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# Who needs a living trust?

Estate planning with a revocable living trust is a good idea for everyone but especially for the following:

1. If you have an estate over \$100,000 and want to **avoid probate** upon death and **avoid property guardianship** upon disability;
2. If you have **real estate in multiple states**;
3. If you have separate **children from previous marriages** (*and don't want your children to be accidentally disinherited*);
4. If you are **infirmed or elderly**;
5. If you are a **parent with minor children** (*including disabled or special needs children*);
6. If you have a large estate and want to **avoid federal estate taxes and Illinois estate taxes**;
7. If you have **married children** and want to protect your child's inheritance from themselves or from **divorcing spouses** or lawsuits.

Since 1984, the **LAW FIRM OF KUCZEK & ASSOCIATES** has drafted revocable living trust-centered estate plans for over 2,900 families.

### **Would you like to learn more about the benefits of a living trust?**

Please contact us at 847-940-7780. We offer an information packet and complimentary meeting with Ted Kuczek.

**PRACTICE LIMITED TO ESTATE PLANNING: WILLS AND TRUSTS**

DEERFIELD • OAK BROOK • ORLAND PARK • HOFFMAN ESTATES • LISLE/NAPERVILLE  
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## THEODORE D. KUCZEK



Theodore D. Kuczek received his bachelor's degree in Business Finance from the University of Wisconsin Whitewater School of Business and received his Juris Doctor degree from the John Marshall Law School in Chicago.

Mr. Kuczek has taught estate planning to attorneys through the National Network of Estate Planning of Attorneys, to various senior groups, accountants, financial professionals, as well as to the top executives of several Fortune 500 companies.

Since 1984, he has been in private practice concentrating in estate planning. The Law Firm of Kuczek & Associates limits its practice to helping individuals and business owners in avoiding the complications of probate and preserving family wealth through tax planning and asset protection.

### Speaker / Instructor:

Alliance of Illinois Community Foundations, Morris, IL, August 2012, "How Law Firms and Community Foundations Can Work Together"

Cook County Human Resources, Chicago, IL, October 2010, "Estate Planning for Pre-Retirees"

Carol Stream Fire Protection District, Carol Stream, IL, October 2010, "Program for Senior Staff"

Independent Accountant's Association, Wheeling, IL, June 2010, "Revisiting Estate Planning in 2010"

St. Peter Damian Catholic Church, Bartlett, IL, April 2010, program for parishioners "Wills & Trusts"

Homeowners Association – “Woods of Barrington,” Barrington, IL, March 2010, “Wills & Trusts”

Group of Retired Teachers, Glendale Heights, IL, November 2009, “Wills & Trusts”

Support Group for Parents of Adopted Children, Arlington Heights, IL, November 2009, “Special Needs Trusts”

Seminar for Tax Professionals, Elgin, IL, August 2008, “Estate and Tax Planning Update”

Seminar for Tax Professionals, Elgin, IL, July 2008, “Estate and Tax Planning Update”

Independent Association of Accountants, Northbrook, IL, August 2003, “Estate and Tax Planning Update”

Harvard Business School Club, Chicago, IL, April 2003

National Network of Estate Planning Attorneys “Estate Planning Collegium,” Kansas City, MO, October 2002

National Network of Estate Planning Attorneys “Spring Collegium” Reno, NV, April 2002

National Network of Estate Planning Attorneys “Spring Collegium” San Diego, CA, April 2002

National Network of Estate Planning Attorneys “Estate Planning Collegium,” Chicago, IL, September 1999

National Network of Estate Planning Attorneys “Estate Planning Collegium,” Seattle, WA, October 1998

National Network of Estate Planning Attorneys “Estate Planning Practicum,” Denver CO, July 1998

National Network of Estate Planning Attorneys “Train the Trainers” Seminar, Nashville, TN, March 1997

Money Magazine “How to Profit in 1997” Seminar; Chicago, IL, March 1997,  
Subject: *Estate Planning - How To Shelter Your Wealth From Estate Taxes*

Social Security Administration, U.S. Federal Government seminar; Chicago, IL,  
October 1997, Subject: *Estate Planning and Social Security*

Public Seminars on a monthly basis, various locations throughout the Chicagoland  
area; Subject: *Estate Planning and Living Trusts, Avoid Probate*

Published NNEPA manual and video 1997; Subject: *Bridges to Understanding -  
Overcoming Obstacles to Proper Estate Planning*

## THE INTESTATE'S WILL

There's an old saying that "the state has made your will" - if you haven't done it yourself. This means that your estate may pass to beneficiaries according to the intestacy laws of the state in which you reside or own real property in at death. Here is an example of an intestate's will that several states have "drafted" for people who die there.

### *Last Will & Testament*

- FIRST: I give my wife only one-half of each of my possessions, and I give my children the remaining one-half. I appoint my wife as guardian of my minor children, but I require that she report to the Probate Court annually on how money was spent for the proper care of my children. My children shall have the right to demand a complete accounting from my wife of her financial actions with their money when they reach legal age.
- SECOND: Should my wife remarry, her second husband shall be entitled to one-half of everything my wife possesses. Should my children need some of this share for their support, the second husband shall not be bound to spend any of his share on my children's behalf. The second husband shall have the sole right to decide who gets his share, even if it means the exclusion of my children.
- THIRD: I specifically disinherit all the worthwhile causes and institutions that I have supported all my life.
- FOURTH: Should my wife predecease me, I direct that my friends and relatives, by mutual agreement, select a guardian of my minor children. If they fail to agree, the Probate Court may make the selection, appointing a stranger if it chooses.
- FIFTH: Under existing law, there are certain legitimate avenues open to me to lower death taxes. Since I prefer to have my money used for governmental purposes rather than for the benefit of my wife and children, I direct that no effort be made to lower taxes.
- SIXTH: I appoint my wife to handle my estate, but as a safeguard, I direct that she give a Performance Bond to guarantee that she does everything exactly as she should.

*This Intestate's Will was published in The Legal Heritage Reporter, Summer 1995.*

# WILLS ARE PUBLIC DOCUMENTS

Actual excerpts from the Last Will of JACQUELINE K. ONASSIS:

I, JACQUELINE K. ONASSIS, of New York City, County and State of New York, do make, publish and declare this to be my Last Will and Testament, hereby revoking all wills and codicils at any time heretofore made by me.

FIRST: A. I give and bequeath to my friend RACHEL (BUNNY) L. MELLON, if she survives me, in appreciation of her designing the Rose Garden in the White House my Indian miniature "Lovers watching rain clouds," Kangra, about 1780, if owned by me at the time of my death, and my large Indian miniature with giltwood frame "Gardens of the Palace of the Rajh," a panoramic view of a pink waled garden blooming with orange flowers, with the Rajh being entertained in a pavilion by musicians and dancers, if owned by me at the time of my death.

B. I give and bequeath to my friend MAURICE TEMPELSMAN, if he survives me, my Greek alabaster head of a woman if owned by me at the time of my death.

C. I give and bequeath to my friend ALEXANDER D. FORGER, if he survives me, my copy of John F. Kennedy's Inaugural Address signed by Robert Frost if owned by me at the time of my death....(Continued to Page 5)

B. I give and bequeath the amount of Two Hundred and Fifty Thousand Dollars (\$250,000) to each child of mine who survives me.

C. I give and bequeath to NANCY L. TUCKERMAN, if she survives me, the amount of Two Hundred and Fifty Thousand Dollars (\$250,000).

D. I give and bequeath to MARTA SQUBIN, if she survives me, the amount of One Hundred and Twenty-Five Thousand Dollars (\$125,000).

E. I give and bequeath to my niece ALEXANDRA RUTHERFURD, if she survives me, the amount of One Hundred Thousand Dollars (\$100,000).

F. I give and bequeath to PROVIDENCIA PAREDES, if she survives me, the amount of Fifty Thousand Dollars (\$50,000).

## Creditors Line Up for Piece of Brando's Estate

[www.lasuperiorcourt.org/Probate](http://www.lasuperiorcourt.org/Probate)

By Steve Gorman

Case #BP086759

LOS ANGELES (Reuters) - From a friend who lost a diamond ring down his drain to a small airline that flew guests to his private Tahitian island, would-be creditors are lining up to make claims on Marlon Brando ([news](#))'s estate two months after he died, a lawyer said on Thursday.

But family members named as beneficiaries in Brando's will have kept a united front, with no squabbles breaking out, since probate of his \$21.6 million in assets began last month, David Seeley, the attorney representing the estate, said.

Probate is the process by which a court distributes the estate of a deceased person.

"At this point in the process, everyone is pulling together and working together to make this as easy as possible in a very difficult time," the Seattle-area based Seeley told Reuters.

Seeley said at least five or six potential creditors have informed the estate that they intend to file claims, including Tahitian-based Air Moorea and Joan "Toni" Petrone, a longtime friend who also worked as a personal assistant for many years.

"I suspect there's going to be a whole lot more than that," he said. Hollywood producer Mike Medavoy, one of the executors of Brando's will, told the Los Angeles Times he doubted total claims against the estate would exceed \$1 million.

Seeley confirmed a Times report that Air Moorea was planning to seek roughly \$460,000 in business costs that the charter airline claims Brando owed the company for flying tourists to the Tahitian atoll he purchased in 1966.

Meanwhile, Petrone is seeking reimbursement for a \$3,000 diamond and platinum ring that she lost down the drain while chopping up vegetables over the kitchen sink in his Mulholland Drive home about 10 years ago, Seeley said.

A petition for probate filed by Brando's estate in July listed private assets worth \$3 million and real estate valued at \$18.6 million, including his California home and the Tahitian island.

The will lists 10 surviving children, ages 46 to 10, and names all as beneficiaries except for his adopted daughter Petra Brando-Corval. It also provides monthly payments for two friends of Brando's.

Brando died July 1 at age 80. Word of initial claims on his estate came as new details surfaced about Brando's final days and the aftermath of his death.

Family and friends told the Los Angeles Times the Hollywood legend suffered from pulmonary fibrosis and depended on a portable oxygen tank to help his breathing during the last months of his life.

He also enjoyed visits to the Neverland Ranch of pop star Michael Jackson ([news](#)), a close friend who employed Brando's son, Miko, the Times reported.

# TRUSTS ARE PRIVATE DOCUMENTS

*(the will is filed as required by law but assets in trust are not revealed)*

LAST WILL  
OF  
MICHAEL JOSEPH JACKSON

I, MICHAEL JOSEPH JACKSON, a resident of the State of California, declare this to be my last Will, and do hereby revoke all former wills and codicils made by me.

I

I declare that I am not married. My marriage to DEBORAH JEAN ROWE JACKSON has been dissolved. I have three children now living, PRINCE MICHAEL JACKSON, JR., PARIS MICHAEL KATHERINE JACKSON and PRINCE MICHAEL JOSEPH JACKSON, II. I have no other children, living or deceased.

II

It is my intention by this Will to dispose of all property which I am entitled to dispose of by will. I specifically refrain from exercising all powers of appointment that I may possess at the time of my death.

III

I give my entire estate to the Trustee or Trustees then acting under that certain Amended and Restated Declaration of Trust executed on March 22, 2002 by me as Trustee and Trustor which is called the MICHAEL JACKSON FAMILY TRUST, giving effect to any amendments thereto made prior to my death. All such assets shall be held, managed and distributed as a part of said Trust according to its terms and not as a separate testamentary trust.

If for any reason this gift is not operative or is invalid, or if the aforesaid Trust fails or has been revoked, I give my residuary estate to the Trustee or Trustees named to act in the MICHAEL JACKSON FAMILY TRUST, as Amended and Restated on March 22, 2002, and I direct said Trustee or Trustees to divide, administer, hold and distribute the trust estate pursuant to the provisions of said Trust, as hereinabove referred to as such provisions now

## Famous People Who Failed to Plan Properly



It's almost impossible to overstate the importance of taking the time to plan your estate. Nevertheless, it's surprising how many American adults haven't done so. You might think that those who are rich and famous would be way ahead of the curve when it comes to planning their estates properly, considering the resources and lawyers presumably available to them. Yet there are plenty of celebrities and people of note who died with inadequate (or nonexistent) estate plans.

### Most recently

The Queen of Soul, **Aretha Franklin**, died in 2018, leaving behind a score of wonderful music and countless memories. But it appears Ms. Franklin died without a will or estate plan in place. Her four sons filed documents in the Oakland County (Michigan) Probate Court listing themselves as interested parties, while Ms. Franklin's niece asked the court to appoint her as personal representative of the estate.

All of this information is available to the public. Her estate will be distributed according to the laws of her state of residence (Michigan). In addition, creditors will have a chance to make claims against her estate and may get paid before any of her heirs. And if she owned property in more than one state (according to public records, she did), then probate will likely have to be opened in each state where she owned property (called ancillary probate). The settling of her estate could drag on for years at a potentially high financial cost.

### A few years ago

Prince Rogers Nelson, who was better known as **Prince**, died in 2016. He was 57 years old and still making incredible music and entertaining millions of fans throughout the world. The first filing in the Probate Court for Carver County, Minnesota, was by a woman claiming to be the sister of Prince, asking the court to appoint a special administrator because there was no will or other testamentary documents. As of November 2018, there have been hundreds of court filings from prospective heirs, creditors, and other "interested parties." There will be no private administration of Prince's estate, as the entire ongoing proceeding is open and available to anyone for scrutiny.

### A long time ago

Here are some other notable personalities who died many years ago without planning their estates.

**Pablo Picasso** died in 1973 at the ripe old age of 91, apparently leaving no will or other testamentary instructions. He left behind nearly 45,000 works of art, rights and licensing deals, real estate, and other assets. The division of his estate assets took six years and included seven heirs. The settlement among his nearest relatives cost an estimated \$30 million in legal fees and other related costs.

The administration of the estate of **Howard Hughes** made headlines for several years following his death in 1976. Along the way, bogus wills were offered; people claiming to be his wives came forward, as did countless alleged relatives. Three states — Nevada, California, and Texas — claimed to be responsible for the distribution of his estate. Ultimately, by 1983, his estimated \$2.5 billion estate was split among some 22 "relatives" and the Howard Hughes Medical Institute.

**Abraham Lincoln**, one of America's greatest presidents, was also a lawyer. Yet when he met his untimely and tragic death at the hands of John Wilkes Booth in 1865, he died intestate — without a will or other testamentary documents. On the day of his death, Lincoln's son, Robert, asked Supreme Court Justice David Davis to assist in handling his father's financial affairs. Davis ultimately was appointed as the administrator of Lincoln's estate. It took more than two years to settle his estate, which was divided between his surviving widow and two sons.

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# Advantages of Revocable Living Trusts

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By: R. Mark Hochberg - Estate Planner

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Revocable Living Trusts are gaining in popularity as a means for people to manage their assets while they are alive and pass them on to their heirs at death without having those assets subjected to probate.

What is a revocable living trust? It is a trust you establish during your lifetime while reserving the right to amend or terminate it at will. You can serve as your own trustee and also be the primary beneficiary of the trust. Upon your death, the successor trustee whom you have designated can step in to distribute the remaining assets of the trust to the beneficiaries of your choice.

A revocable living trust can offer many advantages over a will as a means of disposing of your assets at death. Because assets that have been titled in the name of a revocable living trust bypass probate, they also avoid the delays that may be involved in the probate process. This could be particularly important to people with long-lost relatives who may have to be found before the probate process is completed. This sometimes takes many months to achieve.

It could also be important to people who fear their wills might be contested, since it is usually much more difficult to challenge a disposition under a revocable living trust than under a will. Why? The fact that the creator of the trust actually dealt with the trust during his lifetime and could have changed the terms of the trust at any time strongly indicates that he was comfortable with all of its provisions.

An additional benefit is that the provisions of a revocable living trust can be kept entirely private, with only the beneficiaries

themselves having knowledge of them. By contrast, a will becomes a matter of public record when it is filed. Anyone would have the right to go down to the county courthouse and read it.

Because assets being passed along pursuant to the provisions of a revocable living trust bypass probate, they also will not be subjected to the court costs and lawyers' fees that invariably accompany the probate process.

The need to avoid probate can be particularly pressing to people who own real estate in more than one state. Why? Because the probate courts in the state where a will is probated have jurisdiction only over real estate located in that state.

**You will not be subject to the court costs and lawyers' fees that invariably accompany the probate process.**

When real estate is also owned in another state, a separate court action, known as an "ancillary administration proceeding," must be commenced. A local lawyer must be retained and additional court costs must be incurred. By deeding out-of-state real estate to a revocable living trust, an ancillary administration proceeding can be avoided.

Although the probate process is not always a lengthy one, there are occasions when any delay in the ability to take action can be detrimental. This can occur, for example, if someone has an interest in a closely held business and important decisions must be made on a daily basis. It can also occur where investment decisions must be made rapidly.

Often in the administration of estates, there may be delays in locating and marshalling assets spread far and wide. The revocable living trust can facilitate the disposition of

assets to heirs, since the assets have already been placed under centralized management within the trust.

The revocable living trust is tax-neutral. It does not cause any taxes to be paid and it does not alleviate any tax burden for its creator. Because of this, the Internal Revenue Service has ruled that a separate taxpayer identification number for the trust is not needed while its creator is alive and the trust need not file separate income tax returns. All of the income of the trust is merely picked up by its creator on his own income tax return and his social security number may appear on all trust investments.

One of the greatest benefits of a revocable living trust has nothing to do with death or taxes. It is the opportunity to prevent the necessity of a conservator being appointed to handle your financial affairs in the event that you become mentally incompetent.

In the trust document, you can name someone to take over the administration of the assets of the trust in the event that you are unable to manage them yourself. Since the issue of incompetency is on the minds of more and more people as the population ages, the revocable living trust appears to offer a satisfactory solution to this problem.

Why haven't more people prepared revocable living trusts? Some are not aware of their benefits. Others don't want to bother retitling their assets to a trust. But as the advantages of revocable living trusts become more widely known, they will become more widely used.

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# Your Parents' Estate Plan

by Randy Gardner, J.D., LL.M., CPA, CFP®; Leslie Daff, J.D.; and Julie Welch, CPA, CFP®

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Leslie Daff, J.D. ([ldaff@estateplaninc.com](mailto:ldaff@estateplaninc.com)), is a State Bar Certified Specialist in estate planning, probate, and trust law and the founder of *Estate Plan Inc.* in Orange County, California, and Overland Park, Kansas.

Julie Welch, CPA, CFP® ([julie@meara.com](mailto:julie@meara.com)), is the director of tax and a shareholder with *Meara Welch Brown PC* in Kansas City, Missouri.

Getting your parents to create or update their estate plan is a sensitive issue. As we watch our parents age, remarry, and/or become infirm, the need to plan becomes more urgent, but it is often put off for another day. Here is what you, your parents, and your clients with living parents may be able to do to start the discussions.

## Why Should Your Parents Plan?

Planning in advance will enable your parents to: (1) ensure appropriate people step in to handle their financial and health-care decisions upon their incapacity and death without court intervention, such as guardianship or probate proceedings, (2) minimize unnecessary administrative burdens and costs after the death of a spouse, (3) minimize taxes, (4) preserve their assets, and, ultimately (5) distribute assets to their loved ones in a manner that minimizes disputes and protects the inheritance from creditors, predators, and divorce.

## What Planning Should Your Parents Consider?

1. **Get basic documents in place.** Your parents should execute appropriate documents while they still have mental capacity. For most people, these documents include a will, power of attorney for financial matters, power of attorney for health care, living will, and revocable living trust to avoid probate. For people dying with estates exceeding the federal estate tax exemption amount (currently \$5 million per person), more advanced techniques are available, but for many people, these basic documents will suffice.
2. **Fund the revocable living trust.** For a revocable living trust to be effective in avoiding probate, it is essential that it is funded. In other words, real property, bank and brokerage accounts, and business interests should be re-titled in the name of the trust.
3. **Build flexibility into the plan for tax purposes.** Your parents' current wills or revocable living trust may force a mandatory split into A-B subtrusts when the first spouse dies, even though the estate tax portability feature introduced at the end of 2010 no longer necessitates a B trust (usually referred to as a "bypass" trust or "credit shelter" trust). Thus, a forced split may cause your surviving parent to incur unnecessary administrative burdens and costs, including having to re-title assets between subtrusts and having to file a separate tax return each year for income generated by assets in the bypass trust. To cope with uncertainty in the tax laws, flexibility can be built into the estate plan instead, enabling the surviving spouse or a fiduciary acting on behalf of the surviving spouse to wait until the death of the first spouse to determine what to do based on the tax laws at that time. If portability is revoked, assets may be disclaimed to a bypass trust. With this approach, unnecessary subtrust funding is eliminated.
4. **Consider a subtrust for control purposes.** Apart from tax considerations, sometimes it is important to have the plan designed to hold a parent's assets in a subtrust called a C trust (often referred to as a "QTIP" trust) after his or her death. This trust can provide for the surviving spouse during his or her life with the remainder going to the deceased spouse's beneficiaries. If a parent is concerned that the surviving spouse may squander assets or lose them to a new spouse or predator, he or she may want to have such a subtrust in place, despite the administrative burdens and costs it will cause (having to re-title the deceased spouse's assets to the QTIP trust and having to file annual tax returns on income generated by the trust). If either of your parents has remarried and is in a blended family situation, a QTIP may be a very important component of the plan.
5. **Select the right fiduciaries.** Your parents need to carefully consider the persons or institutions they name in their documents to handle their financial and health-care decisions. Will naming a particular child cause friction among other children? If all children serve together, will it be cumbersome to obtain all signatures for all actions taken? If more than one fiduciary is serving, what tiebreaking mechanism will break an impasse? Should there be a corporate trustee or private fiduciary as a backstop? Are there mechanisms to remove a "bad" fiduciary without having to go to court? Selecting appropriate fiduciaries is one of the most important decisions your parents will make.
6. **Decide how to determine incapacity.** Incapacity is a triggering event for fiduciaries to step in and serve. Traditionally, incapacity has been determined by two licensed physicians, but because your parent may be at home or in a nursing home, it may be cumbersome to have more than one physician make the determination. Today, many parents choose to have the attending physician and spouse, or the attending physician alone, make the determination.
7. **Discuss with your parents how they would like to spend their final days.** Most parents want to die at home and do not want life-prolonging measures taken, but this is an important and, in some states, a legally required conversation to have.
8. **Develop a plan for the family business.** If your parents own a family business, business succession planning, which may include a buy-sell agreement or equalizing assets in the estate plan between children who will be taking over the business and those who will not, is critical for the continued health of the business and for family harmony.
9. **Develop a plan for the family vacation home.** If your parents have a family vacation home that might be sold in a forced sale by a disinterested beneficiary, they may want to consider creating a limited liability company now—or a springing one at death—to keep the property in the family for generations.
10. **Designate recipients of personal effects.** Few gifts are more emotionally charged than gifts of a parent's personal property, such as family heirlooms, jewelry, and artwork. If a parent names one child as the fiduciary in his or her estate planning documents, the child may distribute the property in a way that causes disputes

and heartache. If all children are named as fiduciaries, disagreements can ensue. Instead, if possible, parents should discuss the division with the children and specifically allocate more important items of personal property in their estate planning documents.

11. **Where is everything?** The days when the family would gather to unveil the secrets of the safe deposit box have passed. Parents should be encouraged to create a summary of the bank accounts, investment accounts, retirement plans, insurance policies, and real estate the parents own so fiduciaries can initiate the gathering and distribution of the parents' property after the death of the second parent.
12. **Seek professional advice before doing your own planning.** Sometimes parents engage in do-it-yourself estate planning—adding one or more children to bank accounts or to title on real property. Remind your clients of the unintended consequences. For instance, adding a child to title on real property during life is a gift; it exposes the property to the child's creditors, and the child loses the full step up in cost basis he or she would have otherwise received if he or she had inherited the property.

### How Can You Encourage Your Parents to Plan?

Starting the discussion is the most difficult step. Parents may not want to discuss end-of-life planning because they consider the subject an invasion of privacy or morbid. Children may be reluctant to bring the subject up because they do not want to be perceived as greedy or anticipating the parents' deaths. Although both parents and children feel the need to communicate, they do not know how to start.

Here are some tips you can recommend your clients use to get started:

- A child with siblings should not initiate the conversation alone, and generally, parents should not have the conversation with only one child. Sibling rivalry persists into adulthood. To avoid the appearance of undue influence, a child should run the idea by all siblings before starting a discussion with parents, and parents should discuss plans in a family meeting if possible.
- If the parents already have an estate plan, suggest that they have a third party review it. Many financial planners and estate planning attorneys will review existing estate plans and make recommendations at no charge.
- If the parents do not have an estate plan, start by discussing health-care directives. Discussing end-of-life health-care decisions does not require discussing assets. Let the parents know it is important for them to authorize someone to communicate with their medical providers, to make medical decisions for them if they are unable to, and to express their wishes regarding life-sustaining care. Once the dialogue is started, it often leads to more comprehensive planning.

Financial planning professionals can play a critical role in starting these discussions, but there are ethical considerations to keep in mind. Although the child may be the planner's client and may often accompany the parents to estate planning meetings, it is important to remember the client in these discussions is the parent. An adviser or a child could be held accountable for undue influence. Planners should meet with the parents alone for at least a portion of the time to ensure that their interests, and not the child's, are the ones being served.

# Living trust swifter than probate

Robert Bruss, Inman News

Two subjects nobody enjoys thinking about are death and taxes. Because April 15 just passed, we don't have to talk about income taxes until next year. But death is a topic that is difficult to avoid, especially as the huge Baby Boomer generation approaches its golden years.

Shockingly, less than 20 percent of the U.S. population has a written will designating who shall inherit their assets after death. If a person dies without a will, he or she is said to die "intestate." The state law of the residence then determines who automatically receives the assets, usually a surviving spouse, children or other close relatives.

However, especially in second marriages, intestate succession often results in unintended consequences. Also, except for very small estates, probate court proceedings are usually required when a person dies without a will, thus delaying distribution six to 18 months, and often longer.

A far better, faster and less expensive approach is to have a revocable living trust to hold title to your major assets such as your home, real estate investments, bank accounts, brokerage account and mutual funds.

However, life insurance policies, tax-deferred annuities, IRA and 401k should remain outside your living trust because they pass automatically to the designated beneficiary.

## Advantages of living trusts

Most real estate owners are not aware of the two key living trust benefits. The most important advantage is to avoid probate costs and delays after the trustor or principal dies. Until then, the trustor is the controlling beneficiary and trustee of his or her living trust. Assets can be bought, sold, and managed as desired. Tax benefits are not affected because a living trust is merely a method of holding title.

When a living trust creator dies, the successor trustee takes over management of the living trust assets. Often this is a surviving spouse or it could be an adult child, relative or friend named in the living trust.

The successor trustee can distribute trust assets according to the living trust terms immediately, but it is usually wise to wait 30 to 60 days so debts of the deceased can be paid.

When a principal or trustor dies owning major assets such as real estate in more than one state, holding title to those assets in the living trust avoids probate costs.

For example, a few years ago an elderly friend died, owning real estate in Florida, Minnesota and North Dakota. She did not have a living trust. Her son later told me costly probate court proceedings had to be held in all three states, thus delaying asset distribution.

Most people are not aware there also is a second major revocable living trust advantage. It is management of living trust assets if the trustor or principal becomes incapacitated, such as with Alzheimer's disease.

Without a living trust, it will be necessary to have a court-appointed conservator manage your assets if you are unable to do so. However, if you have your assets in your living trust, your successor trustee can then manage your assets without expensive court interference.

For this reason, holding title to your home, real estate, bank accounts and other major assets in your living trust is usually far better than joint tenancy with right of survivorship, tenancy by the entireties or community property. The successor trustee can take over after a physician determines the principal or trustor has become incapacitated.

Privacy is another major living trust benefit, as compared to a will, which becomes public knowledge after a decedent dies.

Just like a will, a revocable living trust can be changed or even revoked at any time. Another benefit is a living trust has no effect on the trustor's or the heir's tax benefits, such as the \$250,000 and \$500,000 principal residence sale tax break, homestead rights, tax-deferred real estate sales benefits and even stepped-up cost basis for heirs.

Disadvantage to living trusts

Although there are some excellent do-it-yourself living trust books available, most people prefer to consult an attorney who specializes in living trusts.

A perceived disadvantage can occur if you want to refinance your home. Most mortgage lenders require taking the title out of the living trust momentarily so the lender's mortgage or deed of trust can be signed and recorded by the borrower rather than the trustee. But then the title can be transferred back into the living trust one moment later.

Although many states allow "payable-upon-death" checking and savings accounts, and a few even permit payable-upon-death deeds, that doesn't solve the potential problems of incapacity of the owner, or complications if the recipient predeceases the principal. Power of attorney and durable power of attorney forms can work well, but they don't allow the attorney-in-fact to distribute assets after death.

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# Why do people plan using living trusts?

Trusts can be useful to save money in taxes, but tax avoidance is rarely the primary reason for trust planning. The main reasons people plan using trusts are as follows:

## **1. Protecting inherited wealth from in-laws.**

In our litigious society the highest risk lawsuit remains divorce which occurs in 50% of first marriages and 60% of second marriages. When you leave wealth to a married child his or her inheritance can be lost in a divorce proceeding. But by using trust planning, your child's inherited wealth is secure. The divorce court cannot touch the trust assets.

## **2. Controlling the distribution pattern beyond the death of the surviving spouse.**

Most people want to give most if not all of their wealth to their surviving spouse. But no one wants to give their wealth to their spouse's new boyfriend, or new spouse in the event of remarriage. Trust planning can protect a surviving spouse's inheritance from new relationships even if the surviving spouse does not enter into a prenuptial agreement.

## **3. Controlling the distribution pattern beyond the death of a child.**

Most people want to give most if not all of their wealth to their children on the second death. But virtually no one wants to give their wealth to their in-laws on the death of a child. Without trust planning, if your child dies with a typical Will saying "everything to my spouse" all of his inherited wealth would go to your child's spouse. But with trust planning you can provide for your child as long as he lives, then when your child dies, retain the assets in trust for your grandchildren. If there are no grandchildren, then to your other children. We call this "bloodline" protection.

## **4. Prevent your children from being disinherited in the event of your surviving spouse remarries.**

Without trust planning the remarriage of your surviving spouse is a threat to the children's inheritance when the second parent dies. Even if your Will says "everything to the children" on the second death and your 401(k) plan names the children as beneficiary, *your children may still be disinherited* because of laws which intervene in favor of the surviving (new) spouse. This holds true even though the surviving spouse is not the parent of your children. Only trust planning can protect your children's inheritance in the event of remarriage.

## **5. Protection of inherited assets from creditors.**

Conventional trust planning cannot protect you from your own

creditors. But when you die leaving your wealth to your spouse or children, you can protect *their inheritance* from *their creditors*. In our litigious society it is a mistake to depend too heavily on insurance for protection. There are many policy exclusions and judgments can exceed policy limits.

#### **6. Protecting children from their own limitations or circumstances.**

Different children are different. One may be disabled, another with a drug and alcohol abuse problem, another a successful neurosurgeon concerned about potential lawsuits; still another, a so-called starving artist. Whether due to immaturity or disease or disability or inexperience with managing wealth, or occupational vulnerability, beneficiaries are far more secure with protected wealth which only trust planning can provide them with.

#### **7. Pitfalls of joint tenancy prevented.**

Joint tenancy rarely reflects true ownership when entered into between you and your child. Invariably, the property really belongs to you and your child is put on title for convenience-i.e. when you die, your child will take automatically by right of survivorship. But few people realize the threat this arrangement poses to your financial security during your life. If your child files bankruptcy or goes through a divorce, your property, now titled jointly with your child, is in danger of being lost. It never makes sense for you to lose control over your own property when you are alive and well. Joint tenancy is a step backwards-it changes title from a less vulnerable to a more vulnerable status.

#### **8. Segregate control from beneficial interest.**

The reason trusts work so well and present so many planning opportunities is because of the enormous benefit of splitting our conventional notion of "ownership" into two parts. Trusts divide ownership between the holder of *the beneficial interest* and the holder of *control*. This is why you can provide for your child as beneficiary, but give control over the trust assets to an independent trustee to manage the money and make distributions. (Under the right circumstances a child can also act as trustee of his own trust).

#### **9. Avoiding probate and "living probate" i.e. guardianship.**

By splitting beneficial interest from control we protect your estate from coming under the control of the public courts. If you become disabled, you lose control-but you remain the beneficiary i.e. the holder of the beneficial interest. Control is not given to a court by filing a probate (or guardianship) lawsuit, rather it passes seamlessly to a successor trustee who administers the trust in accordance with your instructions. This is how control passes without court

intervention. The "owner" in control (the trustee) is immortal. The trust cannot die or become disabled. Control passes without resorting to court intervention.

**10. Privacy.**

Virtually all court proceedings in America are open to the public and probate is no exception. Wills are public and anyone can monitor the substance and progress of the court case. Everything about the decedent's (or disabled person's) affairs are open for public view. This includes the inventory, the terms of distribution, and the names and address of all the beneficiaries. Marketers often use this information to their advantage. Trusts are not filed in any court. They are administered privately.

**11. Remarriage complexities.**

A remarried couple actually has three families to provide for: For the husband's children from a previous marriage, for the wife's children from a previous marriage and for each other, including any children they may have together. Proper estate planning can achieve everyone's objectives and attain family harmony by removing suspicion and ill-will between children and their often unwelcome step-parent.

**12. Portability.**

Many clients have property in different states. By funding all properties into one trust governed under the laws of one state, simplification in administration is achieved. Also, without a trust, a separate probate is required in each state in which you own property.

# WHEN WILL YOU BE HOME?

By Michael E. Leonetti, CFP®, CEO

Michael Leonetti  
CEO and Founder  
Leonetti & Associates, Inc.

It was the morning of August 27, 2001 when I read a very interesting article by writer/reporter, Chuck Goudie, that moved me to once again think about my life's vocation and its relative importance to the lives of the many wonderful people that have given me the opportunity to work with them. Chuck

and I have communicated on a few occasions since then and he was a keynote speaker at one of my client's charity fund raisers. However, his article of Monday, August 27, 2001 is still something I think about and associate with him. It helps me to remember what's important in life and why I do what I do for a living. I would like to share some of the contents with you as you get ready to move forward with another year – thinking about your goals and your New Year's resolutions.

One of the last things our children say to us before we race out the door is "When will you be home?"

It's the way most kids are when their parents leave.

They don't really care where you are going, what you will be doing, when you get there, or who you are going to see.

They want to know when you will be back.

We usually tell them that we will be back in a few minutes, a few hours, or a few days – depending upon where we are going. After we deliver our answer, we usually hear a reply of "OK... bye... love you." And we are out the door.

That same scene plays out everyday, everywhere, and nobody thinks much about it.

Until the plane crash. The hotel fire. The drunken driver. The heart attack. Or the gun shot.

My guess is that some version of that "When will you be home?" exchange occurs in all of our lives at some point. And it has probably occurred prior to a serious or unfortunate incident which then makes us take pause and wish we had acted, spoken, or done something differently.

The suddenness of a life-ending change is impossible to digest. One moment in time you are having a casual conversation and the next moment time is up. Just like that.

No goodbyes. No words of advice. No kiss to your loved ones. No phone calls to make sure the finances are in order, the e-mail is returned, and the grass is cut.

No nothing.

With the plane crash, the fire, the drunken driver, the heart attack or the gun shot, the recipient of sudden death is rarely given an advance warning. Death is not a democratic process.

If you asked someone who had suddenly lost a loved one what advice they would give to prevent such an awful thing from happening to them, their answer would likely have nothing to do with prevention, but rather with survival.

Never let your loved one leave you without telling them that you love them. Look at them as if it will be the last time you see them... because it may be.

The next time you leave home and you hear that question asked, "When will you be home?", you will probably give the same straight answer as always even though it is not a sure thing. In an hour. In time for the game. Before you go to bed.

The truth is it doesn't really matter when you will be home. What counts is what you did before you left.

Keep this in mind when managing your finances, reviewing your insurance, thinking about your estate plan and preparing contingencies for those you may leave behind, or reviewing your goals for the up-coming year, and making your New Year's resolutions. It is likely to help you make better, clearer decisions and keep you focused on what is really important.

I wish everyone the best for the up-coming year. We will do our best to serve you in any way we can. Finally, here's wishing you make it home safely from wherever you're going, whenever you go. We want you to be correct when you answer that question – "When will you be home?"



# Why Most People Need an Estate Plan

By Bill Bischoff

Thanks to the \$5 million federal estate tax exemption for those who die in 2011 or 2012, most folks are not exposed to the federal estate tax right now. However, if you have some assets (maybe just a car and some nice furniture) or minor children, you still need an estate plan--even if taxes are not an issue. Here's the scoop.

## Why You Need a Will or Living Trust Document

If you die intestate (without a will), the laws of your state determine what happens to your assets and your minor children. So unless you have an inordinate amount of faith in your beloved state legislature, you need a written will to make your wishes known.

In addition to drafting a will, you may also want to set up a living trust in order to avoid probate.

For simple wills, good do-it-yourself software is readily available.

I think you should hire an attorney to draft a living trust document, and you don't have to be "rich" to need one.

## The Will

The main purposes of a will are to name a guardian for your minor children (if any), name an executor for your estate, and specify which beneficiaries (including charities) should get which assets.

The guardian's job is to take care of your kids until they reach adulthood (age 18 or 21 in most states).

The executor's job is to pay your estate's bills, pay any taxes due, and deliver what's left to your intended heirs and charitable beneficiaries.

Remember: if you die without a valid will, state law generally controls what happens to your kids and your stuff. Not good!

## The Living Trust

Another basic estate planning goal is to avoid probate. Probate is a court-supervised legal process intended to make sure a deceased person's assets are properly distributed. Probate typically means legal fees and red tape. Also, if your estate goes through probate, your financial affairs become public information. These are things to be avoided when possible. That's where the living trust comes in. Here's how it works.

You establish the living trust and then transfer legal ownership of certain assets (such as your home, your cars, your antique furniture, and your coin collection) to the trust.

In the trust document, you name a trustee to be in charge of the trust's assets after you die, and you specify which

beneficiaries will get which assets from the trust.

The trustee could be your CPA or attorney, a financial institution, or a trusted friend or relative.

Because a living trust is revocable, you can change its terms at any time, or even unwind it completely, as long as you are alive and legally competent.

For income-tax purposes, the existence of the living trust is completely ignored as long as you are alive. As far as the IRS is concerned, you still personally own the assets in the trust. So you continue to report on your Form 1040 the income generated by the trust's assets and any deductions related to those assets (such as mortgage interest on your home).

For state-law purposes, however, the living trust is not ignored. Done properly it avoids probate.

### **Wills and Living Trusts Are Not Cure-Alls**

The benefits of a will or living trust are obvious. However, you won't get the expected advantages without minding the details.

\* If you are married, you and your spouse should have separate, but compatible, wills or living trusts. That's because you never know who will die first.

\* Your will or living trust will not deliver the expected advantages unless you make it compatible with your beneficiary designations and the manner in which your assets are legally owned. For example, when you fill out forms to designate beneficiaries for your life insurance policies, retirement accounts, and brokerage firm accounts, the named beneficiaries will automatically receive the money upon your death without having to go through probate; ditto for bank accounts if you name a payable-on-death beneficiary. It makes no difference if your will or living trust document specifies to the contrary. So keep your beneficiary designations current to make sure the money goes where you intend it to go.

\* When you co-own real estate jointly with right of *survivorship*, the other co-owner(s) will automatically inherit your share. It makes no difference if your will or living trust document says otherwise.

\* If you set up a living trust, you must transfer legal ownership of the assets for which you wish to avoid probate to the trust in order for it to perform its probate-avoidance magic. Many people fail to follow through by actually transferring ownership, and the probate-avoidance advantage is lost.

### **Your Plan Is a Moving Target**

Things change. You may acquire new assets, win the lottery, lose relatives to death, disown relatives, take them back, and gain children or grandchildren. Any of these events could require changes in your estate plan. In addition, the federal estate tax rules have been wildly unpredictable in recent years, and that trend may continue. For all these reasons, you should review your estate plan at least annually and update it as needed. Now is a good time to review your plan or to set one up if you don't have one.

# Negate Probate: Settling an Estate using a Trust

February 28, 2017 by Daniel Smith

Probate is a hassle in many states, so trusts give us an alternative, more private manner in which to distribute the assets of a decedent. Here, we will take a chronological walk through of the estate settlement process and the critical elements of state law and document language that need to be addressed. Estates are all controlled by state law yet the fundamental responsibilities are universal.

Probate is not necessarily a bad thing and may even be sought after for some people, in certain states, and with respect to some assets, but in general avoiding probate ensures more privacy, costs less and is faster than estate settlement through probate.

Let's be clear, this is not a choice at settlement, it is a choice in planning. Using a trust versus a will as your primary dispositive instrument is not just a matter of writing the document; it is an issue of how your assets are titled at the time of death. Generally, wills handle assets in your individual name and trusts handle assets titled in the name of the trust. There are a number of other forms of ownership, such as joint tenancy, or assets on which you can name a beneficiary that also pass probate free, passing neither through your will nor your trust. The titling of your assets must be properly coordinated with your plan.

So, assuming we have chosen trust as our vehicle of choice, had one drafted by an experienced estate planning attorney and properly funded the trust by titling the desired assets in the trust, let's examine what happens at death. Trusts are a form of private settlement, as opposed to wills and the probate process which is a form of public settlement, so the first distinction is the lack of a court hearing to "prove" the will to be valid. A trust should be created, and funded during life, so it is already valid and operating which enables the settlement of the estate to begin right away and without formalities required by probate laws like contacting all of the people who would receive a share if there were no will. These steps in probate can slow down the process and cause unnecessary family friction when there are heirs who are not beneficiaries. In a trust only the parties to the trust are notified and there is no public hearing. The trustee, or successor trustee when the trustee is the one who passed away (typical in a revocable trust that becomes irrevocable at death), must consider the acceptance of the role. Being named does not make you the trustee, it effectively nominates you as the trustee. The trustee should quickly assess the documents, assets, and people involved and determine that they can properly fulfill the trustee function.

Once accepted, the trustee can begin right away explaining the document to the family and helping them to understand the steps and timing of the estate settlement. There is no set timeframe, but assuming the trust terminates at death and distributes all assets, as in the case of a will, one can expect it will take at least six months and, depending on size and complexity a year or two is not unusual. The team of professionals involved should be defined and roles clarified so

there are no misunderstandings. There can be complex legal work and decisions, there are always tax matters to address, and of course the assets including real estate and investments need to be managed.

Creating a full inventory of the assets is the first step. Next is identifying and getting the date of death values of every asset owned by the trust. Just think of everything that you own, where it is, do you have a centralized up to date list of account numbers and locations, or do you just know? Now imagine that you are no longer with us and what someone walking into that scene would experience having to piece together the full picture. Often family members can be helpful as well as professional advisors, but this can be a big job. Investment accounts, bank accounts, real estate, retirement plans (although they generally pass to a named beneficiary, likewise with life insurance and annuities), business ownership even personal property, as well as debts and credit cards balances. The trustee must create a complete picture of the assets and liabilities of the deceased so that they can address the debts then figure out the net worth at death available to distribute after estate taxes are considered. The trustee must keep detailed records, provide statements to the beneficiaries and use an unusual form of accounting to do so.

Once the assets are gathered the trustee must consider two forms of taxation. Every estate or trust is treated as a taxpayer, just like you and I, and so it must file an annual income tax return. In addition, the decedent would have at least their final income tax return to file for income earned until death. Estate taxes affect a very small percentage of the population, but the trustee must determine whether the decedent's net worth at death exceeds that number and, if so, file an estate tax return. The trust document should provide special language to determine the source of those taxes, whether from the residue of the estate or proportionate from each beneficiaries' share. There are many tax elections that should be considered that may reduce the income or estate tax burden. Tax professionals can be of great value here. There are even choices the beneficiaries can make such as whether to accept their inheritance. In some cases the beneficiary might disclaim their interest in favor of the next named beneficiary in the trust, often their children.

During this estate settlement period the trustee must also comply with all applicable laws, State and Federal, that pertain to the custody, recordkeeping, taxation, accounting, and investment of the assets subject to administration. No one said it was an easy job, but just imagine having to check in with the court every time you wanted to take another step in the administration. Professional trustees deal with these matters everyday and have all of the systems and checklists in place to make sure that things are done right and done efficiently. Keep in mind that anything not done correctly is the personal responsibility of the trustee.

We have discussed seven areas to address in settling an estate: Review and acceptance, setting expectations, the roles of the team involved, marshalling and managing the assets, handling the income and estate tax reporting, complying with the law, and carrying out the document terms notably distributing the assets to the desired beneficiaries. Using a trust makes the process more efficient, and more private.

Client Summary: In summary, in settling an estate using a trust, the complexity of the assets and legal and tax compliance still exists, yet avoiding the direct court supervision and public scrutiny that can exist in the Probate process of many states. Private settlement allows the important and

challenging work of estate settlement to begin rapidly and proceed undeterred by court oversight. Discuss with your advisors whether trust settlement may be right for you.

**Advisor Summary:** In summary, in settling an estate using a trust, the complexity of the assets and legal and tax compliance still exists, yet avoiding the direct court supervision and public scrutiny that can exist in the Probate process of many states. Private settlement allows the important and challenging work of estate settlement to begin rapidly and proceed undeterred by court oversight. Discuss with your clients whether trust settlement may be the appropriate choice for them and their families.

# PCS Advisory: Non-Tax Reasons for Estate Planning

Article By:

Leonard Leader

Veronica R.S. Bauer

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The primary focus of estate planning is often on tax-saving strategies; however, since the newly-enacted federal estate tax laws have doubled the federal, estate, gift and GST tax exemptions to \$10,000,000 per person, indexed for inflation, it is important to point out that there are many other valuable reasons why estate planning should be a priority. Below is a summary of several non-tax reasons for effective estate planning.

## *Organization after Death*

The grief following the death of a loved one is challenging enough to deal with even absent the stress and uncertainty of a disorganized estate. To minimize that stress, and to avoid any fighting that can result from it, it helps to have a solid plan in place to help guide your family in dealing with your estate. In addition to a will and revocable trust, this may include: (1) a recent list of assets and/or advisors; (2) a list of any debts; (3) a list of passwords to digital assets; and (4) instructions or memoranda regarding last wishes.

## *Ensuring Your Wishes are Honored*

If you die "intestate," meaning that you do not have a valid will at the time of your death, your assets will pass to individuals based on a set of laws adopted by the state in which you are domiciled. So you do have an "estate plan" even without a will, or will and revocable trust, it is just not a plan that you picked. Estate planning documents ensure that your assets pass to the individuals of your choosing and in the manner you prescribe.

Beyond the flow of assets, estate planning documents allow you to make decisions regarding the fiduciaries who will help manage your affairs after your death. This includes appointing someone to facilitate the administration of your estate, known as an executor, and someone to care for any minor child you may have at your death, known as a guardian. Without valid estate planning documents, the probate court becomes involved in the appointment of these individuals; at minimum, this creates added time and expense, but at worst, this process could result in the appointment of individuals whom you would not have chosen yourself.

## *Probate Avoidance*

In many cases, proper estate planning can reduce, or even eliminate, the involvement of the probate court in the administration of a decedent's estate. In Connecticut, there is no way to fully avoid probate (as a tax return must be filed with the probate court), but probate court oversight can be minimized by having no—or very few—assets pass through your "probate estate," meaning the assets that pass by virtue of your will. One of the most effective ways of reducing the assets in your probate estate is to fund a revocable trust. Like a will, a revocable trust facilitates the transfer of property at death, but it does so without as much probate court oversight. In New York specifically, the probate process is often costly and time-consuming due to delays in the Surrogate's Courts, and is a public proceeding. An additional benefit to having a revocable trust is that court proceedings can be avoided when there is a change in the trustee.

Beyond the initial administration of an estate, courts in Connecticut will have ongoing jurisdiction over any trust created under a will. This jurisdiction often results in costly administrative proceedings, such as the filing of periodic probate accountings. However, this burden can be reduced by establishing continuing trusts (e.g. for a surviving spouse or descendants) under a revocable trust, over which the probate court will not have that same ongoing jurisdiction.

## *Privacy*

What comes as a surprise to many of our clients is that a will is made public upon the death of the testator. That means that the provisions of a will become part of public record, and other court filings—such as detailed lists of assets owned at death—become susceptible to inspection by the public. Estate planning prior to death can largely curtail any unwanted disclosure. Such planning may include funding a revocable trust prior to death, as mentioned above, but it can also include the use of a business entity or irrevocable trust.

## *Trust Planning*

People often discuss trust planning in terms of its tax advantages, but that is just one of its myriad benefits. Below are non-tax reasons to consider when contemplating trust planning.

- **Delaying Inheritance.** There are many reasons why clients may not want their children or other beneficiaries to have immediate access to their inheritance. For example, clients will often want their children to get accustomed to money management before having full reign over a large amount of money. In this instance, it may be appropriate to put the inheritance in a trust that staggers distributions over certain age milestones. Without any structure, it is likely that a beneficiary would be able to gain full access to an inheritance at a young age.
- **Asset Protection.** Another fear that clients have is the susceptibility of their children's inheritance to the claims of creditors, such as a divorcing spouse. In this instance, a trust from which only an independent trustee can make distributions can be put in place. If administered correctly, this "asset protection trust" can help insulate an inheritance from creditors.
- **Protection for Descendant.** A trust is an effective vehicle to ensure a family's wealth can be preserved for descendants. For surviving spouses, a trust ensures that assets do not go to a new spouse, but are instead preserved for the descendants of a prior marriage. Using a trust for children ensures that assets may be preserved for grandchildren and that assets will not be redirected to an in-law's family.
- **Special Needs Planning.** In order to preserve the availability of government assistance for a beneficiary who has special needs, it is important to keep his or her inheritance in a specialized trust, often referred to as a supplemental or special needs trust.
- **Planning for Special Assets.** Some types of assets, such as business interests, art, and real estate located outside a state of domicile, can benefit from trust or entity planning, such as a limited liability company or limited partnership. Using a trust or a business entity for ownership of special assets helps facilitate succession planning and structure, and can help ensure that the family business or family vacation home stays in the family for generations.

## *Charitable Planning*

Charitable giving at death is never a self-effectuating process; it requires affirmative planning during your lifetime. If a client is charitably inclined, it likely makes sense for that person to seek the advice of counsel, since certain types of assets lend themselves better to charitable giving, depending on the particular circumstances and the goals of that client.

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# Top 10 'non-tax' estate planning recommendations

By STUART B. DORSETT, Ward and Smith, P.A.

*Editor's Note: Stuart B. Dorsett is a member of the Business, Elder Law, Nonprofit Organizations, Trusts and Estates, and Trusts and Estates Litigation Practice Groups at Ward and Smith, P.A. He is a North Carolina State Bar Certified Specialist in Estate Planning and Probate Law and is a Fellow of the American College of Trust and Estate Counsel.*

Even if Congress acts to stave off the impending "Fiscal Cliff," uncertainty about the future of the gift and estate tax laws will continue. Despite this uncertainty, meaningful estate planning goals can be achieved. Estate planning is only partly, and only sometimes, about tax. Whatever the ultimate exemption level, optimizing an estate plan requires careful attention to the following "non tax" considerations:

**1. Plan For The Possibility Of Estate Tax:** The first "non-tax" recommendation is not to ignore the tax laws completely. Given the recent fluctuations in the estate tax exemption, it is wise to provide a surviving spouse with the power to insulate assets from future estate taxation by allocating some of the deceased spouse's assets to a separate trust covered by the deceased spouse's exemption amount. Planning might also involve purchasing a life insurance policy to ensure that liquid assets are available to offset an estate tax liability.

**2. Reassess Existing Life Insurance Policies:** While most people follow the performance of their stocks, bonds, and mutual funds assiduously, they frequently ignore the economic performance of their life insurance policies. A life insurance policy with cash value is an investment and should be reviewed periodically to ensure that the policy will remain in effect through the insured's death and that it is performing competitively with the currently available insurance products.

**3. Incorporate Asset Protection Planning Into Estate Plans:** One of the great "missed opportunities" in estate planning is structuring a child's inheritance in a way that protects the assets from unforeseen circumstances. Decedents often leave assets outright to an adult beneficiary, but outright ownership exposes those assets to any third-party claims against that beneficiary such as lawsuits, bankruptcy, and equitable distribution. This exposure can be avoided by leaving the assets in trust for the benefit of the intended person, rather than distributing them outright. Such a trust may be designed so that the trust beneficiary, in addition to enjoying access to the trust assets, also has managerial control over the trust assets and the ability to designate the ultimate recipients of the assets. Such a design allows the beneficiary to retain all of the

"good" aspects of ownership without any of the "bad."

**4. Plan For The Disposition Of Family Businesses:** Sometimes the key component of a family's wealth is a family business. A business owner's estate plan must address the future ownership, voting control, and management of the family business. The business owner also needs to provide a framework for the business relationships of the children and grandchildren who will be the future owners by creating dispute resolution mechanisms and providing for buy-sell arrangements. A modest amount of planning can dramatically increase the chances of the business's survival.

**5. Clearly Identify Estate Beneficiaries:** The inadequate or incorrect identification of a beneficiary will complicate estate administration and may give rise to litigation. Confusion often arises out of the identification of beneficiaries as a group or class, such as "children" or "issue." Consider, for example, the confusion that may result from adoption. Under North Carolina law, an adopted child is treated the same as a natural-born child, a typically agreeable result, but if the adoption occurs in unusual circumstances (such as one adult adopting another adult), the result may run counter to a decedent's intent. Accordingly, an individual may wish either to eliminate adopted issue as potential beneficiaries or to restrict adopted beneficiaries to those adopted before a certain age.

**6. Fund And Periodically Review Revocable Trusts During Lifetime:** Frequently, individuals will use a Revocable Trust in lieu of a Will to dispose of their assets upon their death, both to avoid probate and to preserve the confidentiality of their estate plan. A Revocable Trust accomplishes probate avoidance only if assets are titled in the name of the Revocable Trust before the decedent's death, so it is important to review the ownership of assets periodically to ensure they are held in the name of the Revocable Trust.

**7. Review Beneficiary Designations For Life Insurance Policies, IRAs, Retirement Plans, And Annuities:** Beneficiary designations, not wills or trusts, control the disposition of these important assets, which are frequently the largest financial components of an individual's estate. Unfortunately, beneficiary designations often receive scant attention. One common problem is the naming of young children as beneficiaries. Without an expense trust or a custodial arrangement for a minor beneficiary's share, those assets will be held by a court-appointed guardian until they are distributed outright to the child at age 18, a result most would choose to avoid. Properly designed beneficiary designations can avoid this and other problems, and can favorably influence the income taxation of IRAs and retirement plans as well.

**8. Use Durable Powers Of Attorney And Health Care Powers Of Attorney To Plan For Incapacity:** Good estate planning not only addresses the disposition of assets at death, but also anticipates the possibility of incapacity prior to death. Typically, this planning takes the form of a Durable Power of Attorney which names an agent to handle financial affairs, and a Health Care Power of Attorney which names an agent to make health care decisions. These documents should designate one or more alternate agents to account for the possibility that the initial agent may be unable to serve. In addition, a good Durable Power of Attorney often will authorize the agent to make gifts to family members, if appropriate, for tax or Medicaid planning purposes.

**9. Generally, Avoid Joint Tenancy In Assets Or "Transfer On Death" Accounts:** Often, a person will own assets such as bank accounts with a child as joint tenants with right of survivorship as a means of providing the child with the ability to manage the account on the parent's behalf and as a convenient means to direct disposition of those assets at the parent's death. For similar reasons, people may apply transfer on death designations to their accounts.

Joint tenancy in assets and transfer on death accounts frequently produce results which are at odds with an individual's estate plan, however, and can lead to acrimony and litigation. Typically, it is better to deal with the disposition of these assets through a well-drafted will or trust.

**10. Provide For Flexibility In Trust Arrangements:** Trusts can be valuable estate planning tools, providing significant tax and asset protection benefits. However, the longer a trust runs, the greater the chance that unforeseen circumstances will negatively affect the trust's operation. Therefore, a good estate planner will incorporate flexibility into the trust provisions to allow appropriate adjustments to be made. Provision can be made for the naming of future, as yet unidentified, beneficiaries and for the removal and replacement of an ineffective trustee, for example.

### **Summary**

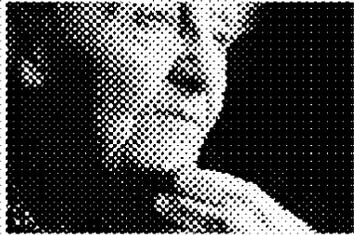
As this brief list indicates, those wanting to optimize their legacy for future generations have vitally important non-tax considerations to address in their estate plans. Paying attention to these non-tax issues increases the odds that an estate plan will be efficient and effective, whatever the estate tax landscape looks like in 2013 and beyond.

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# Top 5 Reasons To Beware Of Joint Ownership Between Generations



Celebrities are not the only ones to make mistakes with their estate planning. It happens to people all across the country on a regular basis. The end result — just like with the rich and famous — often is an ugly and expensive family fight in court. One of the most common estate planning mistakes that people make is joint ownership.

For the most part, we're not talking about when a husband and wife have joint bank accounts or the title to their home is held in both of their names. While not ideal for estate planning, this is quite common and can often be used without problems, except in many second-marriage situations or large estates that may suffer adverse tax consequences.

The area where we see significant problems, however, is when a parent adds a child's name to an asset, such as a bank account, investment, or real estate. This is often done to help with bill paying, as a will-substitute to avoid probate court (often called a "poor-man's will"), or simply to help an elderly loved one who needs assistance managing his or her assets. This is a big no-no!

To help illustrate the problems that can arise with this, we'll discuss an elderly woman, Mom, and her son, Johnny. Let's say that Mom adds Johnny's name as a joint owner on her checking and savings accounts, brokerage account, and even the family home. Maybe she's getting up in age and needs help, or perhaps she's heard the horror stories of probate court and thinks she's doing her family a favor.

Sounds innocent enough right? Not so fast. Here are Trial & Heirs' Top Five Reasons To Beware Of Joint Ownership Between Generations:

1. **Creditors** – Johnny may someday have creditors, file for bankruptcy, or even get sued. When that happens, because he is a joint owner of Mom's accounts, the creditor or bankruptcy estate can try to claim some or all of the assets. Once Mom added Johnny's name, he had equal rights to the money and the assets, so all of the sudden Mom needs to start worrying about Johnny's debts too.
2. **Divorce** – Uh oh! Johnny's wife just filed for divorce. Now what? What if she claims the joint assets as part of the marital estate during the divorce? What if Mom wants to sell her house or take out an equity line of credit? In most states, wives have dower rights. This means that Johnny's divorcing wife has to sign off on the sale or mortgage, even though her name isn't on the real estate. She can hold the home hostage in exchange for money. Yes, we've seen this happen in our client practice.

3. **Borrowing** – What if Johnny is a little tight on money? It's pretty tempting to see Mom's savings account sitting there, with his name on it, and a trusting mother who may not be watching very carefully. "I'll pay it back," Johnny may say to himself. "She won't even know it's gone." Is this what Mom envisioned when she added Johnny's name to the accounts?

4. **Doesn't Have To Share** – Sadly, Mom has passed away. Johnny's three siblings want to sit down and talk about her estate, but Johnny says there is no estate, his name is on everything. What happens? Under the law, he gets to keep everything. He's the surviving joint owner, it's his property now. Unless, of course, Johnny's siblings sue to enforce Mom's actual intent, which leads us to ...

5. **Family Fighting** – Using joint ownership in this way often provokes a family court fight. If Johnny won't share, his siblings can sue him and claim that Mom's actual intent was not for him to keep the money, but she only added his name as a convenience. The siblings have to prove what her actual intent was, and that's not very easy to do. Or maybe, Mom really did want Johnny to keep all the property, since he was the one there for her, taking care of her day in and day out. But do the siblings know that? They may *think* Mom wanted Johnny to share with them, even if she really didn't. This could still end up in a lawsuit, with Johnny spending tens of thousands of dollars in legal fees fighting to keep what Mom wanted him to have.

Will any of these problems happen in your family? Maybe, maybe not. But is it worth taking the chance? Our law firm receives calls from people looking for legal help in exactly this situation on a weekly basis, at least.

These problems, complications and lawsuits do happen, every day. We share some horror stories of joint ownership and similar mistakes in our book, [Trial & Heirs: Famous Fortune Fights!](#)

When you add someone's name to your bank accounts, investments, stocks, bonds, real estate, cars, or almost any other asset of value, you are giving up control and risking complications that most people never imagine can happen

It's much better to use good estate planning – including a will, [revocable living trust](#) (for most people), and financial and health care powers of attorney – which can accomplish all of the same goals as joint ownership, without the risks and complications. Good [estate planning](#) allows people to maintain control over their assets, receive assistance when needed, avoid probate court after death, and eliminate questions about their true intentions.

*By Danielle and Andy Mayoras, co-authors of [Trial & Heirs: Famous Fortune Fights!](#), husband-and-wife legacy expert attorneys, and hosts of the national television special, [Trial & Heirs: Protect Your Family Fortune!](#) For the latest celebrity and high-profile cases, with tips to protect yourself, your loved ones, and your clients, [click here to subscribe to The Trial & Heirs](#)*

# Families Lose Their Wealth by the Third Generation

By Tim Voorhees, JD, MBA



King Solomon warned, “An inheritance quickly gained at the beginning will not be blessed at the end.” Heirs given money typically have a strong inclination toward spending the money on possessions, pleasures, or other purposes without lasting significance. Psychologists specializing in “sudden wealth syndrome” acknowledge that heirs, like lottery winners, tend to blow their windfall.

The availability of money tends to undermine the pursuit of higher purpose. Andrew Carnegie, the 19th-century steel magnate stated, “The parent who leaves his son enormous wealth generally deadens the talents and energies of the son, and tempts him to lead a less worthy life.”

When heirs receive money without prior coaching on the purpose of money, they will seldom take the time to understand the values that helped accumulate the value of the inheritance. Inheritors do not understand the blood, sweat and tears invested in accumulating the wealth. Nor do heirs with money have much motivation to develop the bias toward diligence, delayed gratification, thrift, and other values needed to maintain healthy relationships with people who contribute to wealth accumulation.

There is frequently a lack of personally and socially beneficial purposes guiding the use of inherited wealth. Jesse O’Neil, author of *The Golden Ghetto: The Psychology of Affluence*, documents how money transferred to heirs without a meaningful purpose often fosters “Affluenza.” Heirs may lack the purposeful pursuits needed to cultivate self-esteem, self-worth, motivation, self-confidence, and personal identity. Moreover, the vacuum created by the lack of a healthy purpose leads to negative character qualities, such as the inability to delay gratification, unwillingness to tolerate frustration, feelings of failure, and a false sense of entitlement. As problems grow worse, heirs withdraw from others, avoid accountability, and develop progressively more serious social disorders. The presence of money catalyzes personality disorders. These disorders limit the ability to form vital relationships with other people and leave victims unable to find a comforting sense of purpose.

Parents may think that they can minimize the risk of affluenza by having an estate or financial plan with a clear purpose. Unfortunately, the purposes of an estate and financial plan (e.g., “transfer the business to my sons” or “generate an after-tax retirement income of \$240,000”) are usually too narrow to inspire and motivate heirs. Even if a plan is technically perfect, experienced advisers know that plans frequently do not get implemented because heirs and advisers do not have agreement on purpose. When the plans are implemented, they are too likely to transfer money to heirs who quit their jobs and then live purposeless retirements. Dr. Gerald D. Bell, of the University of North Carolina’s Kenan-Flagler Business School, details how heirs can then drift into roles in which they play rather than work, pretending to be golf pros, skiers, artists, or writers but lacking the motivation to grow, preserve, or transfer wealth.

Given the prevalence of heirs without purpose, it is no surprise that 75% of parents worry that heirs’ lives may be adversely affected by wealth. Estate planners who have watched inheritors over the decades will almost always agree that these fears are well-founded.

Around the world and across the centuries, heirs have lost wealth in a few short generations. In America, we say, “Shirt sleeves to shirt sleeves in three generations.” In Asia, families speak of going from rice patty to rice patty in three generations. Europeans talk of the entrepreneur achieving enough success that he no longer needs to wear clogs but then watching grandchildren squander wealth, resulting in the family going from “Clogs to clogs in three generations.” Likewise, in Italy, families have been known to go “from barn stall to barn stall in three generations.”

Frequently, the loss of wealth takes not three generations, but just three years. Zeeb and Cochell, in *Beating the Midas Curse*, tell of a family that squandered wealth accumulated over five decades in a mere twenty-four months.

Studies in America provide contemporary evidence that families still lose their wealth following the time-tested pattern. 60% of families waste away their wealth by the end of the second generation. By the end of the third generation, 90% of families have little or nothing left of money received from grandparents. Ultimately, 95% of all traditional inheritance plans fail.

Statistics collected from family businesses provide similar sobering facts. Only 30% of businesses make it to generation two and a mere 3% still generate profits in generation three. Given the dismal success of family enterprises, it is no wonder that 65% of family wealth is lost by the 2nd generation and 90% by the third generation. By the third generation, more than 90% of estate value is lost and, even worse, the generation three can usually articulate very little about the values that accumulated the wealth. Even in Australia, where there has been no estate tax, families lose their financial wealth and the values that accumulated the wealth by the third generation.

Even if financial wealth is not lost, the vision is frequently lost. Family members without an effective wealth transfer process typically have heirs working at cross purposes. Disruptive changes of leadership are common. Studies show that values are not transferred to the next generation. Conflicts regarding succession planning cause businesses to fail. Planners involved with wealth planning can usually share countless sad stories about broken relationships. It is common for businesses to dissolve within months after the founder dies.

When the family business founder fails to train the next generation of leaders to maintain relationships based on the founder’s core values, trust deteriorates. Surviving heirs engage in power struggles to fill a leadership void if the business founder dies suddenly. Too often lawyers wrangle for years and dissipate much of the estate value.

If a family does defy the odds and maintain a clear purpose long enough to accumulate significant wealth, they will face greater challenges. As Ralph Waldo Emerson reminds us, “It requires a great deal of boldness and a great deal of caution to make a great fortune, and when you have got it, it requires ten times as much wit to keep it.” Experience teaches that it is hard to accumulate wealth, harder to maintain it, and hardest to give it away prudently.

Clearly, the traditional wealth transfer process is flawed. Does your family's estate plan guard against a repeat of the above patterns? Can your family members articulate a clear understanding regarding how you want them to use your wealth to build healthy relationships? Are your spouse, advisers, business associates, and heirs all in agreement about who should receive ownership, management, and control rights regarding wealth that you accumulated? If you struggle to answer these questions with clear and positive responses, you should schedule an appointment with a trained wealth counselor who can help your heirs inherit your relational values before they inherit the value of what you own. You can then heed the wisdom of Solomon and transfer both a relational inheritance and financial inheritance across time in a manner that establishes a foundation for blessing many future generations.

**About the Author:**

Tim Voorhees, JD, MBA, a member of WealthCounsel, is a tax lawyer and investment adviser based in Irvine, California. He is the president of Voorhees Family Office Services and the managing partner of the Million Voorhees LLP tax law firm. Tim's software company, Family Office Technologies, Inc. maintains a broad array of web-based based software modules used by financial and legal professionals nationwide for developing tax planning illustrations and implementing advanced planning strategies. Serving clients as a Wealth Counselor, Tim has led teams that have developed hundreds of Family Wealth Blueprints® for high net worth clients. Tim teaches Best Tools Workshops for advisers interested in learning how to integrate the most effective zero tax planning tools into financial and estate plans. He also conducts Best Practices Workshops for advisers who seek to integrate advanced Wealth Counseling technologies into their practices. He regularly speaks at national conferences and contributes to a variety of industry publications. Tim lives with his wife Darci and their three teenage sons in Mission Viejo, CA.

## Trusts: Not just for the wealthy

Trusts have long served as valuable estate and financial planning devices since they can meet a number of important planning needs.

Trusts are not new, since they date back to circa 4000 B.C. in Egypt, when individuals who were the equivalent of today's trustees were given the tasks of managing other persons' property. The use of trusts continued in ancient Rome where the first usage of trusts for charitable purposes was introduced. In the Middle Ages, as English knights and other noblemen of the landed gentry class went off to fight in the Crusades, trusts underwent further development under English common law, and many of the trust principles developed during that period have endure today. Trusts were first recognized as legal entities in the United States in 1822, with the chartering of Farmer's Fire Insurance and Loan Company in New York.

Since time immemorial, trusts have mistakenly been regarded as tools for the super-wealthy to protect their wealth. That is certainly true to a degree, but a person doesn't have to drip with wealth in order to benefit from the judicious use of a trust.

Well then, what exactly is a trust anyway? A trust may be defined as a "fiduciary relationship in which one person holds a property interest, subject to an equitable obligation to keep or use that interest for the benefit of another."

A trust, then, is a legal entity, recognized and regulated by the laws of the various states, that is established by the proper execution of a formal, written document (the trust document) in which the legal ownership of certain property (the trust corpus or trust principal) held within the trust is separated from the beneficial ownership of the property itself. The person or institution who is the legal owner of the trust assets and who is responsible to manage and invest those assets is known as the trustee. Those persons who receive the benefits from the trust and/or income generated from trust assets are known as trust beneficiaries.

The trustee must fulfill his duties as defined in the trust document in a fiduciary manner. A fiduciary standard of care is the highest level that is recognized by either law or equity. In essence, the trustee must put the interests of the trust and its various parties above his own interests.

The person who establishes the trust is known as the trust grantor, while the provisions, purposes, duration, trustee powers and all other matters pertaining to the trust are contained in the trust document. The grantor must make a number of decisions prior to the establishment of the trust, such as:

- What assets of mine will be placed into the trust?
- Who will receive the benefits from the trust?
- How will the trust be operated and managed?
- Who will serve as the trustee and, thus, safeguard the trust assets?

The purposes that may be served by the establishment and proper administration of a trust include:

- A trust can be designed to help to reduce income and estate taxes, as well as managing wealth more effectively.
- A trust may ensure that its assets will be professionally managed.
- A trust can "stand in" for children and grandchildren until they can acquire the requisite skills to handle their own affairs.
- A trust can prevent family businesses from having to be unnecessarily sold or divided.
- A trust can protect a trust beneficiary from him or herself in old age from the very real possibility of making bad decisions.
- The use of a trust can protect its beneficiaries from a whole host of bad financial and other decisions.
- A trust can ensure that, at the death of the grantor, benefits will pass to the proper individuals, at the proper time, and in the proper amount.

Greg Roberts is a certified financial planner with 35 years of financial and estate planning experience.



## After The Funeral, The Vultures Descended

November 23, 2003 7:00 PM EST

Death and money do strange things to people. Shakespeare wrote "He that dies pays all debts." In a perfect world, children are repaid for the neglects of the father, wives are compensated for any wrongful acts, friends are left tokens of appreciation, business partners are acknowledged for their services and charities are given gifts to make up for years of disregard. In a perfect world, one's death would leave one's affairs neatly wrapped and tied with a bow.

Death rarely provides such neat resolutions, however, especially when it is unexpected. I learned this harsh lesson at the tender young age of 21, when I became the coadministrator of my father's estate.

Less than two months before John Lennon was killed, my father, 43, died in a car accident. He was a successful jingle writer who had amassed what was in those days a small fortune in real-estate holdings and investments. He was in his prime, and gave little thought to the what-ifs in life. Like many of us, he lived for the moment, caught up in the forward movement of the day-to-day, ignoring anything that spoke of slowing down, or passing on.

The result for my family was an administrative nightmare, a Sisyphean mountain of paperwork, against which my 19-year-old sister and I had to push our bodies again and again and again.

I remember how deeply troubled that first lawyer was when he explained our situation. There was no will, and my mother, due to a decadelong separation agreement, was barred from direct involvement. He shook his head with furrowed brow as he studied us: two terribly naive, inexperienced women, overwhelmed by the loss of their father and about to embark on a dangerous expedition. My sister and I would have to find our way through a maze of legal hieroglyphics, without knowing how long it would take or where we would end up.

There was a way out, the lawyer explained. We could appoint a bank. But, he warned us, we'd have little say in the way things were handled. No, we decided. It had to be us.

"Where large sums of money are concerned, it is advisable to trust nobody." So said Agatha Christie. Wisdom I wish I had had, because it wasn't long after the funeral that the vultures descended. Not one or two, mind you, but en masse. They hovered, they swooped, they swarmed; they picked and pecked and devoured everything they could get their hands on. Business associates, friends, lovers and employees lined up with their hands out, crying poor. Everyone my father owed money to contacted us; those who thought they could sue his estate for some reason did; those who thought they were entitled to occupy one of the dwellings stayed put; those who thought they should help themselves to his possessions grabbed whatever they could.

My family was in too much shock to even think of calling the police. It was akin to being characters in a Shakespearean drama, with all of us cast in the role of a royal family whose status as heirs automatically makes them enemies of the king's associates. We were stunned by the multitude of plots derived to exploit and cheat us, seduce and taunt us, without any regard for our loss. On any given day we were informed by one or another of the dozen lawyers and accountants who represented us that another lawsuit was pending, or another claim had been filed, or another person refused to move from one of my father's properties. It was truly a theater of the absurd.

In the end, my sisters (including the youngest, who was then 15) and I didn't really inherit that much. Once the scavengers departed and the IRS was finished, the estate had shrunk considerably. Afterward, the three of us simply drifted, unwilling to drop anchor until we could regain some semblance of meaning or direction. We had been burned twice--once by death, and once by other people's greed.

It's been 23 years since my father died. Ironically, what I learned about money cannot be bought. It was a lesson filled with pain and deep-cutting insight. In one year, I ventured into more corners of the money maze than most people visit in a lifetime. The pendulum has swung back now, and thankfully, I approach money with a less harsh and more balanced attitude. But I am still fascinated by the power of money to heal and to hurt, to give and to take away, to charm and to deceive.

It gives one pause to consider the possibility of sudden death. Would we manage our affairs any differently? I think so. Look around you. What would happen if you died tomorrow? In addition to the obvious grief it would cause, what other reactions might there be? Fighting? Lawsuits? False claims? If there is even a possibility of the slightest mess or complication, do your family a favor and clean it up now. It is the greatest gift you can leave them. Trust me.

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## DYNASTY TRUSTS - Protecting Your Wealth for Generations

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Many people think that the best way to pass their estate to the next generation is to do it directly - i.e. each child receives a check for their share of the inheritance and the estate is closed.

However, more and more people are thinking multi-generationally and instead of passing their estates directly, they are passing their estates using "dynasty trusts." Dynasty trusts benefit one generation of family members by protecting the inheritance from estate taxes and protecting it from creditors and divorcing spouses.

Wealth that is not reduced by estate taxes or subject to creditors / divorcing spouses has the potential to grow more than wealth that is subject to estate taxes at every generation or further reduced by claims from creditors / divorcing spouses.

Dynasty trusts are a golden opportunity for you and your family. By planning for your children, grandchildren, great-grandchildren, etc., you can give your family many generations of estate tax-protected, creditor-protected, spouse-protected wealth.

### **Consider this tale of Two Families:**

**The Knight Family:** John Knight inherited \$1.5 million from his parents directly. He received a check for \$1,500,000 and deposited it into his personal bank account. He *owned* it.

**The Day Family:** William Day didn't inherit anything from his parents directly. Instead, they left his \$1.5 million inheritance in a dynasty trust that named William as the trustee and beneficiary. William could *control* the \$1.5 million as trustee and could *enjoy* the \$1.5 million as beneficiary. But he did not technically own the money, his parent's trust owned it.

You might think that John, who inherited his \$1.5 million directly, would be happier than William, who inherited his \$1.5 million in a trust. But if the Knight family knew what the Day family knew, John would not be happier. If John could see the future, he would see it is better to *control and enjoy* wealth, rather than *own* it.

Let's compare the Knight family's future to the Day family's future to see why.

Outright  
Distribution  
vs.  
Dynasty Trust

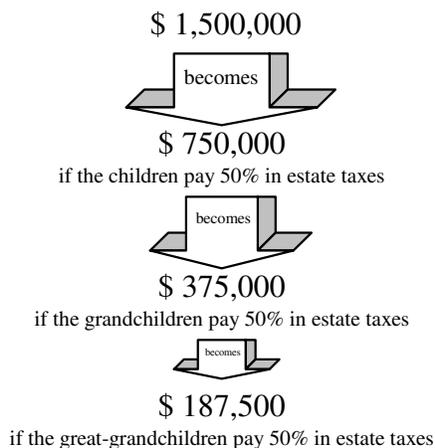
Knight  
vs.  
Day

## The Knight Family

### Estate Taxes:

The Estate Tax was first enacted in 1797, repealed in 1802; enacted again in 1862, repealed in 1870; enacted again in 1898, repealed in 1902; enacted again in 1916; reformed in 1930; reformed in 1976; reformed in 2002. Congress gives tax relief, Congress can take it away.

Congress gives tax relief, Congress can take it away.



There is a federal estate tax rate for estates over the federal exemption amount. There is also a state estate tax imposed by Illinois for amounts over the state exemption amount. The rates and exemption amounts vary depending on what Congress and Springfield decide. Since the government taxes everything we own at death, John will pay estate taxes on his \$1.5 million inheritance because he owns it outright. And the government will tax the inheritance every time it passes from one generation to the next because each generation will *own* what they inherit.

If John has his own estate of \$1.5 million to add to his \$1.5 million inheritance and he and his spouse pass away without proper planning, **his entire estate will be subject to estate taxes.**

### Creditors / Lawsuits:

Lawsuits can wipe out inheritances long before estate taxes do. If you lose a lawsuit and the judgment is in excess of your insurance limits, the creditor / plaintiff can go after your personal assets to satisfy the judgement.

Lawsuits can wipe out inheritances long before estate taxes do.

For example, John may cause a car accident where the property damage and personal injury judgements were in excess of his auto insurance limits. The lawsuit creditors can go after his personal assets - family home, bank accounts, investment accounts, and his inheritance - to pay the judgment.

The postman could slip on John's sidewalk, a neighbor child could fall off the swing-set or drown in his backyard pool, the cleaning lady could fall off a chair while cleaning his house; his teenage child could get into an accident with the family car; etc.. If John is a doctor or professional in a similar high-risk, lawsuit prone industry, there are the added risks of incurring liability at work that could affect John's personal assets.

John may go into a nursing home when he is elderly and the state could force him to "spend down" his assets, including his inheritance, until he is practically penniless in order to receive assistance in paying nursing home costs of \$50,000 to \$100,000 per year.

He may start up a business that fails and have the creditors of the business come after his personal assets, including his inheritance. He may have some large medical bills that are not covered by health insurance that could cause him to go bankrupt and loss all of his assets, including his inheritance.

**Divorcing Spouse:**

Besides the risks from the outside world, there are risks that come from within the family. Unless you diligently keep your inheritance separate from your marital property, a divorcing spouse can claim one-half or more of your inheritance in a divorce, adding financial loss to personal loss.

There are risks that come from within the family.

For example, John may get divorced from his spouse and the divorce judge may award half of the marital property, including the inheritance that John failed to keep separate from his spouse, as a marital settlement to his ex-spouse.

**Accidentally Disinherit the Family:**

You can accidentally disinherit your children, especially when you rely on joint tenancy for your estate planning. This is especially a problem in second marriage situations whether you are divorced or remarry after your spouse passes away later in life.

You can accidentally disinherit your children.

Assume John divorces his spouse. After a few years, John remarries and has additional children with his new spouse. He adds his new spouse on all of his accounts as a joint tenant, including what is left of his inheritance that was not taken in his divorce. If John dies first, all of his assets will automatically go to the new spouse via the joint tenancy, leaving nothing for John's children from his first marriage.

Now assume that John and his original spouse live a long and happy life and his spouse predeceases John. After a few years, John marries a new lady friend and adds his new spouse on all of his accounts as a joint tenant, including his inheritance. If John dies next, all of his assets will automatically go to the new spouse via the joint tenancy, leaving nothing for John's children from his first marriage.

**The Day Family**

**Control and Enjoyment Without Ownership:**

Unlike John Knight, William Day's \$1.5 million inheritance is owned by his dynasty trust, not by William directly. William can spend all trust income, can enjoy the use of trust assets if needed, and can control the trust as trustee, but he will not be deemed to own the trust's \$1.5 million.

Control and Enjoyment without Ownership

For example, just like John Knight, assume that William has his own estate of \$1.5 million to add to his \$1.5 million inheritance. If William and his spouse pass away utilizing proper trust planning, he will pass an inheritance in trust for the benefit of his two children worth \$3,000,000 **after paying \$0.00 in federal and state estate taxes.**

Assume that the trust share for each child is worth \$1,500,000, assume the trust assets grow at 5% a year for 20 years, the trust pays it's own income taxes at 35.0%, then each child passes away owning \$1.5 million of their own assets, their estates will be worth \$4,343,756 apiece and they will each pass \$4,343,756 to their children **after paying \$0.00 in federal and state estate taxes.**

For the inheritance portion of William's estate, it doesn't matter if estate taxes are re-instituted, eliminated, raised, lowered, etc. because as long as that inheritance remains in trust, it won't be subject to federal or state estate taxes for the next generation (a "dynasty" trust) or forever (a "legacy" trust").

### **Creditors / Lawsuits:**

You cannot lose what you do not own. Being the beneficiary of a dynasty trust is like having a millionaire uncle who gives you anything you need, whenever you want it. Though your lifestyle reflects your uncle's wealth, you are not wealthy. Your uncle is.

You cannot lose  
what you do not  
own.

If William loses a lawsuit, goes into a nursing home, starts a business that fails, incurs large medical bills, etc, his dynasty trust share is not be affected. The creditors can still get at William's personal assets but his dynasty trust assets cannot be taken away from him.

### **Divorcing Spouse:**

Again, you cannot lose what you do not own.

If William is divorced by his spouse, his dynasty trust cannot be taken away from him. His spouse may still receive one-half or more of all of the marital assets, but William will still have 100% of his inheritance in the dynasty trust.

You cannot lose  
what you do not  
own.

### **Accidentally Disinherit the Family:**

Dynasty trusts can direct that the inheritance stays within the family. As long as the money stays within the trust, it will be distributed down the family tree if that is what you want it to do.

Dynasty trusts can  
direct that the  
inheritance stays  
within the family.

If William divorces and remarries, or if he remarries after his spouse passes away, his inheritance will never go to the new spouse and his children will not be accidentally disinherited. The inheritance is for William only to enjoy, and when he passes away, it will go to his children (if that is what the dynasty trust directs). The money will never leave the family tree unless you say so.

**The choice: Outright Distribution or Dynasty Trust?**

If your will or trust provides for an outright distribution of wealth to your heirs, consider updating your estate plan to include dynasty trust provisions instead. You can include dynasty trust protections in any estate plan.

Outright  
Distribution  
vs.  
Dynasty Trust

You can create many generations of estate tax-protected, creditor-protected, spouse-protected wealth by making the right choice between outright distributions and dynasty trusts. The difference is as clear as Knight and Day.

If you have any questions about your specific estate planning situation, please contact our office.

*"I live in Alexandria, Virginia. Near the Supreme Court chambers is a toll bridge across the Potomac. When in a rush, I pay the dollar toll and get home early. However, I usually drive outside the downtown section of the city and cross the Potomac on a free bridge. This bridge was placed outside the downtown Washington, D.C. area to serve a useful social services i.e. getting drivers to drive the extra mile and help alleviate congestion during the rush hour.*

*If I went over the toll bridge and through the barrier without paying the toll, I would be committing tax evasion. If, however, I drive the extra mile and drive outside the city of Washington to the free bridge, I am using a legitimate, logical and suitable method of tax avoidance, and I am performing a useful social service by doing so.*

*For my tax evasion, I should be punished. For my tax avoidance, I should be commended. The tragedy of life today is that so few people know that the free bridge even exists."*

- Justice Louis P. Brandeis

*"Anyone may arrange his affairs so that his taxes shall be low as possible; he is not bound to choose that pattern which best pays the treasury. There is not even a patriotic duty to increase one's taxes. Over and over again the Courts have said that there is nothing sinister in so arranging affairs as to keep taxes as low as possible. Everyone does it, rich and poor alike, and all do right, for nobody owes any public duty to pay more than the law demands."*

- Judge Learned Hand

LAW FIRM OF KUCZEK & ASSOCIATES  
847-940-7780



Did you ever leave  
baby-sitting instructions?



What type of instructions would  
you leave if you were going  
away forever?



We believe:

- You should **control** your own property.
- You should be able to give **what** you want, to **whom** you want, **when** you want, the **way** you want.
- You should be able to do all this at the **least possible cost** to you.

### Three Evils of Estate Planning

1. Living Probate (Disability / Guardian)
2. Death Probate (Death)
3. Death Taxes

### A Maze of Complex Legal Issues

- Probate Law
- Civil Law
- Tax Law
- Trust Law
- Real Property Law
- Debtor-Creditor Law

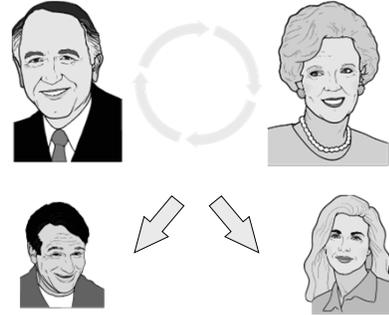


## Bob and Pam



- \$2,000,000 estate.
- All property owned jointly.

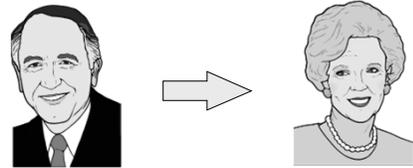
## Bob and Pam's Estate Planning Goals



## Some Estate Planning Choices:

- Do Nothing.
- Hold assets in Joint Tenancy.
- Use a Simple Will.
- Create a Living Trust.

## JOINT TENANCY



100%  
ownership

100%  
ownership

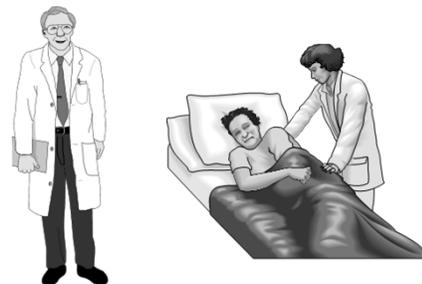
- When the first spouse dies, the surviving spouse gets the entire asset.

## SIMPLE WILL

- A set of written instructions directing how your assets are disposed of when you die.



## Bob becomes mentally disabled



Coma

## Who will manage Bob's property?

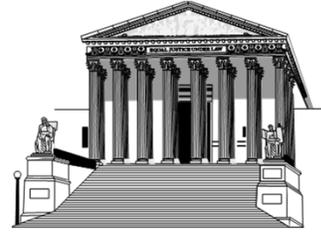
Joint Tenancy?



Simple Will?



## LIVING PROBATE



(Disability / Guardian)

## Living Probate

(Conservatorship or Guardianship)



- A lawsuit designed to protect those who are mentally disabled.

## Disadvantages of Living Probate

- Expensive
  - Court Costs
  - Legal Fees
- Time Consuming
  - Record Keeping
  - Court Reports
- Humiliating



## Bob Dies



## Who will distribute Bob's property?

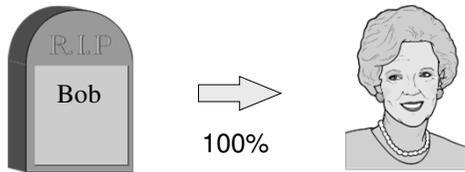
Joint Tenancy?



Simple Will?

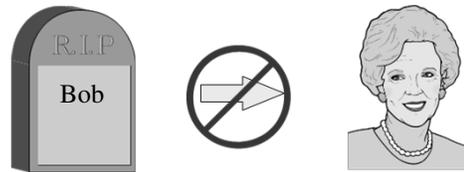


## Death of a Joint Tenant



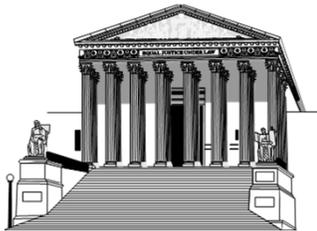
- Survivor receives assets immediately upon death of first joint tenant.

## Simple Will



- No distribution until the Will is probated.

## DEATH PROBATE



## Death Probate

- The legal process of transferring assets to one's heirs.



## Purpose of Probate

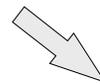
- Pay off creditors.
- Change title of assets to names of beneficiaries.



## Changing title



Bob's name



Pam's name



## What happens in Death Probate?

- Place to resolve disputes.
- Will contests.
- Inventory and appraise assets.
- Distribute assets to beneficiaries.

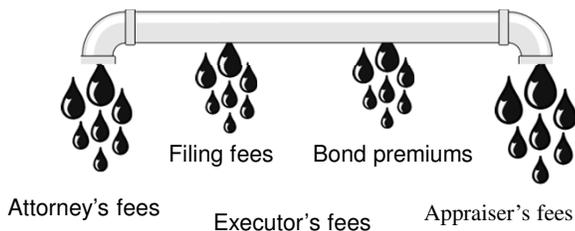


## Probate is expensive

- Attorney's Fees
- Executor's Fees
- Appraiser's Fees
- Filing Fees
- Bond Premiums

(Assuming non-independent administration)

## Probate is like a leaky pipe



## How probate fees are calculated



- Reasonable Compensation
- Percentage of the Estate

## Reasonable vs. Percentage

- Reasonable Fee
  - Whatever the probate judge says is fair.
  - includes Illinois, Florida, Michigan, Wisconsin
- Percentage
  - Based on assets in the gross estate
    - California - 4% variable
    - Nevada - 4% variable

ILCS 755 ILCS 27-2; FL Probate Code 733.6171; MI Probate Code; WI Probate Code 851.40; CA Probate Code 10810; NV Probate Code 150.060

## What is your equity?

- \$300,000 fair market value of house
- \$299,000 mortgage
- **Equity = \$1,000**



## What is the Probate Fee?



$$\$300,000 \times 4\% = \underline{\$12,000}$$

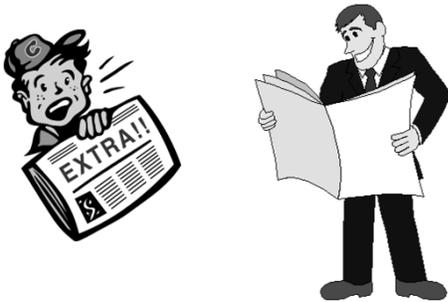
## Disadvantages of Probate

- Public record.
- Excessive time delays.
  - Average time is 1 to 2 years.
- Probate in every state where there is property.
- Additional costs and fees.



"How long does probate take" - www.Legalmatch.com

## Probate is Public



## Multiple Probates



- Additional Cost, Time and Inconvenience.

## DEATH TAXES



## Two kinds of Death Taxes



- Federal Estate Tax
- Illinois Estate Tax

## Illinois Estate Tax

- Illinois has its own estate tax - starting at 9.6% and increasing to 16.0% (effective rate up to 28.0%).
- Estates under \$4,000,000 are exempt



35 ILCS 405

## Federal Estate Tax

- The Federal Estate Tax Rate is 40% for estates over \$11.7 million.
- \$11,700,000 Exemption.
- Unlimited Marital Deduction (Trap!)



26 USC Chapter 11(a)

## Federal Estate Tax Credit Amount

- 2002 to 2003 - \$1,000,000
- 2004 to 2005 - \$1,500,000
- 2006 to 2008 - \$2,000,000
- 2009 - \$3,500,000
- 2010 - repealed; replaced by carryover basis - no stepped-up basis
- 2011 and 2012 - \$5,120,000
- 2013 - \$5,250,000 (indexed for inflation)
- 2014 - \$5,340,000
- 2015 - \$5,430,000
- 2016 - \$5,450,000
- 2017 - \$5,490,000
- 2018 - \$11,200,000
- 2019 - \$11,400,000
- 2020 - \$11,580,000
- 2021 - \$11,700,000
- 2022 - ???

"Sunsets" back to  
\$5,000,00 + inflation  
in 2025

## Federal Gift Tax Exemption

- Annual Exclusion is \$15,000 (indexed for inflation)
- Lifetime Exclusion is \$11,700,000 (indexed for inflation)

26 USC Chapter 12(a)

### **CAUTION**

If your estate is  
below \$4,000,000:

- Do you have Federal Estate Tax?
- Do you have Illinois Estate Tax?
- Do you have Probate?

### **CAUTION**

If your estate is  
below \$4,000,000:

- You are still stuck with Living Probate.
- You are still stuck with Death Probate.

## Joint Tenancy or Simple Will



- Unlimited Marital Deduction means no Federal Estate Tax due on the death of the first spouse.

## Pam is now a widow



- Pam's estate is worth \$2,000,000.

Surviving spouses generally live for an additional 7 years after the death of the first spouse.

## Pam's Estate will grow

- Inflation averages 3% a year.
- Value of homes increase an average of 5% a year - *varies greatly*.
- Stock Market grows an average of 9.4% a year.

www.inflationdata.com, www.realestateabc.com, www.observationsandnotes.blogspot.com

In 10 years, Pam's Estate will be worth \$4,000,000



## Pam becomes disabled



## Who will manage Pam's property?

Joint Tenancy?



Simple Will?



## Living Probate

(Conservatorship or Guardianship)



- Which child will the court choose as Pam's guardian?

## Pam Dies



## Simple Will



- All assets owned by Pam must go through Probate.

## Total Probate Fees

Average Probate Fees = 4%

Bob's death = \$ 40,000

Pam's death = \$ 80,000

**TOTAL = \$ 120,000**



## Total Probate Fees

Average Probate Fees = 4%

Bob's death = \$ 40,000

Pam's death = \$ 160,000

**TOTAL = \$ 200,000**

### What if ?

Subtract Bob's probate = (\$ 40,000)

2% fee for Pam's probate = \$ 80,000

**Is \$80,000 inexpensive?**

## Estate Taxes



- Estate Taxes are due 9 months after the date of death.

## Summary of Joint Tenancy and Simple Will

### Avoid Living Probate?

Joint Tenancy: No

Simple Will: No

### Avoid Death Probate - 1st death?

Joint Tenancy: Yes

Simple Will: No

## Summary of Joint Tenancy and Simple Will

### Avoid Death Probate - 2nd death?

Joint Tenancy: No

Simple Will: No

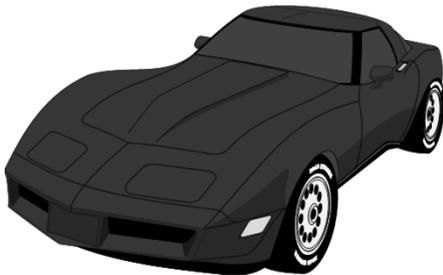
### Avoid Federal Estate Tax

Joint Tenancy: No

Simple Will: No

## Additional undesirable features of Joint Tenancy

- Gift Tax potential.
- Can pass property to unintended heirs.
- Advantages creditors.
- Offers no control.
- No instructions to your family.



## One example of A LIVING TRUST

Created By:

LAW FIRM OF  
**KUCZEK & ASSOCIATES**

## Look out for Boilerplate or “one size fits all”

- One price for all.
- Fee quoted prior to thorough consultation.
- No funding assistance.
- Probate in disguise.
- General practitioner.

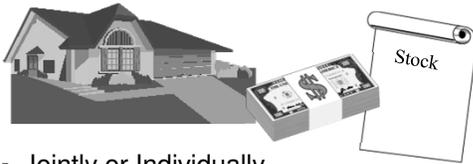
## All Different Types of Cars All Different Types of Trusts

### To Meet Unique:

- Needs
- Wants
- Desires
- Aspirations

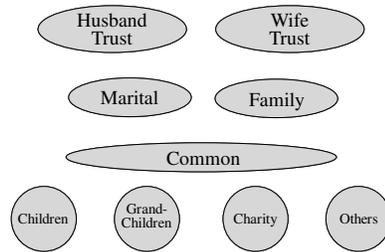
**Have it your way!**

## The problem with Probate is that property is owned by you



- Jointly or Individually.
- Is there a better way to own and control property?

## Create your own instructions!



- Change the names of your accounts to the name of your trust.

### Both Spouses Alive:



- Take Care of Me.
- Take Care of My Spouse.
- Take Care of My Dependents.
- Let My Trustees/Spouse Sign for Me.

### Both Spouses Alive:



### One Spouse Alive:



- Take Care of My Spouse.
- Take Care of My Dependents.
- Minimize Taxes.
- Let My Trustees/Spouse Sign for Me.

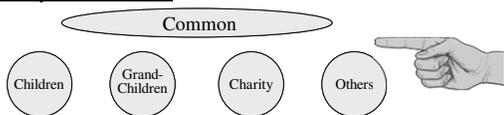
**Both Spouses Alive:**



**One Spouse Alive:**



**Neither Spouse Alive:**



- Let Our Trustees/Children Sign For Us.

**Single or Joint**

**Alive:**



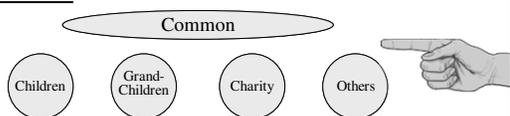
- Take Care of Me / Us.
- Take Care of My / Our Dependents.
- Let My/Our Trustees/Children Sign.

**Single or Joint**

**Alive:**



**After Death:**



- Let My/Our Trustees/Children Sign.

**If you choose the people (Trustees) to sign your name, then the court will not.**



**A Living Trust has 3 positions**

- Trustmakers
  - You.
- Trustees
  - Baby-sitters.
- Beneficiaries
  - Your loved ones.
  - People who spend the money.



**Which would you rather be?**

- Trustmaker?
- Trustee?
- Beneficiary?

**How about all three?**



Will you have a second chance?

**Bob and Pam establish a living trust-centered estate plan**

- They are the trustmakers.
- They are the co-trustees.
- They are the beneficiaries during their lifetimes.

Bob and Pam occupy **all three positions** of their living trusts.

**While both Bob and Pam are**



**alive**



- They have total control over their property.
- No new taxes.

**While both Bob and Pam are**



**alive**



- Same tax returns.
- Same social security numbers.
- Change their plans whenever they wish.

**Bob becomes mentally disabled**



Coma

**Both Spouses Alive:**

Bob's Trust

Pam's Trust



**Upon disability of the first spouse, there is no Living Probate**

- No attorney's fees.
- No court hearings.
- No guardian's fees.
- Your needs are taken care of.
- Your instructions are carried out for your beneficiaries.

## Bob Dies



- Does Bob's living trust avoid Death Probate?

### Both Spouses Alive:



### One Spouse Alive:



Upon the death of the first spouse,  
there is no Death Probate

- No attorney's fees.
- No court hearings.
- No executor's fees.
- No time delay.
- No public record.
- No probate in other states.

## Estate Taxes



- Does Bob's living trust avoid Federal and Illinois Estate Taxes when Bob dies?

Upon the death of the first spouse, there are no Federal or Illinois Estate Taxes



## Pam becomes disabled



### Both Spouses Alive:



### One Spouse Alive:



Upon the disability of the second spouse,  
there is no Living Probate.

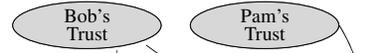
- No attorney's fees.
- No court hearings.
- No guardian's fees.
- Your needs are taken care of.
- Your instructions are carried out for your beneficiaries.

## Pam Dies



- Does Pam's living trust avoid Death Probate?

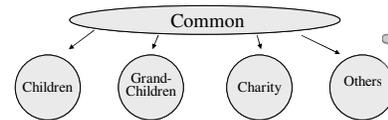
### Both Spouses Alive:



### One Spouse Alive:



### Neither Spouse Alive:



## Upon the death of the surviving spouse, there is no Death Probate

- No attorney's fees.
- No court hearings.
- No executor's fees.
- No time delay.
- No public record.
- No probate in other states.



## What about Estate Taxes?

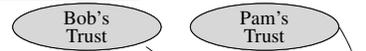


## Estate Taxes are Lowered

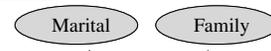
- Utilize each spouse's exemption amounts.
- \$23,400,000 free from Federal Estate Taxes
- \$8,000,000 free from Illinois Estate Taxes



### Both Spouses Alive:



### One Spouse Alive:



### Neither Spouse Alive:

