

## **Beware of Poorly Drafted Living Trust Documents**

The increased popularity of living trusts is causing some document drafters, whose primary concern is to profit at your expense, to produce and sell documents as if from a factory. Recent reports indicate that many families with living trusts are becoming victims of ineffective estate planning. What's worse is that errors are often not discovered until death, when it may be too late for families to correct them. Here's how you can help ensure that your living trust will operate as you intend. Sometimes referred to as a "revocable" trust, a living trust can ease the transition for those you leave behind. Not only does it eliminate the time and expense involved in probating or validating your will through court proceedings, but it also provides for the management and control of the trust's property if you are no longer able to do so, without the necessity of a guardianship proceeding.

Revocable trusts are clearly beneficial if properly drafted and funded. But how can you ensure that your family won't needlessly suffer the consequences of an unscrupulous document drafter?

### **Creating an Effective Living Trust**

To achieve your goals, your living trust must be carefully drafted and funded. You don't need to know all of the technical legal requirements or fully understand the complex tax issues for your trust to be effective. You can eliminate problems that would prevent your living trust from working simply by asking yourself the following questions:

1. Who drafted your living trust? Was the drafter an attorney who is licensed to practice law, and were the documents reviewed by an attorney who is familiar with the laws of trusts and estates? These laws are complex, but an experienced practitioner can help ensure an appropriate plan.
2. What experience does the document drafter have? While more experience is better, the quality of the experience is as important as quantity. You can assess this by asking for a curriculum vitae or by getting references, if possible.
3. Did you receive a clear explanation of how the living trust operates and what the language of the trust means? Complete understanding by all parties ensures that the documents meet your objectives. If the drafter can't clearly explain the concepts or the specific document provisions, seek the advice of someone who can.
4. How much information did the drafter have on you prior to drafting your document?
  - Did he or she take time to learn about your assets and liabilities, goals and special circumstances?
  - Did you have much direct contact with the drafter? If it was limited, can you be certain that all of your concerns have been addressed in the final document?
5. What information did you have before deciding that a living trust was right for your situation? For instance:

- Do you know when probate will be required? If so, are you aware of how complex or simple the process may be?
  - Are you aware of the possible advantages of probate?
  - How much information did you receive on alternatives? Even if the alternatives are not right for you, you should know the costs and benefits of each so you can make an informed decision.
  - Was information on alternatives presented in a fair and balanced manner, or were negative aspects emphasized? If a living trust is right for you, high pressure scare tactics are unnecessary.
6. Was the complexity of your situation addressed? For instance, assuming the full 2001 applicable gift and estate tax exclusion amount is available to you but the value of your estate exceeds \$675,000, your estate may be subject to federal estate tax. Extra caution is necessary when a taxable estate is involved, otherwise serious tax consequences could be the result.
7. Regardless of your estate's size, did your advisor consider how your assets are titled? The best estate plan crafted by the most experienced professional will be ineffective if your assets are titled improperly, such as being titled in joint tenancy.
8. What assets were placed into your living trust after execution? For a living trust to avoid a guardianship proceeding or the probate process, your assets (which would otherwise pass under your will) must be in the trust. Even if all assets can't be placed in the trust immediately, the drafter should have provided a mechanism, such as with a durable power of attorney, to transfer assets in the event of your disability.

### **The Benefits of A Second Opinion**

If any of the above questions are causing you to worry, set up an appointment with an attorney who is experienced in estate planning and probate matters today. He or she can review your current estate planning documents with your needs in mind, make sure they comply with the tax law, and may even help you minimize the potential taxes.

### **Does Your Trust Need a Checkup?**

How current is your living trust? Because tax laws are constantly changing, have your documents reviewed by your attorney if your document was either executed or last amended more than five years ago.