



MULDER LAW GROUP, P.C.

WILL / LIVING TRUST CONTROVERSY

USING A WILL AND POWER OF ATTORNEY OR A LIVING TRUST TO PROVIDE FOR THE MANAGEMENT AND DISPOSITION OF YOUR ASSETS

IMPORTANT FACTS you should know prior to deciding to use a Will or Living Trust as your Estate Planning device.

Living Trust

- A. The Revocable Grantor Trust, popularly known as the Living Trust is fast becoming the vehicle of choice for Americans who want to maximize available advantages for structuring their Estate.
- B. With a Living Trust, the title to your property is transferred to the trust, so that your beneficiaries can easily receive your assets, and will not have to go through Probate Court proceedings. Probate is completely eliminated, if all of your “probate” assets are successfully transferred to the trust prior to death.
- C. Living Trust is a private document, the size and distribution of your estate remains confidential and not a matter of public record.
- D. A Living Trust prevents a will contest. In Probate Court, a disgruntled beneficiary can easily contest a will. Since you are dead, you can’t tell a jury why you disinherited someone. With a Living Trust and some advanced planning, your wishes are carried out without interference.
- E. A Living Trust avoids joint tenancy problems. Joint Tenancy is a method of avoiding Probate, where upon the death of one co-owner, the survivor becomes the full owner of the property. If your child or other loved one is made a Joint Tenant with you:
 - 1. As an owner, your child or other loved one has the power to interfere with your decision to sell or refinance the property.
 - 2. If your child or other loved one should go through a divorce, the other spouse can claim an interest in the property.

3. If your child or other loved one should owe taxes, the tax collector may take your property to satisfy their tax obligation.
 4. If your child or other loved one should be found liable in any lawsuit, your property may be sold to pay the judgment.
 5. If you have more than one child or beneficiary and only name one joint owner, your other children or loved ones may not receive what you had planned for them.
- F. With a properly funded Living Trust, probate is entirely avoided and there is no exposure of your assets to the debts or liabilities of your child or other loved one.
- G. A Living Trust avoids a Guardianship. If you ever become incapacitated, the Probate Court will appoint a Guardian to manage your property, and your estate will be required to pay attorney fees, court fees and costs for the Guardianship each year. With a Living Trust, your Trustee can manage your property if you are unable to handle your affairs, and there are no court fees, attorney fees or court involvement.
- H. All assets which are to be owned by the Living Trust must be transferred currently into the Living Trust. Real property must be transferred into the name of the Living Trust and if the transfer involves real estate, other than a personal residence, then generally all lien holders (mortgagees) must consent to the transfer. Likewise, all bank accounts must be reopened in the name of the Living Trust, all partnership and stock interests must be transferred, and each of these transfers typically requires special documentation by the transfer agent.
- I. To summarize, the transfer of assets to the Living Trust must be carefully and properly documented, and dealing with third parties can be difficult at times. The Living Trust, because of the transfer documents and its operation as a viable entity during the grantor's lifetime, make it more expensive to draft and implement than a Will.

Will

- A. All Wills must be probated. Since probate only affects assets which you own at the time of your death, assets placed in a Living Trust are not owned by you, therefore, there is no probate on those assets. The legal fees just to probate in Texas will generally cost about \$2,000 to \$4,000 for each spouse and will take between 9 months to 2 years (absent litigation or contested claims) to complete. This fee does not include any distributions of the estate, filings of estate tax returns, state inheritance tax returns or otherwise handling tax matters. It is just the average cost to deal with the Texas Probate Courts. Dealing with the probate court system and bureaucracy, however, can be a lengthy and frustrating experience.

- B. Probate costs are generally much higher in most other states. Some states have a percentage of the estate charge that can be as high as 5-6%. If you are sure you will die a Texas resident, don't worry. But, if you possibly may move to another state, you may be advised to adopt a Living Trust plan there, which would mean that you would have paid for your estate planning twice. A Texas Living Trust is just as valid in Florida or any other state as it is in Texas and will avoid probate in any state if properly funded as described above.
- C. A Will only takes effect upon the death of the person, therefore, nothing has to be transferred or administered currently.
- D. Initially a Living Trust has greater costs with respect to its formation and implementation than a Will, but those costs are usually less than the amount saved through the avoidance of probate costs at the time the client dies. Additionally, if confidentiality and continuity of ownership are important objectives, then the Living Trust is the document of choice. Conversely, if confidentiality and continuity are not important objectives, and if the initial cost and potential administration of a Living Trust outweigh the potential savings through the avoidance of probate, then a Will should be used.

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