UNDERSTANDING

ESTATE PLANNING

Presented by

The Law Offices of Gose and Lechman
A Law Corporation

Camarillo Office

1200 Paseo Camarillo, Suite 295
Camarillo, CA 93010
(805) 389-7374 (Voice)
(805) 389-7375 (Fax)

LAW OFFICES OF
GOSE AND LECHMAN
A Law Corporation
1200 Paseo Camarillo, Suite 295
Camarillo, California 93010
TELEPHONE (805) 389-7374
FAX (805) 389-7375
WEBSITE – GLL-LAW.COM

Gregory R. Gose*
Joseph Lechman*

* Masters in Taxation Law,
New York University School of Law

WESTLAKE VILLAGE BRANCH OFFICE
2660 Townsgate Road, Suite 450
Westlake Village, CA 91361
Telephone (818) 707-7791

Estate Planning
Dying Without an Estate Plan Isn't Smart

An unplanned estate can be costly. Your family can incur substantial estate taxes as well as other financial losses from poorly managed assets. Your estate may be large enough to become a tax drain. Appreciating real estate, retirement plan assets, investment growth, and above-average income are signals that you need an estate plan to assure your family's long-term financial welfare.

Anyone who owns assets needs an estate plan.

An estate plan arranges what will happen to your assets after your death -- who will get them and how. And the overall value and nature of your assets determines whether you need a plan that's simple or one that's sophisticated.

The simplest plan of all is the one you never want to use. If you die without a will, state law determines who will get your estate, regardless of what you might want. A will alone may be adequate as an estate plan when you are young. At that time, you (or you and your spouse) are likely to have fewer assets. Once you acquire significant assets (in California, more than $150,000 of investments or any real estate), a will is generally insufficient. In addition, once you have children, the question of guardians occurs, as well as funds for the children's care if you die prematurely or become disabled. Your estate plan has to address those needs, and resolving them adequately will likely take more than a will.

As your investments and other assets grow over time, preserving your wealth and avoiding taxes becomes increasingly important. At that point, you need a more sophisticated estate plan to minimize the taxes that will be owed and provide for management of your assets after your death.

You Can't Ignore the Danger of the Estate Tax

The top federal estate tax rate will be 40% (for 2016 and thereafter) - a lot higher than income tax rates. You cannot assume your estate won't be large enough to be hit by the estate tax. Not only is it one of the most expensive taxes, but it is due within 9 months after your death (or nine months after your surviving spouse's death, if your estate is properly planned to take full use of the marital deduction).

This booklet will tell you more about how an estate plan can prevent or reduce the tax on your estate, efficiently administer and distribute your assets to your beneficiaries after your death, and protect your family's financial welfare. Developing your estate plan will require careful and specialized help. The Law Offices of Gose and Lechman can help you set up and administer a custom plan that is just right for your needs. ***Take the first step by calling us right after you have finished reading this.***

Introduction to Probate

WHAT HAPPENS WHEN YOU DIE?

Most people know that when you die, any property you own after payment of debts and expenses of administration will pass to those persons named in your will. If you die without a will, your property passes to those relatives that California law-makers think you would have given it to had you thought about it during your lifetime. These relatives generally consist of your surviving spouse, children, parents, brothers and sisters, grandparents, etc. What most people do not know, however, is the rather complicated process required to transfer your property to your successors. It is not nearly as simple as some people think.

After your death, the beneficiaries named in your will or your heirs-at-law cannot take your will to your bank and withdraw your funds. Nor can your successors sell your real estate, stocks and bonds, automobiles, or any other property owned at your death. Instead, title to your property passes to your beneficiaries or your heirs through the court-supervised process known as probate.

WHAT IS WRONG WITH PROBATE?

It is slow

The entire probate process is done under court supervision with strict procedural rules. All of your property is *frozen* until someone petitions the court for appointment as the executor of your estate. Assuming no one objects to the appointment, it takes about 30 days for the court to act. Once appointed, your executor generally must petition the court to approve any important estate transactions, such as sales of property or distributions to beneficiaries. Furthermore, no matter how fast your executor acts, no property can be distributed to beneficiaries until four months after the executor is appointed, all creditors have been paid, and after a noticed hearing. Due to statutory waiting periods and filing delays, it often takes over a year to distribute a decedent's estate to the beneficiaries. Of course, any complications will create additional delays.

> **Example.** John Wayne's will was admitted to probate in 1979 and probate hearings were still being held as late as 1990.

It is expensive

On average, total probate costs are often between 5% to 10% of the total gross value of the estate. These costs consist of court filing fees, legal publication costs, probate appraisers, accountant fees, attorneys' fees, and executor's fees. Attorneys' and executor's fees are set by law, ranging from 1% to 4% of the gross estate for each. If anything unusual occurs with the probate, such as a will contest, the fees will be much higher.

Attorneys' Fees For California Probate

Estate Value	Attorneys' Fees
$100,000	$4,000
$200,000	$7,000
$500,000	$13,000
$1,000,000	$23,000
$2,000,000	$33,000
$5,000,000	$63,000

Does not include court costs, publication costs, or executor fees.

It invades your privacy

All probate proceedings are a matter of public record. Anyone can go to the court and find out the details of an estate. All they need to know is the name and the year that the person died.

> **Example.** A perfect stranger can look up actress Natalie Wood's file and see all the details of her almost $6 million dollar estate, including her interest in the television series *Charlie's Angels* (valued at $2.3 million), royalties from movies, investments in real estate, oil and gas leases, artwork, a yacht, and over nine separate bank accounts. It's amazing how detailed the records are. Even half of an $83.31 refund from the phone company is included in her assets. Most importantly, you can see exactly how much she left her mother, sisters, daughters, and husbands, and their addresses at the time of death.

Obviously, probate files can make for pretty interesting reading for the curious (or nosy). Would you want *anyone* to be able to find out what *you* owned--and owed?

Multiple probates

If you own real property in several states, a probate must be opened in each state. Even worse, unless your attorney is licensed in multiple states, you will need to hire multiple attorneys to handle the several probates.

Easy to contest

Probates are very easy to contest by disgruntled or disinherited heirs. All of your heirs must be given notice when your will is offered for probate and your proposed executor asks to be appointed as the executor. If any person is upset about your will or your proposed executor, they can simply show up at the hearing and object to whatever action is proposed. They do not even need to hire an attorney. A contested probate will often take years to sort out, and most are settled just to avoid having the estate consumed in legal fees.

WHAT HAPPENS WHEN YOU BECOME INCAPACITATED?

If you become incapacitated, someone must collect your income, pay your bills, and conserve and protect your assets for you. Of course, if you have a joint checking account with a trusted relative or friend, they can pay your bills until the account is exhausted. But what if your name alone is on your bank accounts? And what about the rest of your property? ***Only you can legally cash your checks, collect your income, or write checks to pay your bills out of your accounts.*** And only you can sell or transfer your titled property, such as stocks, bonds, your home, cars, or investment property.

Once you can no longer competently handle your financial affairs, one or more of your friends or relatives must petition the court to be appointed to act on your behalf as your legal conservator. Your bank will only release your funds for payments of your debts after seeing a court order nominating someone as your conservator.

Like the probate that occurs after your death, a conservatorship is done under strict court supervision. The court-supervised conservatorship prevents someone from taking over your property and squandering your possessions. Your conservator will make financial decisions for you only after a public hearing and court approval. Furthermore, the court will require your conservator to file periodic accountings with the court, draining your estate due to costly accounting and attorney's fees.

Like the probate proceeding that occurs at your death, the conservatorship process is expensive, time consuming, open to the public, and most of all, you and your family lose control of your assets.

WHAT IS A GUARDIANSHIP?

Very few people realize that if minor children inherit property (e.g., from grandparents), their parents ***cannot*** automatically take control of the inheritance for the benefit of the children. Whenever a minor child is to inherit property (including real estate, stocks, bonds, etc.), is to receive life insurance or retirement proceeds, or becomes a joint owner of property, the court must get involved to protect the children's interests. Only a court-appointed guardian can sign on behalf of a minor child to transfer legal title to the minor's property. Just like a conservatorship and probate, guardianships are expensive, time consuming, and open to the public. Worst of all, the guardian must account to the court on a regular basis and explain how the minor's money has been spent.

The Living Trust Alternative

With a living trust, you can completely avoid the need for a conservatorship if you become incapacitated, a guardianship if minor children are involved, and probate when you die.

WHAT IS A LIVING TRUST AND HOW DOES IT AVOID PROBATE?

A living trust is a legal document that allows you to transfer ownership of your titled property (your home, other real estate, cars, stocks, bonds, bank accounts, etc.) and your other property (clothes, furniture, jewelry, etc.) from your individual name to something called a "trust," that *you* control. Think of it as forming your own company, with you (and your spouse) as the sole employees. You personally don't own your property any more because everything is owned by your new company (your trust). However, as the employees, you (and your spouse) have complete control over it. If you can't manage your company, your successor can step in to manage it for you.

There are two ways to avoid probate--own nothing in your own name or have a living trust. The living trust allows you to own nothing in *your* name, yet still have complete control over everything in *your trust's* name. *Nothing changes except the names on the titles*. You still control everything as you did before. Since you own nothing in your own name (everything is in the name of your trust, which you completely control), there is nothing to probate when you die or become incapacitated.

Using a Will		**Using a Living Trust**
Property Titled In Your Name (John Doe)	During Your Lifetime	**Property Titled In Your Trust's Name** (The Doe Trust)
↓		↓
Probate (Court Supervised)	Upon Your Death	**Successor Trustee Distributes Trust Assets** (No Court Supervision)
↓		↓
Beneficiaries		**Beneficiaries**

How a living trust works

To understand how a living trust works, you need to understand the roles of the people involved.

The Grantor

When you set up your trust, you become what is known as the *grantor* (also called the *settlor* or *trustor*). If you are married, both you and your spouse are grantors of your trust.

The Trustee

You will name a *trustee* to manage your trust assets. This can be anyone you desire, and is usually yourself. If you are your own trustee, you will handle your affairs for so long as you are able. If you are married, you and your spouse will probably be *co-trustees*. This way, either of you can automatically act for the other, just like a joint checking account. If one of you becomes incapacitated or dies, the other *instantly* controls all trust property *with no court involvement*. Remember, neither of you own the property--your *trust* does and you simply manage the trust. You don't have to be trustee of your trust if you don't want to. You can always name your children, a close relative, or a professional trustee such as a bank or trust company.

Back-Up Trustee

You will also name someone you know and trust as your *backup trustee* (also called a *successor trustee*). Your backup trustee will step in and manage your trust if the initial trustee is unable or unwilling to act. To take over control of the trust, your backup trustee simply needs a copy of the trust and a death certificate if the initial trustee has died, or a statement from a doctor if the initial trustee is incapacitated. That is all it takes for the backup trustee to step in and manage your trust. There is no court involvement, hearings, notice to heirs, or court investigations.

Beneficiaries

Next, there are the beneficiaries of your living trust. These are the people who will get to enjoy and use the trust property. During your lifetime, you are the sole beneficiary and all trust property is used exclusively for your benefit. You will also name the beneficiaries who will enjoy your property after you have died. You can name your spouse, children, relatives, your favorite charities, or any other person as the trust beneficiaries who will receive the trust property after you have died. In this regard, your trust is very similar to a will.

Furthermore, most living trusts are *revocable*, meaning that you can change the beneficiaries at any time. Again, this is just like a will that can be changed at any time up until your death.

WHAT HAPPENS WHEN YOU DIE?

When you die, your backup trustee acts like an executor if you had only a will--but *does not* report to the court. The backup trustee pays your final bills (signing the checks as successor trustee), pays any taxes due, and then distributes the trust assets as you have instructed him/her to do so. Since all of your property is titled in the name of your trust, it is very easy for your backup trustee to manage the trust. Remember, the only documents your backup trustee needs is a copy of the trust and your death certificate. The process is much quicker and less costly than probate.

Furthermore, your assets are *not* frozen and nothing is advertised or made public record. No one will ever know how you distributed your estate, other than the beneficiaries themselves. None of your "nosy" neighbors can go to the courthouse and read your trust or examine your property holdings. Finally, no "heirs" are invited to make claims against your estate.

WHAT HAPPENS IF YOU BECOME INCAPACITATED?

If you become incapacitated during your lifetime, your backup trustee (or co-trustee) automatically steps in and handles your financial affairs for you. Remember, all of your assets are in the name of your trust. All that your backup trustee needs to do is have a copy of the trust designating them as backup trustee and a statement from a doctor declaring that you can no longer manage your trust. Your successor trustee can then write checks, make deposits, pay bills, sell property, and anything else necessary to manage the trust for your benefit.

No court supervised conservatorship is required, and everything is done privately. You and your family are spared the entire frustrating, time consuming, and expensive process of having to set up a conservatorship and get the probate court's approval to spend your own money. If you recover, you simply start handling your affairs again as trustee and your backup trustee returns to being your backup. There is no complicated paperwork or procedure to regain control.

FOLLOWING YOUR INSTRUCTIONS

A living trust does give a lot of power to your backup trustee. However, the trust is a legally binding contract between you and your backup trustee. Your backup trustee ***must*** follow your trust instructions in a *prudent* manner at all times for your benefit during your lifetime and for the other beneficiaries after you have died. Your backup trustee must also keep everyone informed of all actions taken as trustee.

If anyone didn't like what your backup trustee was doing, they could ask the probate court to intervene and supervise the management of the trust. Therefore, the power and protection of the court is available if you need it, but is avoided if you don't. If your backup trustee does anything that is clearly not in the best interests of the beneficiaries, the backup trustee can be removed by the court and held personally liable for any damages.

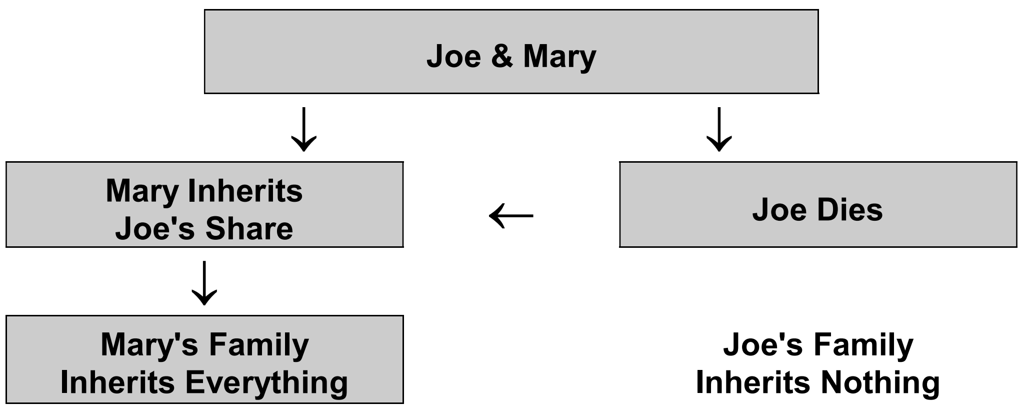
MINOR CHILDREN

A living trust will avoid the need for a guardianship if you have minor children. If you die and the beneficiaries of your living trust are minor children, your successor trustee will simply retain their interest in trust for them until they become adults (or any other time chosen by you). As long as the minor child's interest in the trust is held and managed by the adult backup trustee for the minor child's benefit, the court never needs to step in and sign any legal document on behalf of the child.

Second Marriages

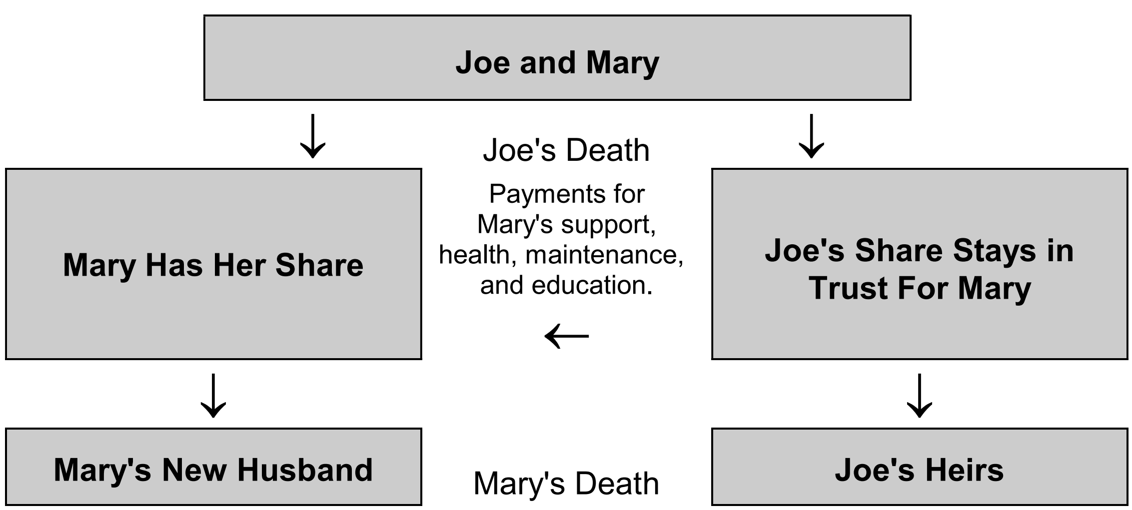
If you are married with children from a prior marriage, you must have a trust to provide for your surviving spouse and protect your children. If you die first, you probably want to provide for your spouse during his/her lifetime, but may want the balance of your estate that your spouse doesn't spend during his/her lifetime to pass to your children. If you give property to your spouse outright, there is no guarantee that your spouse will give anything to your children when your spouse dies.

Unintentional Disinheritance



With a living trust, you can leave property in trust for your surviving spouse. Your surviving spouse can use any of the trust property for his/her lifetime, but you can instruct the trustee to then distribute anything not needed by the surviving spouse to ***your*** children when your spouse dies.

Providing For Your Spouse/Protecting Your Heirs



The living trust provides for the surviving spouse but protects the children of the first spouse to die.

Asset Protection, Estate Tax Skipping, and Multi-Generation Trusts

Estate Taxes

As you may know, every person can transfer at their death $5,490,000 (under 2017 tax laws) without paying any estate taxes. However, any gifts or inheritances in excess of the exemption amount (other than gifts to a spouse or annual gifts less than the annual gift tax limit) are subject to an estate tax of up to 40% (under 2017 tax laws).

Not only is the estate tax one of the most expensive taxes, but it is imposed every generation. When a person dies and leaves everything to their children, the decedent's estate must pay estate taxes. When the children pass away, the estate tax is imposed again before anything is left for the grandchildren, *even though the property was already taxed when the parent died*. As wealth is passed from generation to generation, the estate tax is imposed again and again.

Taxation at Every Generation

Father Dies

$6,000,000	Total Estate
$220,000	Estate Tax
==========	
$5,780,000	For Daughter

→ Estate Taxes **$220,000**

↓

Daughter Dies

$5,780,000	Inheritance
$2,000,000	Personal Estate
==========	
$8,780,000	Total Estate
$1,332,000	Estate Tax
==========	
$7,448,000	To Grandchildren

→ Estate Taxes **$1,332,000**

Creditors

In our litigious society, no one is safe from being sued. With our troubling economy, even the most successful people must worry about financial ruin. Wouldn't it be nice to protect your property from creditors, lawsuits, ex-spouses, and even the Internal Revenue Service? Unfortunately, you cannot protect your own property from your own creditors with a trust. However, you can ensure that after your death, your property is protected from the creditors of *your heirs*.

Grandchildren

If you would rather have your assets pass to your grandchildren after your children have died, rather than to a new spouse and their family, please read on. As we have seen, you can have your property retained in trust during the lifetimes of your children. If your children need it, they have access to it. However, at a child's death, your trust can go to your grandchildren automatically.

YOU HAVE A CHOICE

A carefully planned and drafted living trust is the answer to all of the foregoing concerns. A trust can avoid (in whole or in part) the estate tax at every generation, can protect your estate from your children's creditors or other claimants, and ensure that your property will ultimately pass to your grandchildren. Rather than leaving your estate to your children outright, you can leave your estate in trust for your children throughout their lifetime. Your children are the beneficiaries and have access to the trust when they need it. Your children or any other responsible person can manage the trust. As long as the property is held in trust, ***the trust is not subject to the claims of your children's creditors, lawsuits, the bankruptcy court, ex-spouses, and even the Internal Revenue Service!***

When the children pass away, the trust continues for the benefit of the grandchildren. Since the children were only beneficiaries of the trust, ***no part of the trust is subject to tax when the children die***. Instead, the trust will grow and pass from generation to generation estate tax free! You can see how generation-skipping trusts can build tremendous wealth for several generations.

Eventually, the IRS decided to get even with people using generation-skipping trusts to avoid taxes and imposed a generation-skipping tax (GST tax). The GST tax is imposed on the trust when each generation dies, just as if each generation had received their inheritance outright and paid estate taxes on it. Unfortunately, the GST tax is a *very expensive* tax--a flat rate of 40% (under 2016 tax laws). Furthermore, the GST tax is *in addition* to estate taxes, which can also be as high as 40% (under 2016 tax laws). Now, the good news is that everyone has a $5,490,000 (under 2017 tax laws) exemption from the GST tax. So, you and your spouse can leave up to $10,980,000 (under 2017 tax laws) to a generation-skipping trust free of the GST tax.

Living Trust

* The trust is held for your benefit for your lifetime.

↓

Trust For Children

Creditors -->]
Ex-Spouses -->]
Bankruptcy Court -->]

- After your death, the trust can be held for the benefit of your children during their entire lifetime.
- The trustees (who can be the children) pay to the children so much of the income or principal as the children need.
- While held in trust, no creditors, ex-spouses, lawsuit claimants, or even the I.R.S. can reach your child's interest in the trust!

[<-- Lawsuits
[<-- I.R.S.
[<-- Malpractice

↓

Distributed to Grandchildren

- After the death of a child, his/her share of the trust can be distributed to his/her children (your grandchildren).
- Distributions to grandchildren from the first $5,490,000 ($10,980,000 for a couple) (2017 tax laws) pass ***free of estate taxes***, saving up to 40% (2017 tax laws) in estate taxes.
- You are assured your trust will pass to your grandchildren, rather than a new spouse and the spouse's family.

SUMMARY

As you can see, you can use generation skipping trusts to build wealth for generations to come. Or you can see your wealth devastated by estate taxes at every generation. The choice is yours.

Estate Tax Planning for the Married Couple

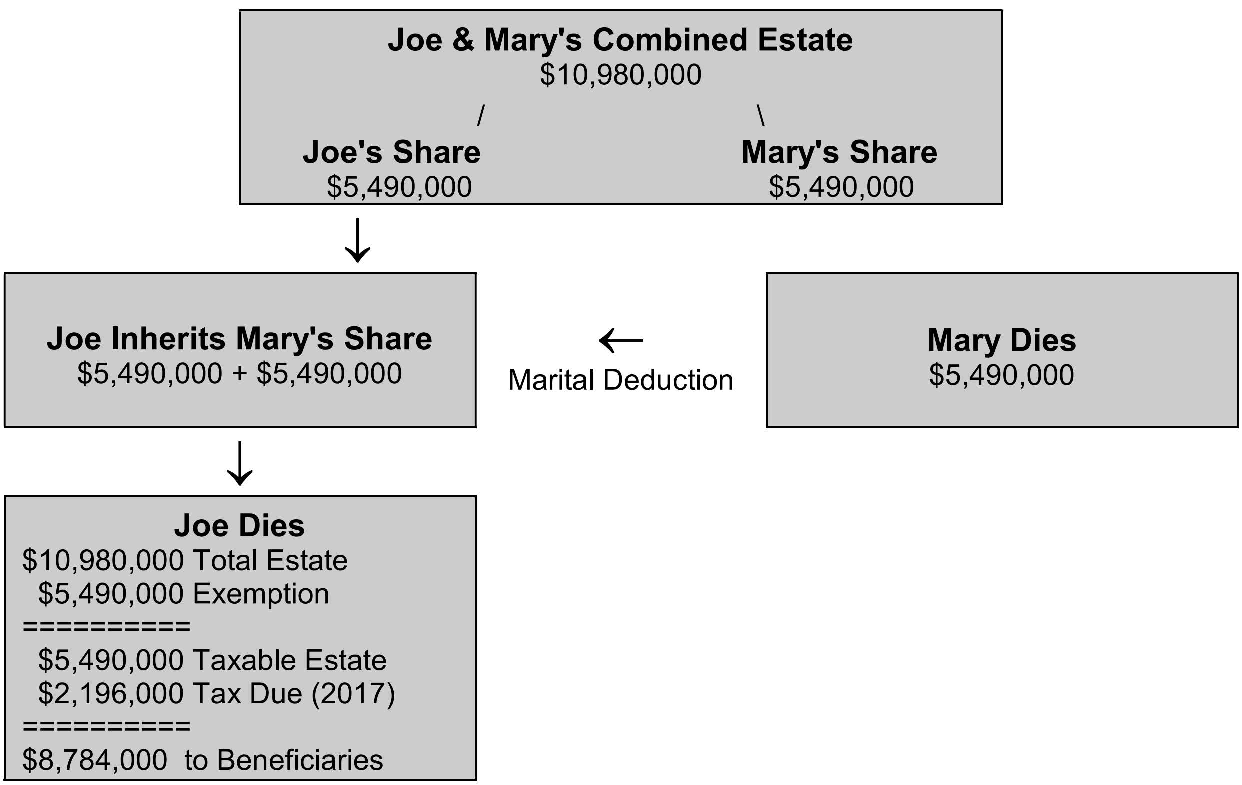
As you see, a living trust will avoid probate and all of its associated expenses. You may be surprised to learn that your living trust can also reduce or eliminate *estate taxes* as well.

The estate tax is imposed on the value of all your property at the time of death. If the *net* value of your estate (the value of all of your assets less your debts) is more than the estate tax exemption ($5,490,000 under 2017 tax laws) when you die, federal estate taxes must be paid from your estate before it is distributed to your beneficiaries-- at a tax rate of up to 40 percent (2017 tax laws). This is, in effect, a "double" tax. Over the years, you paid income taxes on the assets that now make up your estate. And now, unless you plan ahead, your estate may have to pay a tax on those assets *again*. With proper planning, the estate tax can often be eliminated or greatly reduced.

THE SIMPLE WILL FOR MARRIED COUPLES - A TAX TRAP FOR THE UNWARY

Many married couples have simple wills that give everything to the survivor when the first spouse dies. The good news is that the simple will avoids all estate taxes at the death of the first spouse. One spouse can leave any amount of assets to their surviving spouse *and pay no estate taxes*. However, when the surviving spouse dies, the *entire* estate (what the surviving spouse owns plus what he/she inherited from the deceased spouse) is subject to taxes. The estate is entitled to ***only one estate tax exemption***, even though each spouse was entitled to his or her own tax exemption and *could* have transferred up to twice the exemption amount to their beneficiaries tax-free.

The Unlimited Marital Deduction



One way to avoid wasting the deceased spouse's exemption is to have the deceased spouse transfer his/her entire estate directly to the children and skip the surviving spouse entirely. This will allow the deceased spouse to use his or her tax exemption and save estate taxes. However, this could deprive the surviving spouse of the assets needed for the surviving spouse's support. As we will see, the deceased spouse can provide for the surviving spouse while at the same time using both of their estate tax exemptions to save estate taxes ***by setting up an A-B living trust***. Current law also allows under certain circumstances a surviving spouse to inherit the deceased spouse’s unused estate tax exemption (known as “portability”), but many times it doesn’t work.

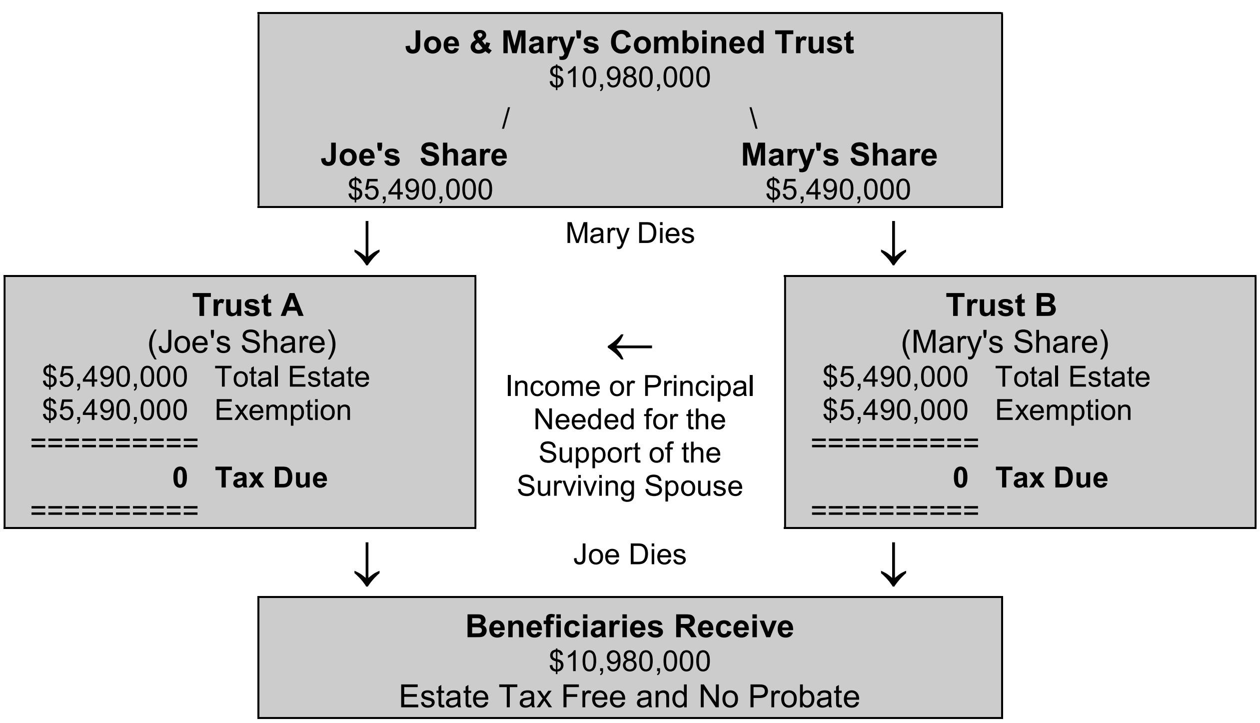
THE A-B LIVING TRUST SOLUTION

With an A-B living trust, a married couple transfers their property to their common living trust during their joint lifetime. When the first spouse dies, the common trust divides into two separate shares called Trust A and Trust B. The surviving spouse's share of the trust is transferred to Trust A, and the deceased spouse's share of the trust is transferred to Trust B. The surviving spouse continues as the sole beneficiary and can be the trustee of both trusts during his or her lifetime.

The deceased spouse's estate tax exemption is applied against Trust B property. Therefore, *no part of Trust B is subject to estate taxes when the first spouse dies*. Furthermore, even though the surviving spouse is the sole current beneficiary and trustee of Trust B, *no part of Trust B is subject to estate taxes at his/her death either, regardless of the value of Trust B at the surviving spouse's death!* Only Trust A is subject to estate taxes at the surviving spouse’s death, after using the surviving spouse's estate tax exemption. The trust allows both spouses to use their estate tax exemptions, saving the beneficiaries ***$2,196,000 or more in estate taxes and avoiding probate***!

The surviving spouse can amend Trust A at any time, just like the common trust before the division. On the other hand, to prevent Trust B from being subject to estate taxes at the survivor's death, the surviving spouse cannot amend or revoke Trust B. Instead, Trust B assets left at the surviving spouse's death are distributed to those beneficiaries chosen by the deceased spouse.

The A-B Living Trust



Alternatives to Probate and Living Trusts

You may have heard about several ways to avoid probate, including the use of joint-tenancy and lifetime gifts. However, in many cases these techniques create unanticipated problems.

JOINT TENANCY

The kind of joint ownership many people have is called "joint tenancy with right of survivorship." This means that when one of the owners dies, his/her share instantly passes to the surviving joint owner(s) by simply recording a death certificate with the county recorder. It is often used by spouses or between parents and children to avoid probate.

Problems With Creditors and Irrevocable Gifts

Adding your children as joint tenants to your property can create serious problems for you if your child develops financial problems. If any creditor obtains a judgment against your child, the judgment lien will attach to his or her interest in ***your property!*** The creditor can then sell your child's interest in your house to satisfy your child's debts. Until the judgment lien is removed, you cannot sell or refinance your property.

Furthermore, if you add a child as a joint tenant to your property, you have made an immediate and irrevocable gift of half your property. You can never demand that your child give you back your property. You may trust your child now, but who knows what might crop up later. For example, your child can at any time deed his/her interest in your property to someone else. Finally, what if your child becomes incapacitated and you want to sell the property? The only way to sell the property is to have a conservator appointed for the child. Even worse, the child's share of the sales proceeds can be distributed only for your child's benefit under the court supervision.

Merely Postpones Probate Until Both Spouses Have Died

When a husband and wife own their property as joint tenants, a probate can be avoided at the death of the first spouse. However, a probate is necessary when the surviving spouse dies, unless the surviving spouse adds another person as a joint-tenant. So you don't *avoid* probate after all--you just *postpone* it.

Income Tax Trap

Married couples who live in California never want to hold appreciated property in joint tenancy. All of the capital gain that the person would have reported as income if their appreciated property was sold during life *is eliminated at the person's death*. For example, if a person buys a house for $50,000 that is worth $250,000 when the person dies, the heirs can sell the property for $250,000 and ***pay no income taxes on the appreciation!***

In the case of a married couple, the capital gain attributable to a spouse's one-half interest in joint-tenancy property is eliminated when that spouse dies. The surviving spouse can sell the property and pay income taxes only on *their one-half share of the property*. However, if the property is held as community property instead of joint-tenancy, all of the capital gain attributable to appreciated property, ***including the surviving spouse's share***, is eliminated when one spouse dies. The surviving spouse can sell everything and pay ***no income taxes!***

Joint Tenancy vs. Community Property

JOINT TENANCY $250,000 Rental $50,000 Original Cost ($25,000 each)			
Deceased Spouse's Share		Surviving Spouse's Share	
$125,000	Value	$125,000	Value
<u>$125,000</u>	Tax Basis	<u>$25,000</u>	Tax Basis
0	Capital Gain	**100,000**	Capital Gain

COMMUNITY PROPERTY $250,000 Rental $50,000 Original Cost ($25,000 each)			
Deceased Spouse's Share		Surviving Spouse's Share	
$125,000	Value	$125,000	Value
<u>$125,000</u>	Tax Basis	<u>$125,000</u>	Tax Basis
0	Capital Gain	**0**	Capital Gain

<u>Unintended Disinheritance</u>

Joint tenancy can also cause you to unintentionally disinherit your own family. Remember, joint tenancy property goes to your spouse when you die. And when your spouse dies, the entire property (including your share) will go to your spouse's heirs instead of yours. This may not be a problem if this is the only marriage for both of you. But what if you have children from a previous marriage? Your spouse may include your children in his/her will now, but you can't be sure they will inherit your share. Your spouse can sign a new will disinheriting your children. Or, your spouse might add another joint tenant (like a new spouse) who will receive full ownership when your spouse dies.

LIFETIME GIFTS--THE TAX TRAP OF A LIFETIME

Another way to avoid probate is to own nothing at the time of your death. If you give away everything during your lifetime, there is nothing to probate and transfer to your heirs. Unfortunately, a lifetime gift often has income tax disadvantages that far outweigh the problems of probate.

Let's assume that you have a rental property currently worth $250,000 that you originally bought for $50,000. If you sell that property during your lifetime, you will pay income taxes on a $200,000 capital gain. Furthermore, if you *give* the property to your heirs during your lifetime, your heirs will pay the same income tax on the $200,000 capital gain that you would have if you sold it during your lifetime. Depending on their tax brackets, the tax on $200,000 could be nearly $60,000 or more.

On the other hand, when you die and your heirs inherit your property, whether it be through probate or your living trust, all capital gain for income tax purposes is eliminated. This is known as the "stepped-up basis." That is, the valuation of the property for income tax purposes is "stepped-up" to the fair market value as of your date of death. Your heirs can immediately sell the inherited property for $250,000 (the value as of your death) and ***pay no income taxes on the appreciation*** (although the heirs may have to pay *estate* taxes if your total estate is more than your estate tax exemption - $5,450,000 per person for 2016).

<u>So, That's Probate</u>

Now you know about probate, and how it can take control if you become incapacitated, have minor children or grandchildren, or when you die--and how it can affect you and your family whether you are married or single, old or young. If the risks don't bother you, or if you really don't care about what probate can do, then that's okay. You can still rely on a will or joint ownership to transfer your property at your death. Or you can give it all away while you are living. At least now you know the risks (and the costs)--*before* your family unexpectedly gets caught in the middle of probate.

Common Questions About Living Trusts

HOW MUCH SHOULD I OWN TO HAVE A LIVING TRUST?

It really doesn't matter how much you own. Chances are that unless you own no real property and have less than $150,000 of other property, you and your family will benefit from a living trust. If you are in doubt, please contact me and I will let you know whether you can do without a trust.

DO I LOSE CONTROL OF MY PROPERTY IF I PUT IT IN A LIVING TRUST?

Absolutely not. You keep full control over your property. You can do anything you could do before--buy and sell property, make changes, and even cancel your trust at any time. Even if you initially name someone else as trustee, you can replace them at any time if you are not happy with the way your trust is being managed.

ARE THERE ANY ONGOING COSTS?

No. There will be no additional charges once the trust has been set up, unless later on you want to amend the terms of the trust. You do not have to come back to us or inform us in any way if you later buy or sell trust assets. In addition, please note that transferring assets to your living trust does not change your property taxes or how you file your income taxes.

IS A LIVING TRUST HARD TO MAINTAIN?

No. After your living trust has been properly set up, all you have to do is be diligent in generally putting new assets into your name as trustee of your trust.

DO I STILL NEED A WILL IF I HAVE A LIVING TRUST?

Yes. You still need what is called a **pour-over will**, so called because it **"pours over"** into the trust any odds and ends not already transferred to the trust by the time of death. A pour-over will is included with the living trust at no additional cost.

WHAT IF I MOVE TO ANOTHER STATE?

Most states follow the same general rules concerning trusts. Chances are that even if you move to another state, you will not need to amend or create a new trust. Of course, it might not be a bad idea to have a local attorney review your existing trust if you do move. If any changes are required, it can probably be done with a simple amendment.

HOW LONG DOES IT TAKE TO SET UP A LIVING TRUST?

Once you make the basic decisions--who will be your successor trustees, beneficiaries, guardians for minor children, etc.--it will take me about a week to prepare the first draft of the documents. Once you review the drafts, it is just a matter of setting up a time to meet and sign the documents.

After that, title to your assets will need to be changed, which may take a little more time. If there is an emergency, I have prepared and funded a living trust in the same day.

HOW STABLE ARE LIVING TRUSTS?

They have been around since the end of the Middle Ages in England. They were developed for a familiar reason - to avoid taxes, the king's death taxes. They have become increasingly popular over the last few years for many reasons, the primary one being to avoid probate. We feel very confident that in the future nothing will be done that will change the clear advantage that the living trust has as the key estate planning device of choice.

WHAT IF THE LAWS CHANGE TO ELIMINATE LIVING TRUSTS?

Anything is possible, but this is unlikely. Remember, living trusts have been around for hundreds of years. Besides, neither the state nor the federal government receives income from probate, so there is no incentive for them to eliminate living trusts and make people go through probate. On the other hand, the states have every reason to *encourage* living trusts as a way to reduce the overcrowded court system.

However, estate taxes *are* a source of revenue for the federal government. It is possible that Congress will change the amount of the estate and gift tax exemption ($5,450,000 for 2016), which it has done in the past. That would make living trusts even more popular, since more people with smaller estates would then worry about estate taxes and will benefit from the tax planning in an A-B living trust.

WE OFFER A FREE 20-MINUTE CONSULTATION TO ANSWER ANY QUESTIONS YOU MAY HAVE ABOUT LIVING TRUSTS.