowed couples. On the marriage or remarriage of a Trustor, subtrusts should be added to provide for the second spouse.

The birth, adoption or death of a child may require changes in the manner of distribution of trust assets or the naming of the beneficiaries. A marriage or marriage dissolution of a child may also require certain changes in the gifting sections of the trust.

A child’s disability, particularly when government funding is being received will require the creation of a “Special Needs Trust” to shelter assets from the reach of those government agencies.

If you created a family trust, you are a thoughtful and responsible person who provided a vehicle for the smooth transfer of wealth to the next generation; however you must keep this vehicle in proper running order so it will perform the task for which it was created. A trust not properly maintained becomes “stale” and will not work for you!

A recent review of a trust indicated that after the death of a spouse, four years previously, the surviving Trustor did not update the trust. As a result, it was necessary, but costly, to establish the value of the assets at the time of the spouses death. Amended tax returns were filed and tax refunds were obtained from tax paid on the sale of property. “ABC” provisions were properly funded to reduce taxes otherwise due with penalties and interest. Overall a potentially explosive situation was avoided, but at additional cost including penalties.

“Stale” or out-of-date trusts will defeat the purpose for which they were established. Unfortunately, many firms producing trusts fail to inform their clients of changes which affect the trusts. Many firms do not periodically review trusts for their clients to determine if amendments are necessary. Such reviews for changes cost little and should be performed every few years to ensure they are current.

In another review, it was noted that a couple had refinanced their home. The lender took the

residence **out** of the trust for the refinance, but did not place it back into the trust. As a result their home was not protected from probate by the trust and would have caused their estate to be subjected to probate costs and time delays. We prepared the proper trust transfer deed and recorded it thus placing their most valuable asset back under the probate protection of the trust.

Upon completion of a Living Trust, a another couple received the deeds for their residence and a rental. The deeds properly transferred the property to the trust **but** they were not recorded. Several years later, the owners were told that the best way to hold real estate in California **is** "Community Property." A title company transferred the property to them as community property. The title company had used the "last recorded" deeds which showed their ownership as joint tenants and this caused the property to be removed from the trust. Thousands of dollars could have been wasted on an unnecessary probate had the problem not been caught in time.

In another instance, upon the death of the husband, the wife attempted to transfer assets in the bank owned separately by the husband and could **not** because she had not establish the decedents **sub trust**. The bank had provided her sketchy information. It was determined that no administration of the trust had been performed on the death of the husband as it should have been. We accomplished the necessary tasks and the problem of her control and management of trust assets was eliminated.

In still another instance, property passed to the surviving spouse as a joint tenant, rather than as community property. Two years later the property was sold, resulting in a large amount of capital gains tax based on the original purchase price. The proper documents converting the property to community property were submitted, the property was re-assessed as of the date of death of the spouse thus reducing the capital gains taxes to zero.

In Summary:

Your trust must be maintained up-to-date to recognize any pertinent internal family changes. Periodic review is necessary to determine if any maintenance or administration is recommended.