A Special Report on . . .

ADVANTAGES OF A LIVING TRUST

You are important to your family. Today, while you are alive and well, you can provide for and care for your loved ones. But who will manage your finances for you if you become disabled? If you pass away, how will you provide for the continued support and care of your family, for family expenses upon your death, for the continuation of a family business, for college educations, etc.? Who will receive your assets and how much should they get? Should they receive the assets outright or will they require someone to manage the assets for them? Who will manage your assets to carry out your wishes and maximize the inheritance to your loved ones? To adequately protect you and your family in the event of disability or death, it is important to have a well thought out and comprehensive plan for the management of your financial affairs in the event of your disability, or for the distribution of your assets in the event of your death – an *estate plan*. A trust can serve as an important element of any estate plan.

You have probably heard of a *living trust* or a *revocable living trust*. Because of the powerful advantages and flexibility of a trust, in recent years trusts have become popular features of well planned estates. A trust is a legal arrangement where one party gives property to another to be held for the benefit of themselves or others. A trust is a legal relationship between three parties: the person who places assets in the trust (the *settlor* or *grantor*), the person who manages and administers the assets (the *trustee*), and the persons who benefit from the trust (the *beneficiaries*). A *living* trust is a trust created during your lifetime. A *revocable* trust can be changed, amended or cancelled at any time. Trusts are established for many reasons and by persons of all income levels. Discussed below are some of the advantages and features of a living trust.

● A Living Trust Avoids Probate

It seems that everyone that you talk to has their own "horror story" about probate. Stories about long delays, huge attorney fee bills, a never ending stream of paperwork, estates dragging on for years before the heirs receive their money, etc. In contrast to this popular view, probate has been streamlined in recent years and many of the alleged abuses have diminished. Gone are the days of endless delays; the Michigan Estates and Protected Individuals Code sets general time deadlines to complete probate and the county probate courts do some monitoring for compliance with these deadlines. The old fee schedules for the executor and his attorney, where each would also get a percentage of the estate regardless of the actual time spent, are no longer permitted. Generally the executor and the attorney are paid an hourly rate much as you would pay any professional.

Still, it cannot be denied that even with all the improvements probate still involves time, loss of privacy, and unnecessary costs. Even if you have a Last Will and Testament, your assets still must pass through probate before reaching your heirs. A living trust avoids probate. Since your assets are held by the trust, the assets do not have to pass through probate to reach your heirs but rather pass according to the instructions you have dictated in your trust agreement.

- **A Living Trust Keeps Your Estate Private**

Probate also involves a loss of privacy. In probate, your Last Will and Testament are filed with the probate court and become a public record. Any member of the public is entitled to go to the probate court and pull your file, read your Will, and even make a copy of it! Probate procedure also requires that in some cases an inventory (a listing of all of your assets and their value) be filed. Thus, your complete estate becomes a public record and anyone – a family member, a disgruntled heir, a neighbor – can review and copy it. Since there is no probate with a living trust, the terms of your disposition plan and the nature and value of your assets are kept private. No one has to know the terms of your trust or the value of your assets except you and your successor trustee. This is not to say that you have to keep family members in the dark, but simply that the choice is yours as to which people have how much information. There is no forced public disclosure.

- **A Living Trust Avoids the Delays of Probate**

Unless your estate qualifies as "small estate" (less than $18,000), your estate must remain open, by law, a minimum of 5 months. While the estate is supposed to be closed within 12 months, the probate court does not review the progress of the estate until 13 months have passed and the probate courts are very liberal about granting extensions of time to close the estate. With a trust, there are no required waiting periods or other time deadlines as in probate. The distribution instructions in your trust agreement can be carried out without delay. Distribution could even be made within a matter of days.

- **A Living Trust Saves Attorney Fees**

Even with the streamlining of the probate process current estimates are that probate will cost between 3% and 5% of your estate. Most of this cost is attorney fees. With a living trust, while there is an initial cost in attorney fees to establish a trust, and you may need an attorney to prepare the paperwork for the transfers at the time of distribution, these expenses will be far less than the costs of probate. For example, assume a modest estate of $300,000. The cost of probate, at 3% to 5%, would be $9,000 to $15,000. At our Firm, the current fee to prepare a trust agreement is $1,500. This is a substantial savings over the cost of probate. And, of course, with a larger estate the cost savings is even more dramatic.

- **A Living Trust Can Save Estate Taxes**

When you pass away, all of your assets, everything that you own or have an ownership interest in, regardless of whether the asset must go through probate, is subject to the federal estate tax. Fortunately, thanks to what is known as the unified credit, currently the first $2,000,000 of assets is exempt from tax. [Note: under the Tax Act of 2001, the amount of the unified credit will increase on a bi-annual basis.] This means that if your total assets are $2,000,000 or less, there is no federal estate tax. If your estate is over $2,000,000 and you are married, with a properly drafted living trust you can double the unified credit so that $4,000,000 of assets are exempt from federal estate tax. This can result in a substantial savings for a married couple because the federal estate tax rate starts at 41% and escalates to 50%. For a couple with an estate of $2,500,000 in 2006, the savings would be $235,000.

- **A Living Trust Allows You to Control Distribution**

When assets pass to a beneficiary through probate, whether or not there is a Will, those assets become the property of the beneficiary and may be saved – or spent – as the beneficiary wishes. You have no control over how or when the beneficiary spends the money. With a living trust, however, you can if you wish control both the timing of the distribution to the beneficiary and specify the uses the beneficiary may make of the money. These limitations can apply for as long as you specify or under any conditions that you specify, even long after your death. While this power to control distribution is sometimes denigrated as "reaching beyond the grave," the alternative is certainly worse and you are doing nothing more than exercising your right to dispose of your property as you wish.

This power of disposition is especially important in situations where the potential beneficiaries are minor children, developmentally disabled persons or spendthrifts. A living trust is also frequently used by parties in second marriages. The power and flexibility of a living trust permits to you to design a disposition plan that will fit your particular circumstances and satisfy your individual wishes for the disposition of your estate. For example, with a living trust monies can be held in trust for your children until any age that you choose when you feel the children will be responsible enough to handle substantial monies. If the child is developmentally disabled or a spendthrift, funds can be retained in trust for their lifetime. Without a trust, the child receives the assets at age 18 regardless of their condition or maturity level. With a trust, monies can be set aside and earmarked for special purposes, such as to pay for a college education, finance a business or profession, provide the down payment for a home, etc. Without a trust your child receives the funds outright and can do whatever he or she wishes with no controls or stipulations. All of this, of course, applies to other beneficiaries as well, such as grandchildren, great grandchildren, nieces and nephews, etc. Living trusts are also frequently used in second marriage situations. Without the disposition control provided by a trust, it is possible, depending upon the order of death, that the second spouse, or even the second spouse's children by the first marriage could end up with most or all of the assets, excluding the deceased spouse's children from the first marriage and even excluding the children of the second marriage. Note: it is possible to obtain this disposition control by having the provisions of a trust included in your Last Will and Testament (known as a *testamentary trust*); however, the other advantages discussed, such as probate avoidance, are available only with a living trust. A living trust is an extremely flexible and powerful tool to plan the disposition of your estate.

- **A Living Trust Protects You if You Become Disabled**

With a living trust, should you be unable to manage your finances or pay your bills due to illness, disease or accident, your trust will provide the necessary protection. Your successor trustee, the person you have chosen to administer the trust if you are unable, will step in and manage the trust and its assets, pay your medical expenses, maintain your home, provide for any dependents, etc. while you are disabled. Without a living trust, should a disability occur your family members will have to petition the probate court to have a conservator (a guardian over your assets) appointed for you. This procedure can take a month or more, and could cost between $500 and $1,000 for attorney fees. In the meantime, while the petition is pending there is no one who can handle your finances for you, take care of paying bills, etc. While the probate court is likely to appoint one of your family members as your conservator, it may not be the particular person that you would have chosen of your own free will. And that is if there is no dispute! If there is a dispute over who should be conservator – and sometimes children will fight over who should be mom's or dad's conservator –

one of two things will happen. Either the probate court will be required to hold a trial to resolve the dispute which will cost more money and waste more valuable time, or some probate courts, rather than resolve the dispute, will simply appoint some third party of the court's own choosing as the conservator. Thus, you could end up with a complete stranger as your conservator! Remember too that probate court proceedings are public proceedings – the files and records are available to anyone, and court hearings are open to the public. Simply by having a living trust, all of this delay, expense and publicity can be avoided and you will be assured of having the person of your choosing as your money manager.

- **Who should have a Living Trust?**

Do you own assets? Do you want to avoid probate when you die? Do you want to maintain your privacy? Do you want to avoid probate court involvement if you become incapacitated? Do you have minor children? Are you in a second marriage situation? Do you have minor grandchildren who will inherit from you? Do you have dependents with special needs? Do you want to control when your beneficiaries will receive their inheritances? If you answer "yes" to any of these questions, you should consider a living trust – regardless of your age, marital status, and wealth. And if your parents are living, you may want them to consider one so you will not have to deal with the probate court at their incapacity or death.

You have taken an important first step by finding out about living trusts. And that is not an easy first step for many people. After all, none of us likes to think about our own mortality, or even the chance of becoming incapacitated. Which is exactly why so many families are caught off guard and unprepared when incapacity or death strikes. Do not wait until it is too late for you and your family – set up a living trust now while you are able to act. A living trust is one of the most thoughtful and considerate gifts you can give to those you love. Because, remember – with estate planning, you do not get a second chance!

This Report provides only a general description of the matters discussed. You must consult legal counsel to obtain individualized legal advice regarding further details and the specifics of your particular situation. We are glad to answer your questions or discuss your situation with you in detail.

For a confidential consultation, contact us at:

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