" GOD BLESS AMERICA AND
ALL WHO DWELL WITHIN"

Understanding in Plain English
ESTATE PLANNING AND LIVING TRUSTS ©

***Rule of Thumb*:**

Living Trusts are Not just for the wealthy. If an asset is "in your name" when you pass over And has a value greater than $150,000 (One Hundred Fifty Thousand Dollars), it has to be probated. If it is probated, then the Probate Court will take between $10,000 to $30,000 Per Each $150,000 Valuation of Property. For example, if your house is worth $300,000, then you'll pay a Minimum of $30,000 for a Probate Official to tell your Heirs what the value of Your property is and to whom it should go. That's not $30,000 worth of Legal advice! Au contraire, if the asset is in your Living Trust Name when you pass over, then it's Not in Your Name. If it's in your Trust Name upon your passing over, then you will avoid the CA Probate Court – a $Billion-Dollar-a-Year-Business! With a living trust, then Everything You own goes to Your Heirs! That is precisely how it should be! Why do People go through Probate? Because Nobody Told Them About Living Trusts. Well, If you share this Info pamphlet, then we'll all know!

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A FEW STORIES OF HOW YOUR GOOD PLANS CAN GO WRONG

To avoid probate after she passed over, Edith, an elderly widow, decided to give her home to her daughter Susan. They had always gotten along well, and Susan assured her mother she would be able to live in the house for the rest of her life (life estate). The daughter even stated so in her Will, just in case anything happened to her first. Unfortunately, Susan did die in a car accident. Not long after, Edith was shocked when she received an eviction notice. As it turned out, Susan had made her husband joint owner of the house with her, and when Susan died, he became sole owner. He had never cared about Edith and decided to sell. Susan's Will didn't make any difference, because her share had transferred to her husband immediately upon her death. Mother was now homeless.

Over the years, John and his wife Eleanor had planned carefully, saved and invested wisely for their retirement. They made sure their Wills, which left everything to each other, were always up to date. They even had Trusts in their Wills for extra protection. Unfortunately, John developed Alzheimer's Disease. As his condition worsened, Eleanor needed to sell some of their investments. But John was no longer able to conduct business, and Eleanor soon learned she could not sign for him – only the Court could. It was hard enough dealing with John's situation, but now Eleanor also had to deal with the court. She didn't know the court would *stay* involved to "protect" John's share of the proceeds. She had to keep detailed records of everything – the court insisted upon approving *all* expenses *and* the sale of their jointly owned assets. When John died several years later, Eleanor found herself back in court again – this time to probate John's Will.

Claire was very lonely after Fred died, her husband of 40 years. To fill her time, Claire started taking ballroom dancing lessons. Her instructor, a much younger man, was very quick to provide her with the companionship she was missing. Claire, with a new sense of self-esteem, soon fell "head over heels". Fred and Claire's children were shocked when their mother announced she had married her instructor. But the real shock came seven months later when Claire died – and the children learned that their mother had placed everything in joint ownership with her new husband. As the new sole owner, the new husband decided to sell everything and leave town. Because their mother had made her new husband joint owner, the children had been completely disinherited. Everything Fred and Claire had built over the years, was gone.

When George and Betty moved to Florida, they gave their home in New York to their daughter Anne, a divorced mother of three. Anne later remarried and, as a wedding present to her new husband, she changed the title on the house from her name to both their names, as husband and wife. Not long after, Anne suddenly became ill and died. Her husband, now the sole owner, promptly booted the children (all teenagers) out of the house. George and Betty will undoubtedly have many sleepless nights and regrets over this situation.

When Edward and Beth were married, they both had children and assets from previous marriages. They had new Wills prepared, with each leaving their separate assets to their own children. When Edward died 10 years later, Beth's attorney advised her that, as a surviving spouse in that state, she was entitled to a percentage of all of Edward's assets – including the 300-acre farm that had been in his family for generations. Although she knew Edward had wanted the farm to go to his children, she felt that she and her children had a right to part of it. She decided to contest Edward's Will, prompting a bitter and expensive court battle. Eventually Beth won. But the farm had to be sold to pay the expenses. The closeness the family had developed during Edward's lifetime, had been destroyed.

INTRODUCTION

People want to "do the right thing" for themselves and their families. All too often though, their good intentions have tragic results. The really sad part is that the unhappy endings are often *avoidable*. If they had just known what could happen, chances are they would have done things differently.

What we're talking about is called *estate planning.* It's not just for "wealthy" or "old" people (whatever those are). It's something *you* need to do – regardless of your age, marital status or wealth – if you want to keep control of your assets

(your estate) and of decisions about your medical care when something happens to you. It's important to plan *now* while you can; because with estate planning, *no one gets a second chance.*

This booklet is important to you and your family because, in effect, it gives *you* the second chance these people mentioned above, didn't have. We'll look at six basic ways people "plan" their estates. (You're already using at least one of them now, even if you don't know it.) We'll explain what can happen when you use them and show you how one plan gives you far more control than the others. And we'll explain it all in clear, conversational English because we want your good intentions to have a happy ending.

Losing Control with JUST A WILL

Contrary to what you've probably heard (and been led to believe), a Will may not be the best plan for you and your family – primarily because a Will does not avoid probate when you die. All Wills – including those with Trusts in them – must be admitted to probate court before they can go into effect. Also, a Will provides no protection if you become physically or mentally incapacitated. In addition, it probably doesn't give you the control you think it does if you have a minor children or grandchildren.

Let's look at each of these situations and see what happens when you have a Will.

What is probate and why do we have to go through it in the first place?

Probate is the legal process through which the court makes sure that, when you die, your Will is legally valid, your debts are paid and your assets are distributed according to your Will. It is the *only legal way* to take your name off the title of an assets after you have passed over and put the new owner's name on.

Probate doesn't happen automatically. Someone, usually a relative or your executor, must petition the court for probate proceedings to begin. For example, when checks need to be written, or when an asset needs to be sold or transferred to a new owner.

What assets go through probate?

Not everything you own is automatically subject to probate. Jointly owned assets that transfer to the surviving owner and assets that have a valid beneficiary designation (like an insurance policy or pension funds) generally do not go through probate. But there can be some significant problems with both. You'll want to finish reading this booklet before you rely on them.

What's so bad about probate?

It can be expensive! A recent survey by AARP (American Association of Retired Persons) found that probate is Big Business. In fact, AARP estimates that probate costs could top $2 Billion a year -- $1.5 Billion *for attorneys*, and hundreds of millions more for bonding companies, appraisers and probate costs. Probate -- it's Big Business. In fact, an attorney was a probate referee in one of the J. Paul Getty Estates and his probate court-awarded fee – made him a Millionaire overnight thanks to someone else's money.

Probate Costs *must be paid* from your estate *before* your heirs get anything. It comes off the top.

Probate costs *must be paid* from your estate *before* your assets can be fully distributed to your heirs. They vary widely from state to state, but usually are estimated at 3-8% of an estate's *gross* value. Some states actually calculate probate costs on the total *gross* value of an estate – *before* debts are paid. So if your home is valued at $100,000 when you die, *probate costs* would be calculated *on the full* $100,000, even if the mortgage is $95,000!

Assets titled in just your name (and not titled in the name of your Living Trust) must go through probate before any assets can be distributed to your heirs.

Who gets most of this probate money? The *biggest expense* in probate is *legal and executor fees*. Some states have regulated (statutory) fee schedules for attorneys and executors. However, you recall the probate attorney who sat on the court bench as the probate referee and his statutory court fee made him a Millionaire overnight – thanks to someone else's money. Other states use what is called a "reasonable" fee system. The problem with that system is, there's no way to know the total cost until the process has been completed.

Your family has no privacy. Probate is a public process. Any "interested party" can find out details about your estate – including who the heirs are, what they will receive, their addresses, etc. This information is often used for leads by unscrupulous solicitors. If your estate goes through probate, some unscrupulous solicitors may call on your family – because you won't be thinking too clearly during your bereavement.

The following chart shows Probate Fees in California, Florida and New York *for just the attorney and executor,* which *doesn't include* bonding fees, appraisers fees, probate court costs, probate referee costs, will contests, publications, tax advice, tax returns and real estate transactions.

Estate Value	**Combined Fees for Attorney and Executor**		
	California	***Florida***	***New York***
$ 100,000	$ 6,300	$ 6,000	$ 10,000
$ 200,000	$ 10,300	$ 12,000	$ 18,000
$ 500,000	$ 22,300	$ 30,000	$ 36,000
$1,000,000	$ 42,300	$ 60,000	$ 63,000
$2,000,000	$ 62,300	$100,000	$113,000
$5,000,000	$122,300	$250,000	$263,000

Keeping Control with A REVOCABLE LIVING TRUST

The kind of Trust we are discussing in this booklet is called a *Revocable Living Trust*. (To keep things easy, we will often refer to it as a *Living Trust*, and sometimes simply as a *Trust*.)

What is a Revocable Living Trust? A Revocable Living Trust is a legal document that looks a lot like a Will. It includes A Revocable Living Trust is a legal document that looks a lot like a Will. It includes *your* instructions for what *you want to happen* to your assets when you pass over – just like a Will. *But unlike a Will*, a Living Trust avoids probate at death. It *also* prevents *the court* from controlling *your* assets if you become incapacitated. Ant it gives *you* (not the courts) control of the assets you leave to your minor children or grandchildren.

How does a Living Trust avoid probate and prevent court control during my incapacity? When you set up a Living Trust, you transfer your assets from your individual name to the name of your Trust, which *you* control – such as from "John and Mary Smith, Husband and Wife" to "The 2006 John and Mary Smith Family Trust". Technically, *you* no longer own anything – so there is nothing for *the courts* to control when you die or if you become incapacitated. The concept is very simple, but that is what keeps *you* and your family *out of the courts* – even if you own assets in other states.

Do I lose control of my assets that I put into my Living Trust? Absolutely not. You keep *full* control. You can do everything you could do before – including buying, selling, investing, etc. You can make changes or even cancel your Trust – that's why it's called a *Revocable* Living Trust. In fact, the Internal Revenue Service considers putting assets in a Revocable Living Trust to be a "*non-event* " because you can take them out at any time. *Nothing changes but the names on the titles.* And as you'll see in the next few pages, you'll actually *have more control* with your assets in a Living Trust than you do now.

How does a Living Trust work? When you set up a Living Trust, you become the Grantor – the person whose Trust it is. If you are married, you and your spouse can be Co-Grantors, or you can be Grantors of your own separate Trusts. *Only you* – the Grantor – *can make changes to your Trust*. That's how you keep control.

Does a Living Trust reduce my taxes? A Revocable Living Trust has no effect on your income taxes. Income taxes must be paid very year you receive income – even the year in which you die. However, a Living Trust can reduce, or depending on the size of your estate, even eliminate estate taxes.

What are estate taxes and who has to pay them? Estate taxes are different from, and in addition to, income taxes and probate fees. Depending on how much you own when you die, estate taxes must be paid *before* your assets can be fully distributed to your Beneficiaries. Federal estate taxes are expensive – in 2005, they start at 45% and quickly go up to 47% -- and they must be paid in cash, usually within nine months after you die. (Some states also have their own death/inheritance taxes). Because few estates have this kind of cash, assets often have to be liquidated.

Your estate will have to pay estate taxes if its net value when you die is more than the "exempt" amount set by Congress at that time. The chart below shows the current schedule for the amount of net assets you can own at your death *and not pay any estate taxes*. This is commonly called the "estate tax exemption".

Year of Death	Estate Tax Exemption via Living Trust
2004 and 2005	$1.5 million per person or spouse
2006, 2007 and 2008	$2 million per person or spouse
2009	$3.5 million per person or spouse
2010	Unlimited Exemption and repealed at end of 2010
2011, 2012, 2013, 2014	$1 million per person or per spouse

Some Estate Planning Consultants have said that the year 2010 was the year to "throw Momma from the train". LOL

How is the net value of my estate determined? To determine the *current* net value of your estate, add your assets, then subtract your debts. Include your home, business interests, bank accounts, investments, personal property, IRAs, retirement plans and death benefits from your life insurance. Keep in mind that estate taxes are based on the values *when you die*; you assets may appreciate in value between now and then.

What can I do about estate taxes? If you plan ahead, you can reduce or eliminate estate taxes. For example, if you are married, you can make sure you and your spouse use both our estate tax exemptions. *Unfortunately, most married couples leave everything to each other, which can be a tax trap.* Here's why. Let's say Bob and Sue have a combined net estate of $3 million and they both die in 2005. Bob dies first and leaves everything to Sue. Currently, if your spouse is a US citizen, you can leave him or her an unlimited amount when you die with no estate tax. So no estate tax is due when Bob dies. When Sue dies, her estate of $3 million uses her $1.5 million exemption. The tax bill on the remaining $1.5 million? $695,000! The problem leaving everything to your spouse--*you waste an exemption*!

If Bob and Sue plan ahead, they can use *both* their exemptions and pay *no* estate taxes. A tax-planning provision in their Living Trust splits their $3 million estate into *two (2) Trusts* of $1.5 million each (called an "A-B" Trust). When Bob dies, his Trust uses his $1.5 million exemption. When Sue dies, her Trust uses her $1.5 million exemption. This reduces their taxable estate to $0 – so the *full* $3 million estate can go to their Heirs. (Depending on where you live, your attorney may recommend starting with two separate Trusts instead of one common Trust as explained here.)

As the following chart shows, if you are married, planning ahead with a Living Trust can save thousands of dollars in estate taxes and probate fees. This same estate tax planning can also be done in a Will, but you would not avoid probate or enjoy the other benefits of a Living Trust.

Simple Will (Probated)				**Living Trust with Tax Planning**		
Estate Size w/Will	Estate Taxes* w/Will	Probate Fees** w/Will	Total w/Will	Estate Taxes w/Liv.Trust	Probate Fees w/Liv.Trust	Total w/Liv.Trust
$ 500,000	$0	$15,000	$ 15,000	$0	$0	$0
$1,000,000	$0	$30,000	$ 30,000	$0	$0	$0
$1,500,000	$0	$45,000	$ 45,000	$0	$0	$0
$2,000,000	$225,000	$60,000	$285,000	$0	$0	$0
$3,000,000	$695,000	$90,000	$785,000	$0	$0	$0

BENEFITS OF A LIVING TRUST:

- Avoids probate at death
- Avoids multiple probates if you own assets in more than one state
- Prevents court control of assets at incapacity
- Brings all your assets together under one plan
- Provides maximum privacy
- Quicker distribution of assets to Beneficiaries
- Assets can remain in Trust until Beneficiaries reach the age(s) you want them to inherit
- Can reduce or eliminate estate taxes
- Inexpensive, easy to set up and maintain
- Can be changed or cancelled at any time until your incapacity or death
- Difficult to contest
- Prevents court from controlling finances when minor children inherit
- Can protect dependents with special needs
- Prevents unintentional disinheriting and other problems with joint ownership
- Professional asset management if you use a Corporate Trustee
- Peace of mind

Is a Living Trust expensive? Not when compared to the costs and loss of control that come with probate at death and court interference at incapacity. How much you pay for your Living Trust will depend in part, on how complicated your plan is. Be sure to ask for an estimate in advance.

Only an Attorney or Estate Planning Consultant specializing in Living Trusts has the experience for valuable guidance and assist in the proper preparation of your Living Trust.

How long does it take to get a Living Trust? It should only take a few weeks to prepare the documents after you make the basic decisions. Then you'll need to change titles and beneficiary designations.

Are Living Trusts new? Not at all. They have been used effectively – for hundreds of years.

Why haven't Living Trusts been used more in the past? One reason may be that probate is Big Business – so *your* best interests may not have come first. Another reason is that estate planning is complicated, and many professionals have not had the necessary training and experience in this area. So, for years, only people who could afford the services of the top estate planning experts were given information about Trusts. Only in recent years has the general public become more knowledgeable about Living Trusts through seminars and publications such as this one. As more people learn about Living Trusts and want them, more estate planning professionals are learning how to do them.

Who should have a Living Trust? Do you own titled assets? Do you want to avoid probate when you die? Do you want to maintain your privacy? Do you want to avoid a conservatorship if you become incapacitated? Do you have minor children? Do you have minor grandchildren who will inherit from you? Do you have dependents with special needs? Do you want to control when your Beneficiaries will receive their inheritances? If you've answered "yes" to any of these questions, you should consider a Living Trust – regardless of your age, marital status, and wealth. If your parents are living, you may want *them* to consider a Living Trust, so you won't have to deal with the courts at *their* incapacity or death.