

Living Trusts for Estate Planning

If you decide to use Living Trusts in your estate plan, your estate will likely avoid the expense and delay of probate, and your privacy will not be impaired by public records of your estate assets or beneficiaries. However, there are several countervailing considerations as well, and the rules are somewhat complex. This article provides an overview of the main considerations.

Trust Declarations

The Living Trust Declarations set forth your basic plans for disposition of assets upon your death. In order to achieve the full benefit of these trusts, it is critical that all of your material assets be transferred into your trusts right away. In the event something should happen to you, and any material assets remain in your name alone (outside of your trusts), a full scale probate proceeding for the omitted assets would likely be necessary, even if you had transferred all other assets into your respective trusts. Having Wills (discussed below) does not change this result, as the Wills will only facilitate the probate process, not eliminate the need for it. Only by placing all of your material assets into your living trusts will you completely avoid probate.

Assets to be owned by Husband's trust should be held as follows:

JOE H. HUSBAND, Trustee of the Husband Living Trust, UDT August ____, 2009

Assets to be owned by Wife's trust should be held as follows:

WILMA G. WIFE, Trustee of the Wife Living Trust, UDT August ____, 2009

As a starting point, your attorney should prepare the deed for your home and any other real estate. Your attorney should also prepare General Assignments which are intended to "sweep up" any assets inadvertently left out of the trusts. However, these are only a backup measure, and each of your assets having significant value (i.e., investment accounts, savings, etc.) should be separately transferred into your trusts. You will need to make specific arrangements with each bank, brokerage, and other institution where you have accounts, investments, or other forms of assets, to ensure that each of your material assets is separately transferred to your living trusts. Your attorney can assist you with these transfers if necessary.

Your trusts direct how you would like your estate to be distributed. Typically, your trust would generally leave everything to the surviving spouse, and then to your children, or their offspring.

Your trusts generally control only those assets which are in your trusts, and which do not automatically pass to other persons upon your death. For example, if you hold any assets in joint ownership with each other, or with other parties, your trust will have no effect on your interest in such property. It is therefore important to review how title is held for each of your material assets, and as mentioned above, it is critical to transfer your assets into your trusts. On a related note, your attorney should review the beneficiary designations on your insurance

policies, annuities, retirement plans, IRA, and other accounts. Often it is recommended that you specify your spouse or your spouse's trust, and alternatively your own trust, as the beneficiary for each of these assets. You should consult your attorney for assistance with these beneficiary designations.

An important feature of your respective Trust Declarations, is the continuity of asset management, during periods of your mental or physical incapacity. In the event you become incapacitated, a successor trustee can take over management of your Trust. In order to allow the determination of incapacity to be made, it is important to authorize in advance, the disclosure of your medical records. Your attorney should prepare Medical Disclosure Authorization forms to facilitate this process. Medical privacy laws have greatly restricted the release of medical information, so it is important that you sign such a disclosure authorization.

Please keep in mind that your Trust Declarations are based on facts as they exist at the time of document preparation, and should be reviewed at least every three years. If any of the persons named in your trust dies or otherwise is no longer appropriate, you should contact your attorney to update your trust. Additionally, you should review your trusts upon the acquisition of any assets which will substantially increase your estate, or in the event of any material change in the tax laws.

Pour-Over Wills

Whenever your estate plan involves Living Trusts, you should also have pour-over Wills. Such Wills serve primarily the following purposes: (i) provide the direction, through the probate process if one is necessary, to transfer into your trusts, any material assets which may have been inadvertently omitted from the trusts, and (ii) specify how federal estate taxes, if any, are to be allocated and paid. On the death of the second spouse to die, the death taxes payable by your estate, if any, will typically be paid from the residue of your estate. This will effectively reduce the trust assets passing to your children or other alternate beneficiaries. Alternatively, you have the option of charging any portion of the death taxes against any specific assets.

Your Wills may also include the optional provision for an anatomical gift. If you are interested in donating organs, you should also register with Donate Life Northwest through the easy-to-use website at www.donatelifenw.org.



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