



## **ADVANTAGES OF A REVOCABLE LIVING TRUST**

The Revocable Living Trust is a substitute for a Will. Accordingly, just as in a Will, it contains an individual or a couple's personal planning decisions as to the disposition of their assets and the appointment of one or more individuals, or a financial institution, who will manage and supervise their assets during a lifetime incapacity, or at their death.

Wills can obtain the same personal planning objectives for the administration of an estate at death and provide for estate tax planning. What are the additional benefits that a Living Trust can provide an individual or couple?

### **PRIVACY BENEFIT**

A Will is required to be filed in the court of jurisdiction of the decedent. When a Will is filed, it then becomes a public document. In addition, an inventory of the assets owned by the decedent is filed. An individual or couple desirous of maintaining privacy as to their personal plans for each other and their family, or desirous of keeping the size of their accumulated wealth private, will utilize a Living Trust. The Living Trust provides this privacy benefit.

### **PROBATE AVOIDANCE BENEFIT**

Probate is the process of the court supervising the administration of the assets of a decedent. Though there are certain probate proceedings that attempt to expedite the administration process, the process is not avoided as it is with a Living Trust. In addition, Wisconsin probate courts impose a \$2 per \$1,000 filing fee on the inventory filed with the court so as to reimburse the court for the cost it expends in its oversight responsibility. For example, a \$1,000,000 probate estate would result in a \$2,000 filing fee with the probate court. A Living Trust avoids the probate proceedings which will result in less time for administration and eliminates the probate filing fee.

### **OUT-OF-STATE REAL ESTATE BENEFIT**

Some individuals or couples own real estate not located in the State of Wisconsin. This real estate is subject to the probate proceedings of the non-Wisconsin jurisdiction. This requires obtaining assistance in an out-of-state jurisdiction and the attendant costs related to that assistance and the foreign jurisdiction filing fees. A Living Trust avoids these administrative procedures and costs.

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## **OUT-OF-STATE AGENTS BENEFIT**

Many times, the individual selected as Personal Representative to assist in the administration of the estate after death is not a resident of Wisconsin. If a Will is utilized, the probate court will require the posting of a surety bond based on the value of the estate since Wisconsin courts do not have jurisdiction over a non-Wisconsin resident. Use of a Living Trust eliminates the cost associated with this bond.

## **TRUST'S BENEFIT**

Often, the personal planning decisions will include the creation of a trust for children and grandchildren. In addition, when estate tax planning is a component of the planning decisions, a Trust may be created for the surviving spouse. Trusts created by a Will continue to be subject to court jurisdiction and require an annual accounting with the court. Though the information is readily available, this is an additional annual responsibility to make such an annual accounting with the probate court. Trusts created through the Living Trust are not subject to probate and eliminate those annual court reporting requirements.

## **CHALLENGE BENEFIT**

There are times when it is desirable to minimize, or make more difficult, the ability of someone to challenge your planning decisions. When a Will is utilized, all heirs who would have otherwise received property from the decedent will receive a notice that the Will has been filed. This notice will advise the individual of the date and time in which the initial hearing will be conducted. If the individual feels that their exclusion or the type of provision provided for them was a result of undue influence or because of the incapacity of the decedent when signing the Will, the Will provides for direct access to the court system for purposes of filing that objection.

When a Living Trust is used, there is no requirement that an heir receive any notice or a receipt of the Trust Agreement. If the heir believes that their lack of participation in the estate was a result of incapacity or undue influence, the heir must take action independently to create a forum for this allegation. This requires the heir to start a legal proceeding as opposed to having easy access to the probate court to raise the objection.

## **EMOTIONAL BENEFIT**

Whether a Will or a Living Trust, the reading of the document occurs at a time when a family tragedy has occurred, i.e., the death of a loved one. In these times, though it is obvious that certain administrative matters need to be accomplished, many individuals prefer that this be accomplished in a private and expedient manner, as opposed to what may be perceived as jumping through bureaucratic hoops to obtain the same result.

## **HOW TO ACHIEVE BENEFITS**

The advantages of a Living Trust are obtained by the retitling all of the individual or couples property. For example, Deeds to real estate would transfer title into the names of the individual or couple as trustees of the Living Trust. Likewise, investments, bank accounts, etc. would be retitled. Certain assets are not retitled such as annuities and retirement plans, but their beneficiary designations are changed to provide for distributions generally with the primary beneficiary being the spouse, followed by the Living Trust. Whether a Will or Living Trust is used, special beneficiary designations need to be considered to insure the maximum income tax advantages by “stretching” the distributions over the lifetime of the beneficiary.

## **MARITAL PROPERTY AGREEMENT**

In Wisconsin, a couple may utilize a Marital Property Agreement to transfer assets at death which have not been titled in the name of the Living Trust. The specific provisions of the Marital Property Agreement allow for omitted assets to be transferred directly to the Trust without probate proceedings. Though a probate proceeding is not utilized, a petition to the court is required identifying the omitted assets and its value with the attendant filing fee of \$2 per \$1,000 of the omitted assets value. This Marital Property Agreement provision should be viewed as a “broom” to sweep the assets into the Living Trust as opposed to a shovel. For omitted non-Wisconsin assets, Living Trust documentation would include a Will to transfer omitted out of state property. Unfortunately, when a Will is utilized to transfer out of state property, it is subject to the probate proceedings of the non-Wisconsin jurisdiction.

## **ALTERNATIVES**

Many times the advantages of a Living Trust can be obtained with other planning techniques. For example, a modest estate between a couple may choose to own all of their property as survivorship marital property (formerly known as joint tenancy with the right of survivorship). This avoids probate on the death of the first spouse when joined with naming the surviving spouse as the beneficiary of life insurance, retirement plans and annuities. This will not eliminate probate proceedings on the death of the survivor, but many couples view avoidance of probate upon the first death as sufficient initial planning for their purposes.

In addition, modest estates can consider the use of transfer on death (TOD) and payment on death (POD) beneficiary designations on their assets so as to have those assets avoid probate and be distributed to the beneficiaries. These types of ownership techniques need to be carefully reviewed to insure that if one or more of the beneficiaries predeceases, that his or her share is distributed in accordance with the decedent's wish. For example, if a mother were to name two (2) daughters as the named beneficiaries under a TOD, and one daughter predeceases, does the surviving daughter receive the entire account or does the financial institution form allow for the decedent's daughter's children to receive her share. Furthermore, when there is a desire to protect minors from receiving wealth too soon, the minor children of the decedent daughter would receive their share outright and only a Will or a Living Trust could contain the provisions for a trust for that minor child.

## **SUMMARY**

Whether to use a Will as the main planning document or a Living Trust is a decision that should be made only after a review of an individual or couple's specific planning objectives, the size of their estate, and to the extent that they perceive the benefits of the Living Trust as real benefits to them.

All individuals, regardless of the choice of the Will or Living Trust should have in place, a Durable Power of Attorney so as to provide for the administration of their financial affairs during a lifetime incapacity and a Health Care Power of Attorney/Living Will to provide for the designation of an agent to make health care decisions for the individual during a lifetime incapacity.