

ISSUE #16
March 2008



MATSUMURA LAW FIRM

Wills, Trusts, Probate
And Estate Planning

Michele Matsumura,
Attorney, LL.M. (tax)

How Do Living Trusts Work? Part II

Preserve Management Control of Your Assets and Avoid Probate

In my last newsletter, I explained that a trust is a contract, and by signing a trust, you create a “basket” into which you place your assets for ongoing managerial control. Even though creating a trust seems like a lot of work, trusts are very common because of their enormous benefits. A revocable living trust is the only way to preserve your intent and ensure probate avoidance.

to your beneficiaries. If any beneficiary is too young to manage money, or is financially irresponsible, your trust can specify that the beneficiary’s share be held in trust until he or she reaches a certain age or until the trustee believes that the beneficiary can handle the money wisely. In this way, you can provide for continuing management of your assets after your passing to preserve the assets for your beneficiaries. Additionally, your trust can provide greater asset protection for your beneficiaries than you can provide for yourself. Your trust can contain “spendthrift” provisions so that your beneficiaries’ creditors cannot attach trust property to satisfy beneficiaries’ rightful debts.

A Will Requires Probate. Only A Trust Can Preserve Your Intent and Ensure Probate Avoidance

Continuity of Asset Management In The Event of Your Incapacity.

Remember, your trust document is the handbook for management of your assets. While you are living and have mental capacity, you will serve as trustee of your own trust and manage your assets. In addition, if you become incapacitated, you have named your successor trustee in your the trust document and this successor trustee will manage your assets per your trust instructions. The trust can avoid the expense and publicity of a conservatorship for your assets and provide seamless transfer of asset management. In all events, your assets will continue to be managed as you wish, since you have written your goals in your trust document.

Continuity of Management In The Event of Your Passing.

Your trust is operative both during your lifetime and after you pass away. Upon your passing, your selected successor trustee will carry out any terms for distribution of your assets

Trusts Avoid Probate By Providing “Endless” Life.

Probate is a transfer process of removing a deceased person’s name from an asset and placing a living person on title. A Will is a letter to the probate court instructing the transfer of assets. As a result, a Will requires probate. A trust is an entity which basically lives “forever”. Your major assets will be owned by your trust, and the trust does not die. As a result, even if you pass away, title to your assets is not affected. The trust continues to own the assets, and your trustee will be able to manage and distribute your assets as you specify in your trust document. In this way, a trust can ensure that your assets will never need a probate. If a transfer of assets is required from your trust, you have your successor trustee to make the transfer. Avoiding probate can benefit your family greatly in several ways.

(continued on reverse)

5674 Stoneridge Drive
Suite 202
Pleasanton, CA 94588
(next to the courthouse)

Tel | 925.218.8984
Fax | 925.218.2372

MATSUMURA LAW FIRM

Wills, Trusts, Probate
And Estate Planning



Michele Matsumura,
Attorney, LL.M. (tax)

5674 Stoneridge Drive
Suite 202
Pleasanton, CA 94588
(next to the courthouse)

Tel | 925.218.8984
Fax | 925.218.2372

A Trust Will Avoid Probate Publicity, Time and Costs (continued)

Probate Takes Assets Away From Your Family. The cost of probate is calculated upon the gross value of assets being probated. Probate can cost about 8% to 10% of the gross probate assets. Therefore, a home with a gross value of \$1,000,000 can cost more than \$50,000 to probate. Keep in mind that the calculation ignores all debts, so the home can be fully leveraged with debt, and the probate costs will be the same. On the other hand, the cost of establishing your trust is a fraction of probate costs.

who will have legal authority to manage the asset. However, it can take months after a person passes away to get a court-appointed executor. In the meantime, a child may need to pay mortgages on a deceased individual's home with the child's personal funds because the deceased's bank accounts are "frozen". Debt payments can create financial hardships on a child. A trust avoids this situation. If bank accounts are owned by a trust, when an individual passes away, the successor trustee becomes the individual who can legally manage assets. Rather than months, the waiting time to add the

A Trust Can Provide Your Children With Thousands of Dollars in Saved Court Costs



Remember, if your gross estate (with a home) is \$100,000 or more, you will be subject to probate unless you have a trust. You do not need to be wealthy to need a trust.

successor trustee is the time it takes to obtain a death certificate for the deceased individual.

A Trust Saves You From Potential Multiple Probates. Additionally, if you own real property in more than one state, it is especially critical to have a trust. If you have multiple properties and only a will, each parcel of real property must be probated in its home state. With a trust, all of your real property can be handled without any court intervention in your state of residence.

A Trust Can Minimize Exposure to Estate Taxes. Even if you currently are not subject to estate taxes, the estate tax laws are man-made and can change. In the event that a change occurs to expose you to estate tax liability—the estate tax rate is currently 45%, your trust can be drafted to provide a "safety mechanism" to reduce this exposure as much as possible.

A Trust Avoids "Frozen" Assets in A Probate. If assets are owned in an individual's name and not in a trust, when the individual owner passes away, no living person is left who can manage the asset. As a result, the asset is "frozen" until the probate court can appoint an executor

Other Benefits. Your trust also never needs to be recorded anywhere, so its provisions are private, thereby protecting it from creditors and trust contestants. Your trust can also be coordinated with business succession planning to be sure that a family business can be kept solvent and in the family. Any current "work" and cost to set up a trust is heavily outweighed by the financial and emotional benefits afforded by this flexible estate planning document. ♦

(next column above)

About Me & My Practice

I have practiced exclusively in the area of estate planning, probate and trust administration for approximately ten years.

In my non-work hours, I support Cal athletics, the SF Giants, the Sacramento Kings, and play tennis! ☺

Next Issue:
What Are Pet Trusts?