



ESTATE PLANNING AS PART OF YOUR COMPLETE PLAN FOR RETIREMENT (C.P.R.) TRUSTS FOR ASSET PROTECTION

It is a common misconception that estate planning is important for only those with money or who are advanced in age. This myth is a cruel deception. **Everyone can benefit by creating an effective estate plan.** My all-encompassing individualized estate plan package consists of a simple or pour-over wills for each spouse, a revocable trust, an irrevocable trust when necessary, and a durable power of attorney, health care proxy, advance directive, and living will for each spouse. In addition, for a holistic individualized plan, a deed or deeds which transfer real property to either a revocable or irrevocable trust.

Arranging for the distribution of one's wealth is what estate planning is all about. A critical part of estate planning is creating documents that outline your wishes for distributing your wealth after you die. **Every individual has an estate plan. If you do not have a formal written will or trust, your estate plan is created by default.** Every state in America has laws governing the distribution of property when a person dies without a Last Will and Testament (i.e., dies intestate). The question is not whether or not you will have an **estate plan, but whether you will have an estate plan of your own selection or one imposed upon you by the law.** My holistic individualized plan generally covers all of your family's legal health, financial well-being, and asset protection needs.

Traditional estate planning involves a simple will. By preparing a will most people feel they have effectively safeguarded their family's inheritance. However, this is often a false "peace of mind." **A Last Will and Testament outlines your wishes about the distribution of your property after death and usually requires probate.** In preparing only a will, you may be forcing your loved ones through years of dealing with probate court before your estate is finally resolved.

PROBATE

Probate is the orderly administration of your affairs supervised by the court. Probate is a function of state law and varies from state to state. If you own real property in more than one state, it is probable your estate will be subject to probate in numerous jurisdictions, each imposing their own probate fees.

A will must be presented to the probate court and proven to be a valid document. In addition to “proving the will,” the probate process includes taking an inventory of all property and appraising its value, paying the deceased person’s debts and taxes, preparing a final accounting, and distribution of the estate to the proper heirs.

DISADVANTAGES OF PROBATE

Time Consuming: The probate process can take a few months or as long as several years to complete. The average probate can take about 15 months. In complex situations, probate lasting 18 months to three years is not unusual.

Costly: Attorney’s fees to probate an estate can run into thousands of dollars. All related probate fees must be paid before any of the decedent’s assets are distributed to the family.

Loss of Control: The probate court controls the entire process. Someone outside of your family whom you are unfamiliar with, will tell your beneficiaries who gets what and when.

Lack of Privacy: All probate transactions are a matter of public record. Anyone can find out the size, contents, and beneficiaries of your estate. This can be embarrassing and frustrating for your family, create disputes, and expose your family to unscrupulous solicitors.

A Trust Eliminates Probate

One of the better estate planning alternatives is a ***Revocable Living Trust*** which is a simple way to make certain your estate assets are distributed as you desire.

It is “revocable” because you can change the terms or cancel it any time during your life. It is “living” because the trust takes effect while you are still alive. It is a “trust” because it creates a place where assets are available for your normal use now and will be available for distribution at your death.

ADVANTAGES OF A REVOCABLE LIVING TRUST

- Even though you transfer legal ownership of your assets to the trust, by naming yourself as trustee of the trust, you keep complete control over your property. You can manage, sell, borrow against, or give away the assets in your trust as you please.
- If an illness or accident leaves you incapacitated, your successor trustee can handle your financial affairs without the need of a court-appointed guardian or conservator.

- If the beneficiaries of your trust are minor children or others who might now use an inheritance as you intend, the trust can continue to hold assets until they reach a more mature age.
- If you own real property in more than one state you avoid the expense, time and hassle of multiple probate proceedings.
- A trust is generally more difficult to contest than a traditional will. To invalidate a will you must either prove it was signed under duress or that the maker was incompetent on the day it was signed. To invalidate a trust you would have to prove it was invalid not only on the day it was signed but each and every day it was in existence thereafter.
- When a will is contested the assets are frozen and they cannot be distributed until the claim is resolved. Assets placed in a living trust are not frozen pending the outcome of a legal challenge. Anyone wishing to contest the trust must file suit against each of the beneficiaries; in the meantime the assets in the trust can be distributed.

LIMITATIONS OF A REVOCABLE LIVING TRUST

Limitations of Revocable Living Trust are relatively few, but there are some:

- For your living trust to work properly, you must transfer everything you own into the name of the trust.
- A trust provides no income tax benefits. Any income generated by the assets in the trust during your lifetime are taxed as if they were still held in your personal name and reported on your personal 1040 income tax form. (However property that has appreciated in value may receive your date of death stepped up cost basis, which is a tax benefit to your heirs.)
- If a trust sells an asset to a beneficiary at a price less than the assets cost basis, the loss is non-deductible. Whereas the same asset sold through probate can count the difference between the cost basis and the price sold, as a loss.
- Upon death, trusts are required to make quarterly estimated income tax payments whereas a probate estate need only pay annually.
- Fees for creating a trust have traditionally been more than for preparing a simple will.
- A Revocable Living Trust provides no protection from your creditors.
- You need a second kind of trust for asset and creditor protection called an *Irrevocable Trust*. Depending upon your family's circumstances and requirements, your C.P.R. may include both a revocable living trust and an irrevocable trust.

ADVANTAGES OF AN IRREVOCABLE TRUST

- The purpose of this type of trust is to limit asset exposure or to keep valuable assets such as your home, safe from unpreventable long term health care costs, such as that generated by the nursing home.
- With the asset in this type of trust, it will also not be counted against you when trying to qualify for Title 19 (after five years)

- When property is in an irrevocable trust, family members are protected from the burden of ownership of additional assets which can affect the ability of your grandchildren from qualifying for scholarships or loans.

LIMITATIONS OF AN IRREVOCABLE TRUST

- Once an asset such as your home is transferred into this type of trust, you will no longer be the owner. The manager of the trust will be the person you have appointed to be trustee and will have ultimate decision making power over all assets transferred to this trust.
- With a few exceptions your house must be loan-free to go into this type of trust.
- If you are transferring assets into this type of trust in order to qualify for Title 19 or to prevent the loss of your home to the State, it will take sixty months to be an effective tool, to meet the current five year look back period.

C.P.R.

In summary, my estate plan, as part of the **C.P.R.** is designed for you and your family's needs to eliminate probate, help you avoid paying catastrophic long term care costs, minimize estate taxes to the fullest extent permitted by law, maintain your privacy, and discourage legal challenges. Documents that are included in the C.P.R. include the following:

- **Revocable Living Trust**
- **Irrevocable Trust**
- **Assignment of Personal Property**
- **Pourover Will**
- **Durable Power of Attorney**
- **Appointment of Health Care Agent**
- **Directives to Physicians**

Get answers based on facts, not opinions

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DICTIONARY OF ESTATE PLANNING TERMS

Beneficiary – One entitled to profit, benefit or advantage from a contract or estate.

Codicil – A written addition or amendment to a will.

Conservatorship – A formal proceeding in which the court appoints conservator to act on behalf of another in business and / or personal matters.

Contingent Beneficiary – One entitled to profit from a contract or estate only upon the occurrence of a specific event, usually one who receives assets at the death or the primary or lifetime beneficiary.

Decedent – A deceased person.

Descendants – Persons who follow decedent in line of decedent.

Estate – The assets and liabilities, real and personal property, left by a decedent.

Estate Tax – Inheritance tax.

Execute – The act of signing and notarizing trust documents.

Executor (Executrix) – Persons or institution named in a will to carry out the will's instructions.

Gift Tax – Tax levied on gifts of property, to supplement estate and inheritance tax.

Grantor – One who creates a trust; the trustor; the settlor.

Intervivos – “Between the living” or “while living”.

Intestate – One who died without a will.

Issue – Lineal Descendants.

Joint Tenancy – A holding of property by several persons in such a way that any one of them can act as owners of the whole and take the property by survivorship.

Last Will and Testament – An instrument whereby one makes a disposition of his property to take effect after his death.

Life interest – An interest in property which is to terminate upon the death of the holder (or some other designated person) of the interest.

Living Will – A document which formally expressed your wish to forego extraordinary medical treatment when you become terminally ill.

Marital Deduction – Exempts from estate tax all property passing from one spouse to the other by reason of gift or death.

Pour Over Will – Instrument which provides that property not previously transferred into a revocable living trust is to be transferred at the death of the trustor.

Powers of Appointment – Power vested in an individual to make decisions affecting disposition on distribution of assets.

Power of Attorney – Formal instrument by which an agent is appointed.

Principal of Representation – Permits the descendants of a deceased beneficiary to receive the same share collectively that the deceased beneficiary would have taken if he had been living.

Probate – The process of proving a will.

Probate Court – Court established for the administration of the estates of decedents, and the control of the adoption and guardianship of minors.

Revocable Trust – A trust in which a contingent interest is given to another in which the trustee retains a present interest, ownership, and control.

Sprinkling Power – The power vested in a trustee to distribute income to others over time.

Trust – A right of property, real or personal, held by one party for the benefit of another.

Trustee – One appointed to manage a trust.

Unified Credit – The total credit provided by law, which is free of estate taxation (currently \$5,000,000.00) per individual.