

# The POCKET LAWYER®

## Self-Help Series

### Understanding California Revocable Living Trust Agreements

*The information in this brochure is for educational purposes only and is intended to assist you in preparing your own California Revocable Living Trust Agreement. It is NOT legal advice or a substitute for the professional advice of a licensed attorney.*

#### **What is a Living Trust?**

A living trust is a legal arrangement in which you, as the trustor, place property in trust for the benefit of one or more individuals known as beneficiaries. One basic purpose of the trust is to pass the benefits of accumulated wealth from one family member to another, and usually from one generation to the next. A trust is established with a trust agreement in which you name someone to act as the successor trustee to manage assets placed in the trust, and you give instructions on how distributions are to be made. Assets of all kinds can be placed in a trust, including bank accounts, real estate, securities, mutual funds, limited partnerships, and personal property. A trust agreement can spell out your wishes in detail. For example, a trust can do the following:

- Provide for the management of your investments during your lifetime;
- Provide for the management of trust investments after your death, if beneficiaries are inexperienced;
- Arrange for your spouse to receive interest income for life, with the principal to be distributed to your children at your spouse's death;
- Designate the circumstances under which distributions are to be made. For example, you can specify that your children are to receive a certain amount of money solely for educational purposes;
- Control the timing and amount of distributions. For example, you can specify that a child is to receive a certain sum at a certain age, or a certain number of years after your death;
- Provide for the ongoing support of a disabled family member for his or her lifetime; and,
- Provide just about any other arrangement you might desire with respect to your assets, your liabilities, or the care, comfort, support and maintenance of your loved ones.

After your trust is established, assets are placed into the trust while you are alive. As soon as you sign your trust agreement, you should change the title of all property you're placing in the trust from your name to the name of the trust. This process commonly includes preparing new deeds for the transfer of real estate, changing title on bank and brokerage accounts, changing title on stock certificates and changing title on business interests.

Once your assets are in the trust, you can manage them in the same manner in which you would manage your personal investment portfolio, according to your investment objectives. You maintain full control of your assets. It is a good idea to inform your successor trustee that you have a living trust and make sure he knows where the trust and other important documents are kept.

A pour-over will is prepared in addition to your trust in case some of your property is inadvertently left outside of your trust at the time of your death. The pour-over will directs that upon your death, any items or property which have not been placed in the trust will "pour-over" into the trust.

#### **What forms are included?**

Typically, a living trust is accompanied by the following documents:

- a. Durable and Medical Powers of Attorney
- b. Living Will
- c. Declaration of Anatomical Gift
- d. Pour-Over Will
- e. Certificate of Trust Existence and Authority
- f. Transfer Documents

### **What is the Trustee's roll?**

A Trustee is a person or institution which holds property for the benefit of another person, known as a beneficiary. A successor trustee is the person who will step in for the trustee if the trustee is no longer able or willing to act as trustee. The trustee is under a fiduciary duty to administer the trust as long as he is the trustee, which means he or she must administer the trust solely in the interest of the beneficiaries, and in accordance with the terms of the trust.

Since you have the ability to revoke or amend your own trust, these duties do not restrict your use of the property in the trust, but do provide protection after your death from improper acts of other trustees.

### **What are the advantages of a Living Trust?**

You can organize your affairs and avoid the delay, agony and cost of probate. The process of preparing a living trust and its related documents is an affairs-organizing process. If you so desire, a living trust distributes assets directly to your heirs, without a time-consuming court procedure. Settling a trust can be far less expensive than probating a will. The typical expenses in probating a will include attorney's fees, filing fees, costs of appraisals, and personal representative's fees. Living Trusts are recognized as valid in every state. If you move elsewhere, typically no changes in your trust may be required. However, you may wish to have it reviewed by an attorney to ascertain if that state has any special requirements pertaining to living trusts. A living trust assures financial privacy. The terms of a trust, unlike those of a will, are generally not required to be disclosed to the public.

You can eliminate unnecessary estate taxation. A well-prepared trust can unburden your beneficiaries of heavy and needless taxation. Reduce income taxes for the surviving family. Your trustee can be given discretion to "sprinkle" trust income among your grandchildren, for example, who may be in lower tax brackets than your children. Provide the entity for the support and/or education of minor children. A trust can assure management (and continuity of management) of your investments after your death, allowing you to provide for your children's futures. Your living trust will allow you to restrict how your estate is managed and spent even after your death, and can provide for the support and education of anyone, for example your spouse and children.

You can provide for children from a previous marriage. Your living trust can make special provisions for children from a prior marriage so that they receive fair treatment and distributions of your property, as you desire.

You can defer the passing of the ownership of your assets to your beneficiaries until your beneficiaries have reached a certain age, with interim management of the assets being provided by the trust you choose. You can provide equal treatment for beneficiaries. Your living trust can be drafted in such a way as to make sure that your beneficiaries receive the benefits from your estate in the manner in which you desire, and if you desire that your beneficiaries are treated equally, your living trust can be used to accomplish equal treatment among your beneficiaries.

Your living trust allows you to have all of your assets treated under one document for centralized control and distribution. Without a trust, your assets may be distributed piecemeal and at different times, causing delays and inequities which are not intended. When all of your assets are in your living trust, your estate plan will be easier to review and amend than if your assets were distributed among several documents. Preserve the estate against legal challenges. Because a trust actually functions and is used and operated during your lifetime, it is not likely that it can be successfully challenged. It is much more difficult for disappointed relatives to upset a trust than a will because the trust was in existence during the life of the trustor, was operating under his or her observation, and was subject to his or her revocation. Also, would-be contestants must initiate their own court action rather than merely filing objections with the probate court, as is doing with challenges to wills.

A living trust allows you flexibility and control. If you have a living trust you can manage trust assets the same way you would manage your personal investment portfolio. A living trust gives you maximum flexibility because you or anyone you name can act as trustee; you may have full control of the assets in your trust; you can change the terms or revoke the agreement any time; and you can name one or more back-up trustees to take over investment management so you have continuous lifetime control of your assets and continuity of management after your death.

A living trust avoids the restrictions some states impose on who may qualify to serve as the fiduciary of your estate after your death. With a living trust, you can designate and qualify any person as the trustee without regard to the state in which that person resides.

Protect your assets from the creditors of your beneficiaries. The use of a spendthrift provision in your trust can protect your assets from the creditors of the people who will receive your property after your death.

You can avoid co-mingling of property. If you so desire, your living trust can be used to separate or maintain separation of your property from your spouse's property. Living trusts can also be an excellent means to avoid commingling of community property with separate property. Eliminate conservatorship. If you become disabled or unable to manage your estate, your living trust avoids the need to have a conservator appointed to take care of your property. The successor trustee, which you name in your living trust, will step in and manage your affairs without government interference, expense, and a degrading court process.

All the problems of managing your assets can be given to your trustee, if you so desire, including investment decisions, safekeeping of assets, tax planning and record keeping. Of course, if you do not want to give up control you may remain trustee during your lifetime, with a successor chosen by you to take over after your death. Your trust continues to function even if you become ill (because of age, stroke, accident, etc.) or unable to attend to affairs because of heavy demands on time. At your death, assets are not tied up by probate proceedings, and therefore, there will be continuity of ownership and management of your assets.

Renew appreciation of family and community. The process of making decisions about how you want your estate to pass to our loved ones often triggers other actions which result in additional organization of your personal affairs, brings a renewed sense of family and community, and brings a person closer to his or her family and friends.

Provide peace of mind. When your living trust is completed, you and your family can relax knowing that your estate will be managed and distributed as you have instructed by those you have chosen.

#### **What are the disadvantages?**

Some time and effort are required to transfer assets to the trustee. A certain amount of time and paperwork are required to transfer real estate, securities, bank accounts and other property in the trust. However, there are established procedures for making these changes.

The initial costs of setting up a trust are usually higher than simple preparing a will. The costs are usually minor in comparison to the tax savings, avoidance of the costs, delays, and frustrations of the probate process, and the piece of mind which can be obtained by and which accompany a living trust.

#### **Documents that typically accompany a Living Trust**

There are other legal documents which may also be prepared at the same time as your living trust. Although not all of these documents may be required, they are helpful in properly preparing your estate plan.

**Durable and Medical Powers of Attorney:** The term "durable" means that the power of attorney is effective even though you become incapacitated after you sign it. A power of attorney is a document that states that you are appointing someone to act for you. For example, it authorizes someone to manage your bank accounts, stocks, real estate, pay your expenses, etc. The durable health care power of attorney authorizes someone to make your medical decisions if you cannot make them yourself. Be aware that this form does not replace a living will. This document should be prepared and signed in conjunction with a living will.

**Living Will:** In this document, also called a declaration regarding life-sustaining procedures, you direct that life sustaining procedures be withheld or withdrawn from you and that you be allowed to die naturally in the event you are certified to have a terminal injury, disease or illness, and that recovery is not possible.

**Declaration of Anatomical Gift:** If you elect to sign such a declaration, it results in the donation by you of all or a portion of your body to medical providers. You can state exactly what you are donating and to whom if you want to be specific.

**Pour-Over Will:** This document provides that any property you have inadvertently or intentionally left out of your living trust will pass to your trust upon your death. If all of your property has been transferred into your trust prior to your death, your Will will not transfer any property and the personal representative you choose under your Will has no tasks to perform as personal representative. Your entire estate will then pass to your loved ones under the terms of your living trust.

**Certificate of Trust Existence and Authority:** Some financial institutions may wish to see your trust documents to verify your authority and the authority of your trustee to act on behalf of the trust. The Certificate of Trust contains an abbreviated version of some of the essential information that most financial organizations are looking for when they request a copy of your trust. If you are asked to provide a copy of your trust, you can often just provide a copy of the Certificate.

**Transfer Documents:** The transfer documents include notices to the institutions which hold your assets, notifying them that you have created a trust and now wish to have your assets, such as bank accounts and stocks, held by the trust. An assignment of Furniture, Furnishings and Personal Effects transfers your untitled personal property to the trust. Additionally, if you own real estate, deeds must be prepared, signed and properly recorded in order to transfer the property to the trust.

**Can I change the terms of my trust after I sign it and transfer my assets to it?**

Yes. While you are alive and competent, you can amend the trust or even revoke it at any time. Also, you can appoint yourself as trustee of your living trust and thereafter, as long as you are competent, handle your own financial affairs and all of the assets in your trust.

**What if I decide to sell an asset that I've transferred to the trust?**

You can sell assets in the same way you currently do. However, you will need to add the word "trustee" after your signature and identify the trust as the seller.

**Can I transfer real estate into my living trust?**

Yes. In fact, generally all real estate should be transferred into your living trust. Otherwise, upon your death probate may be required in every state where you own real property. When all real estate and other property is owned by your living trust, no probate is required anywhere.

**Will it be complicated to transfer assets to my living trust?**

No. Generally the forms used to accomplish the transfer are not complicated.

**If I am only a part owner in real property, can I transfer my share into the trust?**

Yes. Your share can go into your trust unless you have agreed with your joint owner that such transfers are not permitted.

**Does my living trust have to be recorded or filed with the court?**

No. Not in California. The living trust is a private document that need be not recorded. However, if you own any real estate, the new deeds showing trust ownership will be recorded.

**Will I benefit by a trust if I am not wealthy?**

Yes. A living trust can help anyone who wants to protect his family from unnecessary probate fees, attorneys' fees, court costs and estate taxes.

**How much are estate taxes?**

Estate taxes are a very substantial tax currently beginning at 37% and going as high as 55%.

**What if I become disabled before I die?**

If you become disabled as a result of injury, senility, temporary stroke, etc., without provisions similar to those in your living trust, your family may have to apply to the court to have a conservator appointed for your property. The court process is expensive, time-consuming and often humiliating. Also, the accounting and other administrative tasks associated with conservatorship are very restrictive. Wills offer no protection from conservatorship.

**If my spouse and I have separate property, can we transfer it into the trust?**

Yes. Generally, all of your property can and should be transferred into your living trust, and the property transferred in, unless you otherwise agree, will maintain its character as separate or community property. Community property is divided between the parties and the party who originally owned it retains separate property.

