

REVOCABLE LIVING TRUST PACKAGE

Presented By

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Jim and Betty thought they had planned carefully for their Estate Planning needs. They had recently gone to an attorney who had drafted their Wills leaving everything to each other and upon each passing away, to their children, to be divided equally. Unfortunately, Jim developed Alzheimer's Disease. Before Betty could do any planning, Jim's condition worsened. Betty soon learned that she was unable to sign for him and that the only way to obtain funds was to go through the Probate Court. Upon counseling with an attorney, Betty discovered that a Court supervised conservatorship was necessary in order to obtain the funds needed to care for Jim's medical expenses. Betty now had to act as Jim's conservator. This entailed her keeping detailed records of everything she was doing and reporting to the Court with regard to all expenses incurred and the sale of any investments or property in their Estate.

Three years later, Jim passed away and Betty was forced to go through a Probate proceeding. Because a Probate proceeding is a matter of public record, one of Jim's cousins appeared in Court claiming that Jim had promised to leave him a certain sum of money. Because of the resulting extremely expensive costs to litigate this matter, Betty was forced to give this cousin a certain amount of their property.

The above example could have been avoided had Jim and Betty done proper Estate Planning. Jim and Betty had the common misunderstanding that Wills would avoid Probate and guard against any lifetime problems that may occur. A Will does not avoid Probate. In fact, the Probate Court is set up to Probate Wills and to make sure the property in the Estate goes to the proper beneficiaries. Since there are a number of disadvantages to Wills and Probate proceedings, one of the most popular Estate Planning documents to avoid Probate is a Revocable Living Trust. It avoids Probate and plans for any unexpected medical problems which may occur during your life.

ESTATE PLANNING

As a first step to learning about a Revocable Living Trust, it is important to understand what we mean by Estate Planning. Some definitions are in order.

Estate: All wealth accumulated during one's lifetime. Examples of property in an Estate may include the following:

1. Real Property (residence and rental property);
2. Business Interests (partnerships, corporations, sole proprietorships);
3. Investments (stocks, bonds, mutual funds);
4. Insurance proceeds;
5. Personal effects.

Planning: To overcome obstacles when transferring our Estate upon our death and to preserve our wealth during life. Some of the obstacles to overcome are:

1. Probate
2. Federal Estate Taxes
3. Conservatorships
4. Nursing Home Costs

Let's examine how Probate, death taxes, conservatorship proceedings, and nursing home costs create problems in the lives of a typical California married couple who do not have a Revocable Living Trust and how their problems are eliminated through proper Trust planning. Although our example uses a married couple, the problems and solutions are similar to those who are widowed, divorced, or unmarried.

PROBATE

One of the biggest misconceptions concerning Living Trusts is that a person does not need a Trust unless his or her Estate is more than \$1,000,000.00. This may be true as it pertains to Federal Estate Taxes, but it is far from the truth where the Probate process is concerned. The current law states that if your Probate Estate consists of a house with a Fair Market Value greater than **\$184,500.00**, then your Estate will go through the Probate process.

What is Probate? Upon the death of each spouse, the Superior Court in your area will supervise the distribution of assets. Probate is the legal process by which your assets are transferred to your beneficiaries according to the provisions of your Will. Listed below are some of the objectives of the Probate process.

1. Provides a forum for disputes concerning the validity of Wills and other documents (Will contests).
2. Court supervision over the appointment and work of the Executor for the Estate.
3. Inventories and appraises all assets and debts of the decedent.
4. Provides for payment of creditors of the Estate.
5. Distributes assets with clear title to the beneficiaries named in the Will.

DISADVANTAGES OF PROBATE

However, there are significant disadvantages to the Probate process:

- (1) Excessive Fees:
Attorney's fees, Executor's fees, Court filing fees.
- (2) Excessive Delays:
Probate in Orange County can take between nine months to two years to complete depending upon the complexity of the Estate.
- (3) Public Record:
Every detail of your family's financial life is available for the public scrutiny at the County courthouse.

EXCESSIVE PROBATE FEES

In a \$600,000.00 Estate, it would not be uncommon for Probate fees and costs to exceed \$26,000.00. Most of those fees are paid to the attorney who Probates the Will.

HOW PROBATE FEES ARE CALCULATED

California Law sets the Probate fees that attorneys and executors may charge. Those fees vary according to the size of your Estate. They are calculated as follows:

4 percent of the first \$100,000.00

3 percent of the next \$100,000.00

2 percent of the next \$800,000.00

1 percent of the next \$9,000,000.00

1/2 percent of the next \$15,000,000.00

Excess over \$25,000,000.00. Reasonable amount to be determined by Court.

Remember that these fees do not include any extraordinary fees that attorneys often claim. These fees are also levied on the death of each person.

Not only are the fees excessive, but the manner in which they are calculated is unfair. Fees are calculated on your Estate's gross value without deductions for liens or encumbrances. This means that if you have property worth \$100,000.00, but owe \$90,000.00 to a bank or some other financial institution, your Probate fees will be based on the full \$100,000.00, not the actual \$10,000.00 equity interest. As you can see, this valuation method unfairly increases the size of your Estate and results in the payment of larger fees.

Below is an illustration of how this works to your disadvantage.

<u>ASSET</u>	<u>FAIR MARKET VALUE</u>	<u>LOANS</u>	<u>EQUITY</u>
Residence	\$400,000.00	\$350,000.00	\$ 50,000.00
Investment Property	\$100,000.00	\$ -0-	\$100,000.00
Automobile	<u>\$ 20,000.00</u>	<u>\$ 10,000.00</u>	<u>\$ 10,000.00</u>
Total:	\$520,000.00	\$360,000.00	\$160,000.00

Total Equity = \$ 160,000.00

Total Probate Value = \$520,000.00

Total Minimum Probate Fees = \$26,800.00

WHY NOT JOINT OWNERSHIP TO AVOID PROBATE?

***ANSWER: JOINT OWNERSHIP INCREASES TAXES PAID TO THE INTERNAL
REVENUE SERVICE
AND EXPOSES THE ASSETS TO ATTACHMENT.***

Many people believe that if they merely place their child's name on their stocks, bonds, home, and bank accounts, that this is sufficient to avoid probate. Such joint ownership may delay, but will **NOT** avoid probate, **AND** it will increase taxes paid to the INTERNAL REVENUE SERVICE because joint tenants receive only a partial step-up in basis in their property. This negative aspect of joint tenancy, as well as a constructive solution to the resulting dilemma, will be explained more thoroughly during our first meeting.

In addition, if you place your assets such as stocks, bonds, and real property in joint ownership, you expose those assets to attachment if your joint owner ever has a judgment rendered against him/her, fails in his/her business, or suffers a divorce, and, as a result, creditors of the joint owner are looking for assets to attach. Remember, that if your child's name is on your bank account or other asset, that asset legally belongs to the child and can be attached to pay that child's debts.

DEATH TAXES

There are two types of death taxes: The Federal Estate Tax and the State Inheritance Tax. The Federal Estate Tax levies a tax on an individual's right to give property upon his death. The Inheritance Tax, on the other hand, taxes one's right to receive property given to him by a decedent. In other words, we are taxed on both the giving and the receiving. Fortunately, the residents of California have been spared the bite of the Inheritance Tax which was repealed by the voters in 1981.

FEDERAL ESTATE TAX EXEMPTIONS

The Federal Estate Tax is imposed on the decedent's net estate value. The law in this area recently changed to allow a greater portion of a decedent's estate to go tax-free to their heirs. It used to be an Estate over \$600,000.00 was subject to estate tax, but as of 2022, the amount that can go estate tax-free is \$12,060,000.00.

UNLIMITED MARITAL DEDUCTION

In 1981, the Federal government exempted all transfers of wealth between a husband and wife. As a result, regardless of the size of the Estate, there will be no Estate tax levied when the husband or wife dies and leaves his or her Estate to the surviving spouse, so long as that spouse is a United States citizen. Keep in mind, however, that this is merely a postponement of the tax. There will be a tax on the Estate of the surviving spouse when it passes to the children or other beneficiaries. Since in all probability, the Estate will continue to appreciate in value, taxes may be paid at a higher rate.

WHAT IS A TRUST?

It is an important alternative to a Will and all of its problems. A Trust has been used for centuries as a method of holding title to property. Basically, it is a transfer of the title to real or personal property from the owner (Trustor) to a Trustee with specific instructions that the Trustee manage it for the benefit of someone called the Beneficiary. Although Trusts can take many different forms, they are all either "living" or "testamentary" and "revocable" or "irrevocable". The Living Trust begins its existence during the life of the Trustor while the

Testamentary Trust does not become a valid legal entity until the Trustor dies. A Revocable Trust can be altered or revoked, but an Irrevocable Trust cannot be changed or terminated once it is created.

The remainder of this presentation will center around the Revocable Living Trust which is created during life and can be amended or revoked during the lifetime of the Trustors. It also offers more Estate Planning advantages than any other type of Trust. There are a variety of excellent reasons for creating a Revocable Living Trust. Some of these include situations where:

1. An individual is interested in transferring his Estate at the time of death without Probate;
2. An individual is having difficulty managing his affairs or is concerned that a surviving spouse may have difficulty managing the assets of the inherited estate;
3. A husband or wife in a second marriage wants his or her separate property held in Trust at the time of his/her death for the benefit of the surviving spouse, but designated upon the death of the surviving spouse to be distributed to the children from a first marriage;
4. An individual wishes to establish a Special Needs Trust so that a child's benefits from the government will not be affected;
5. An individual wants a Trust to continue on after his or her death for the benefit of children, grandchildren, etc;
6. A couple wants to reduce their death taxes.

CAN YOU BE YOUR OWN TRUSTEE?

In most situations where individuals are competent to manage their property they can act as Trustee or, in the case of a married couple, Co-Trustees of their Living Trust. That means that a husband and wife who set up a Living Trust are transferring property from themselves as Joint Owners to themselves as Co-Trustees. As Co-Trustees, they are managing the property for the benefit of themselves as Joint Beneficiaries. During their lives, they will have absolute and complete control over all property in the Trust. They can spend, give away, invest or save all the

assets of the Trust at their sole discretion. Moreover, if they do not like the terms of the Trust, it can be amended or revoked without penalty.

HOW A LIVING TRUST ELIMINATES PROBATE

When you set up a Revocable Living Trust, you simply transfer all of your property out of your individual names and into your names as Trustee's. For example, "Jim and Betty Jones as joint tenants" to "Jim and Betty Jones, as Trustees of The Jones Trust dated 2/1/11". All property transferred to a Living Trust is outside the jurisdiction of Probate Court. Remember, the Probate Court can only exercise power over property owned by the decedent on the date of death. After you transfer property to the Trust, you no longer own it as an individual. You own and manage it as a Trustee and the Trust is alive and well, even at your death. However, at your death, the Trustee's duties are transferred to either your surviving spouse, or someone else you may have named. If you change accounts or property of the trust, you don't need to go back to an attorney. The trust takes care of itself.

HOW TRUSTS REDUCE ESTATE TAXES

Without becoming too technical, it is safe to say that the Living Trust can be used as a tool to lower or eliminate Estate taxes. If the net value of your Estate when you die is more than the exemption amount stated earlier, then Federal Estate taxes, at a rate of 40%, must be paid from your Estate before it is distributed to your beneficiaries. Most people believe that their Estate is well under the exemption amount and therefore, they do not have to be concerned about Estate taxes. However, if you add up your entire Estate, which includes your real property, all of your personal property, any retirement benefits, and any life insurance, very often your Estate will exceed the exemption amount. With a simple A/B Trust we can reduce or eliminate any Estate taxes that may have otherwise been due.

CONSERVATORSHIP

Up to this point, we have discussed the problems which occur after death. However, there are major problems during life as well. For example, if there is a disabling injury, senility or a stroke during one's life, which makes it impossible for you to manage your affairs, you will have to apply to the Superior Court to have a Conservator appointed. Many people think that joint ownership of real property gives either one of the two joint tenants, the right to sign for the other. However, this is a common mistake. When you own real property in joint tenancy, both signatures are required to transact any business. You cannot sell or refinance the real property without the other's signature. This is commonly the situation that exists when a spouse is forced to go into a Probate Court and file for a conservatorship. The same issue applies to retirement accounts which only allow one person to take money out.

When a conservatorship proceeding is filed, a hearing will be held to determine whether this person is able to handle his/her own affairs or not. This can be expensive, time consuming and a humiliating affair. If the Probate judge finds you incompetent, a conservatorship will be set up whereby a conservator will care for your needs. If this is done, most often you will lose all your rights as a citizen. The conservator must keep detailed records of all expenses and submit them to Court for approval. This process takes time, costs money and all of your property is open to public inspection.

Fortunately, a Living Trust avoids all the problems inherent in a Conservatorship proceeding. In fact, the entire Conservatorship process is avoided in the same way that Probate is avoided using a Living Trust. In most Living Trust documents with husband and wife as Co-Trustees, the competent spouse can deal with the assets of the Trust without the signature of the disabled spouse.

NURSING HOME COSTS

A Living Trust and a Durable Power of Attorney can help a loved one to preserve enough assets to live on when a spouse goes into a nursing home. The average cost of nursing home care is approximately \$8,000 per month. This expense is **not covered** by Medicare or your average health care insurance.

STARTING THE PROCESS

If you decide the Living Trust is right for you, all you have to do is fill out a Confidential Client Questionnaire Form I have available for my clients. When I receive your questionnaire, I will contact you for an appointment. The Living Trust Package includes the following:

1. **Certificate of Trust.** This six-page document is to be used to present to banks, savings and loan associations and brokerage houses when either purchasing real property or establishing any new accounts to be held in the name of the Trust. Rather than having to copy the entire Trust document to present to certain financial institutions, we have developed this Certificate of Trust merely to inform a financial institution of the pertinent provisions of the actual Trust document. Our Certificate of Trust contains only those selected Trust provisions which are reviewed by most financial institutions before they allow you to transfer any assets into the name of the Trust;

2. **Revocable Living Trust.** This is your actual Trust document which describes how your property will be distributed upon your death and who will be acting as Successor Trustees of your Trust, either upon incompetency or death. It further indicates the powers that are given to you as Trustee of your Trust while you are alive and also the powers given to the Successor Trustees;

3. **Assignment.** This document assigns all of your personal belongings into the Trust to be distributed according the provisions of the Trust. Since we do not label each and every item of furniture and clothing in your residence, we use this document to transfer those items into the Trust.

4. **Last Will and Testament.** This document is a "Pour-Over" Will which merely takes any assets that we may not have added to the Trust, such as your checking account or

automobile, and "pours" those assets into the Trust upon your death so that they may be distributed according to the provisions of the Trust. As long as these assets do not exceed \$184,500.00, they will not have to go through Probate.

5. Durable Power of Attorney and Nomination of Conservator. This document gives the power to your agent to handle financial affairs for you in the event that you are unable to handle those matters on your own behalf.

6. Advance Health Care Directive. This document gives your agent the power to make health care decisions for you in the event that you are unable to make those decisions on your own behalf, and also states your wishes concerning life support.

7. HIPAA/CMIA Authorization For Release of Protected Health Information. This document is a new document that authorizes your health care agent to request medical information from any entity and does so within the new guidelines of both State and Federal law.

***Thank you for your time and
I look forward to hearing from you soon!***