



(A 501(c)(3) Non-Profit Corporation)

ESTATE PLANNING FACTS

[What is a Will?](#)

A Will is a legal document declaring how an estate is to be distributed after death. The Will states who the executor is and outlines powers so he or she can administer the Will. The Will also designates a guardian for minor children if there is no surviving parent. **When a person dies, if their estate is worth over \$75,000, it must go through Probate.**

[Are You Concerned About Probate? If Not You Should Be!](#)

When Robert Smith's father died he left his home, business, a mountain cabin and other assets to his son through a Will. The Will had to be probated, a process that took over two years and cost the estate a significant amount of money. In the meantime, because the assets were frozen in Probate, the business went defunct.

[What is Probate?](#)

Probate at death is the legal process of administering an estate upon your passing. It involves demonstrating that a Will is valid, cataloging the belongings of the deceased, payment of debts and taxes, transferring titles on assets, and distributing the assets to the beneficiaries.

Years ago the probate process was conceived as a systematic way of transferring the property of a deceased person to his or her heirs. It was designed to protect the heirs. Today it has become a legal nightmare for families with lawyers, administrators, clerks, guardians, appraisers and bonding companies all getting a share of the estate.

If you die without a Will the local Court will appoint an administrator who will distribute your estate. The Court will determine who the beneficiaries are and the Court will determine guardianship for your minor children.

Disadvantages of Probate

- * Expensive: In most states, fees are set by law as a percentage of the gross estate. Attorney fees for administering a Will through Probate may range from 5% to 10% of your estate. If the estate is worth \$100,000, it may cost your estate between \$5,000 and \$10,000 in attorney fees.
- * Public: Probate proceedings are a matter of public record therefore, anyone can find out the size of your estate. Often unscrupulous people get the records from Probate and make a living preying on the grief-stricken.
- * Lengthy: On average it can take one to two years to settle an estate, in the meantime, for the most part, the estate is “frozen” to the beneficiaries.
- * Traumatic: Probate proceedings cause loved ones undue grief dealing laboriously with the affairs of the estate.
- * Out-of-State Probate: Probate can occur in every state where Real Estate is owned.
- * Probate is Particularly Harsh on a Business: Most businesses come to a halt because of the frozen assets.

What is Living Probate?

Living Probate occurs when you become incapacitated and you do not have the appropriate Powers of Attorney (Medical and Financial) documents set up for your family. Without these documents your family will have to petition the court to have a family member appointed as your Medical and or Financial Power of Attorney. The Court will make the decision on who will be the Power of Attorney not you. The family will have to hire an attorney to petition the court which will cost money and time.

A Revocable Living Trust Portfolio Avoids Living and Death Probate

Many people who wish to spare their loved ones the delay and expense of Probate are looking to the Revocable Living Trust—a legal device that allows you to leave your property to your heirs without having to go through the Probate Court thus making the funds available for distribution immediately after your death. **A Revocable Living Trust is a legal instrument used to hold title to assets such as real estate, stocks, bonds, bank accounts etc.**

How Does a Revocable Living Trust Work?

When you create a Revocable Living Trust you usually name yourself as the Trustee. By designating yourself as Trustee you have complete control over the assets you transfer into the Trust. You can spend, save, invest or give away your assets. You can revoke or modify the trust agreement at any time without restrictions, thus, the Revocable Living Trust allows you to manage your property during your lifetime and appoint whomever you choose to manage the trust upon your death. At that time the successor trustee transfers ownership of the trust property to the people you wish it to go to without expense, delay or publicity.

Example: Had Robert Smith's father had a Revocable Living Trust, with his son as successor trustee and beneficiary, when his father died, Robert, with the authority granted by the Trust document, could have, quickly and easily, transferred ownership of the assets to himself, thus saving time, expense and the loss of the family business.

Advantages of a Revocable Living Trust

- * Avoids the expense, delay and publicity of Probate

- * Avoids being placed under a court-appointed Guardian if you physically or mentally handicapped during your life and cannot manage your affairs. A Revocable Living Trust allows you to avoid the humiliating, lengthy and expensive Conservatorship proceedings. (A Conservator and Guardian can be appointed in the Revocable Living Trust.)

- * A Revocable Living Trust allows you to manage your assets while you are living and restrict how your estate is managed and distributed after your death. Your children can be provided for through your Trust after your death by turning over assets to them at any age you choose.

- * Your spouse and your children from a previous marriage can be provided for fairly under the terms of the Revocable Living Trust.

- * A Revocable Living Trust is difficult to challenge.

A disgruntled heir would have to hire an attorney and file a civil suit. Since the assets of the Trust are not frozen, the assets may be distributed and the Trust dissolved long before the disgruntled heir had a chance to act. If that were the case he would, then, have to sue each beneficiary separately.

JOINT TENANCY: A Poor Substitute for a Revocable Living Trust

What is Joint Tenancy? Joint Tenancy means that, at least, two people hold title to an asset with Rights to Survivorship. Therefore, if one of the Joint Tenants dies the surviving Joint Tenant receives the property without Probate. If a husband and wife own assets as Joint Tenants there will be no Probate on the first spouse to die but **there will** be Probate on the second death.

There are disadvantages to Joint Tenancy. First, Joint Tenancy can create a large capital gains tax liability for the surviving spouse. Second, The individual loses control of the property. It cannot be sold without the consent of the other Joint Tenants and each is responsible for the debts and taxes. Third, if one Joint Tenant is sued the entire property is in jeopardy.

A Revocable Living Trust and TAXES

* A Revocable Living Trust has no effect on your **Income** taxes. There are no advantages or disadvantages. As Trustee you continue to report all Trust transactions on your regular Income Tax Return.

* The Federal Government has given every person an exemption of 5 million dollars (2012) **for Estate Tax** purposes. If your estate is less than that at the time of your death there will be no Federal Estate Taxes, however, anything over 5 million dollars(single person) or 10 million dollars(married couple) will be taxed at the horrendous rate of between 37% and 55%. (By the way, all assets are included in the \$5,000,000 including the face value of life insurance policies.)

However, **there is a way that the Federal Estate Taxes can be eliminated or substantially reduced** by holding assets in a Revocable Living Trust rather than Joint Tenancy with Rights of Survivorship by using an "A-B" LIVING TRUST.

If a couple has an A—B Living Trust, they can pass on up to 10 million dollars tax-free to their children. Using this method, each trust can use the full 5 million dollar Federal Estate Tax exemption. The surviving spouse can use the income for life and also have the right to invade the principal of the other Trust if necessary. When the second spouse dies, both trusts go to the heirs. According to a tax attorney, without the A-B Trust the heirs would pay approximately 2.5 million dollars in Federal Taxes on the 10 million dollar estate.

[Do You Need a Revocable Living Trust if Your Estate is Worth Less Than \\$5 Million?](#)

YES, do not be lured into false security if your estate is worth less than the 5 million dollar exemption. There is still a need for a Revocable Living Trust.

Remember, Probate and estate taxes are entirely different from one another. Your estate would still need to be probated assuming it was valued at \$75,000 or more.

Remember too, you would still need court supervision for Conservatorship or Guardianship if you were to become disabled during your lifetime.

With a Revocable Living Trust you can leave your family everything you own, be in control of your assets during your lifetime and enjoy peace of mind.

[A Complete ESTATE PLANNING PORTFOLIO Should Contain These Documents](#)

- * **Revocable Living Trust:** Avoids Probate and Conservatorship; reduces Estate Taxes
- * **Certificate of Trust:** Summary of the Trust for use in dealing with Banks, Brokers, Insurance Companies, etc., if required
- * **Pour-Over Will:** Transfers any assets into the Trust, at the time of death, that have not been titled into the Trust
- * **Living Will:** A declaration stating your wishes in regards to life support, if you have a terminal illness or are in a permanent vegetative state and there is no chance of recovery
- * **Medical Power-of-Attorney:** A document naming someone to make medical decisions in your behalf if you cannot make decisions for yourself.
- * **Durable General Power-of-Attorney:** It authorizes the person you designate to make financial decisions for you in the event you cannot make them for yourself.
- * **Deed Transfer Documents:** The documents necessary to transfer your real estate assets into the Trust
- * **Trust Funding Instructions:** Instructions on how to fund all assets into your Trust.