The Law Offices of Jeffrey G. Marsocci, PLLC's

The Estate Planner

Basic Information Edition

PLEASE NOTE

INSIDE

Estate Planning Solves Problems Before They Become Problems

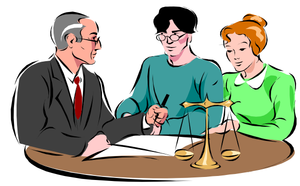
Most people walk through life ignoring potential estate planning problems, mostly because they do not realize they *have* problems. Most assume that their spouse receives everything upon their death, or they assume that because they are not multi-millionaires that they do not need to worry about estate taxes.

That simply is not true. A surviving spouse does not receive everything unless they put those wishes in writing in a properly executed Will or Revocable Living Trust. Those couples that have even $400,000 between them but carry more than $~~1,5~~00,000 in life insurance are also at risk for needlessly paying estate taxes.

Unfortunately, the people that avoid estate planning during life cannot plan for estate taxes once they die, and their families are burdened with legal and financial nightmares.

By drafting a Revocable Living Trust that incorporates credit shelter trust provisions, a married couple can save thousands or hundreds of thousands of dollars in estate taxes. A married couple dying in 2004 with $2.0 million in assets and life insurance proceeds could potentially save their children more than $300,000 in estate taxes by using such a trust.

In addition to planning for huge estate tax savings, a family can avoid the probate process through a Living Trust.



Probate may cost thousands of dollars in attorney bills and probate fees, can waste hundreds of hours in unnecessary document preparation and running around for the probate court, and it can delay the distribution of your assets for months or even years. A Living Trust avoids probate in favor of a process outlined in the document that is simpler, quicker and efficient. Your assets can be distributed to your heirs in a matter of days or a few weeks.

The Law Offices of Jeffrey G. Marsocci, PLLC have compiled some articles on the basic estate planning documents needed for most individuals and couples, and people are encouraged to give serious consideration to having their plan enacted as soon as possible. Many clients put off having their Wills or Revocable Living Trust created because they do not wish to think about it. At the same time, they often worry because they have no plan in place and life is uncertain. For that reason, we are committed to providing quick and thorough service. As always, initial estate planning consultations are free.

Revocable Living Trusts Save on Taxes, Probate

The Revocable Living Trust is quickly growing in popularity among most middle class families wishing to save their heirs time, taxes, and probate costs. These versatile trusts are created during life and upon death distribute property much the same way probate does through a Will, but it does so without probate court supervision or interference. Instead, a less expensive, less time-consuming process is used, and your successor trustee signs title to the assets over to the heirs.

Taking an estate through probate can be a time-consuming, expensive and frustrating process. It seems that the only people that come out ahead by taking an estate through probate is the law firm handling the paperwork. However, a probate court only takes control of and examines property titled in the deceased

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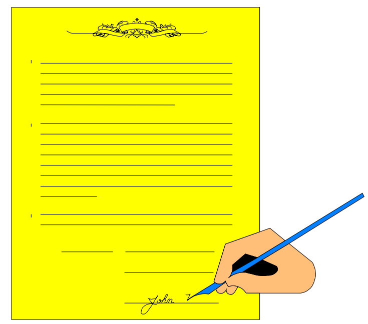
Last Will and Testament Distributes Property Through Probate

A Last Will and Testament is the most common document used for giving away possessions after death, but it is quickly decreasing in popularity in favor of the Revocable Living Trust. The traditional Will is a writing that instructs a probate court on distributing your assets after all of your bills are paid. Which heirs get which items or what percentage of the estate, when it goes to them, and how taxes are handled are explained in a properly drafted Will. It can also include legally binding instructions on the desired type of funeral service and burial you want, list the people you want to administer your estate, name those you want to take custody of minor children, and outline any age restrictions on the people receiving bequests.

A Will can also provide some of the benefits a Revocable Living Trust does, such as establishing a credit shelter trust to save on estate taxes and restricting property to heirs. Overall, a Will is better than nothing, but it is not nearly as versatile or complete as a Living Trust. In general, people that chose to create an estate plan using Wills rather than a revocable living trust are concerned about the short-term set-up costs. However, the money saved by using a revocable living trust is generally the best investment you could hope for.

Wills, once filed with the court after a death, are also public documents and are open to anyone. Many people do not realize the appalling lack of privacy in this. Sales people frequently go to probate courts, review files of estates, and note the name and address of heirs and how much money they received. So if you left your child your estate, his or her name, current address, and the amount of money distributed to them is available to anyone that wants to see it. And people looking for this information are not limited to salespeople… con artists also have access to this information.



Revocable Living Trusts offer much more privacy since these lists are kept with the trust documents and do not have to be filed anywhere (except with government taxing agencies, and these documents are not open to the public.) A Last Will and Testament is generally better than not having a plan at all, but the drawbacks are substantial compared to using a Revocable Living Trust. ■

Revocable Trusts, continued from Page 1

person's name. If everything is titled in the name of a revocable living trust rather than the deceased person's name, then the court does not have to be involved (as long as the bills are paid and no one contests the estate plan). The Living Trust document then tells people how the estate should be distributed, outside of court, and with as little fuss as possible.

Other benefits of using a Revocable Living Trust include:

- Privacy of the Estate Plan
- More difficult to contest than a Will
- Tax savings through a credit shelter trust (for married U.S. citizen couples)
- Trustee cares for property during incapacity
- Helps secure property until children and heirs reach a proper age

Privacy is a benefit often cited by Revocable Living Trust users, attorneys and financial planners. When a person passes on, his or her Will becomes a public document accessible to anyone. Any salesman may go into the probate court, see what the estate was worth and which heirs received an inheritance, and begin soliciting them. Their names and addresses are also on file as part of the probate paperwork. A Living Trust need never be seen by anyone other than the trustee(s), or by a judge. Even the heirs are not allowed to see the Trust if you forbid it.

In addition, Wills are statistically more likely to be successfully challenged than Living Trusts. The reason that Revocable Living Trusts are harder to contest than a Will is that Wills become active when a person dies while a Living Trust is active from the moment the trust is signed until the death of the person owning the trust and beyond. To contest a Will because the person was not "in their right mind," it would have to be proven that the person was not mentally competent on the day the Will was signed. To contest a Revocable Living Trust because a person was not "in their right mind," it would have to be proven that the person was not mentally competent on the day the Trust was signed, on each day an asset was transferred into the trust, on each day money is withdrawn or deposited into an account owned by the trust, etc. Proving someone was not in their right mind for each and every transaction over a period of years is close to impossible unless they actually were mentally incompetent.

Many married couples make the tax mistake of leaving everything to each other upon the first of their deaths. For couples with more than $1,500,000 in assets and life insurance proceeds, this could be an expensive mistake costing the second spouse's heirs thousands or hundreds of thousands of dollars. A Revocable Living Trust can incorporate credit shelter trust provisions that would protect up to $3,000,000 worth of assets from estate taxes after the death of a second married spouse. As long as the property left in a credit shelter trust complies with several IRS rules and regulations, then the heirs of the second spouse can save these thousands or hundreds of thousands of dollars in needless estate taxes.

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Healthcare Documents Are Best Plan When Planning For the Worst

Families squabble over many issues, and, aside from money, the worst fights occur over the healthcare decisions of a loved one. In particular, permanent rifts in family relations occur when a loved one is on life support and a decision needs to be made on whether or not to "pull the plug." This decision can be taken care of ahead of time, while a person is still healthy and in their right mind, through a Living Will.

A Living Will orders a doctor to use or not to use extreme life-saving measures, such as life-support, if you are in an irrecoverable coma, also called a "persistent vegetative state." A Living Will is sometimes mistakenly called a Do Not Resuscitate Order (DNR) because most people use this document to stop extreme life-saving measures. However, a true DNR is an order from a physician for other medical personnel (such as EMTs) to withhold life support. In a typical Living Will, *doctors* are ordered either to withhold life support or are requested to administer life support. Doctors are also ordered to withhold artificial nutrition or are ordered to give nutrition.

Because the Living Will was drafted, signed and notarized while the patient was conscious and of sound mind, doctors must follow the directives of a Living Will document. This not only allows a person to make these important decisions ahead of time, but it also removes the burden of these difficult decisions from loved ones.

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Revocable Trusts, continued from Page 2

Please note that avoiding probate does not mean that the possessions are immune from estate or inheritance taxes. Avoiding probate means eliminating the costs and expenses of a court proceeding, and it does not mean avoiding taxes except to the extent a credit shelter trust already avoids taxes.

A Living Trust is also a mechanism for caring for you, the trustee and initial beneficiary, during life if you become incapacitated. If you are judged incompetent to handle your business and personal affairs, another trustee you previously designated can step in and protect you and manage your assets. A Last Will and Testament will only allow another to handle your affairs after death. This means that if you become incapacitated, your family must have you declared incompetent in a time-consuming (and possibly expensive) court proceeding, and then the guardian must account for all of assets and debts and submit it to a court. Having a trustee step in to manage these assets is much easier, more efficient, and far less expensive.

A Revocable Living Trust can also restrict property going to younger beneficiaries until they reach a mature age that you determine beforehand. Parents are often concerned about children receiving a large inheritance all at once. Imagine what an 18 year old would do with an inheritance of even $200,000. Two words that frequently come up as a response-"Porsche" and "Beach." Property can be restricted until an appropriate age, and a trustee that you have appointed can use their best judgment to manage the trust until that time. The trustee can also give some property to the heir ahead of time, pay directly for bills and other expenses, or withhold money because of immature behavior. These powers are particularly useful to let the trustee handle college and other educational expenses while not directly giving money to the beneficiary.

There are many different ways to restrict money going to beneficiaries, and popular arrangements include giving a third at age 25, a third at age 30, and the remainder at age 35. However, limitless arrangements exist to restrict property to heirs with very few exceptions. After all, it is your money and you should be allowed to create the distribution rules for the property after you have passed on.

The most notable drawback is that a Revocable Living Trust estate costs more to plan and establish than an estate by a Will does. The cost to establish an estate plan using Wills for a married couple is typically between $600 and $900 depending on the complexity of the plan. The cost to establish an estate plan using a Revocable Living Trust for a married couple is typically between $1,700 and $2,000 depending on the complexity of the plan. However, the cost of probate is typically between 3% and 8% of assets in the estate. For a million dollar estate, this would mean between $30,000 and $80,000 just to handle the probate of the estate. In general, a Revocable Living Trust is recommended over a Will because the long-term savings far outweigh the short-term costs. ■

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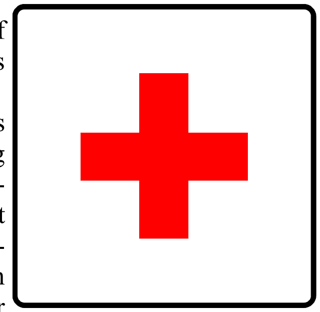
Healthcare Documents, continued from Page 3

Many prospective clients have said "Well, my family knows what I want to have done… let's skip the Living Will." Our response is, "Do you really want your son or daughter to think that they were responsible for your death for the rest of their lives so you can avoid paying an extra $50 for a Living Will?" Our office no longer drafts Wills or Living Trusts without including these documents free of charge. If a client does not wish to have a Living Will, it is still the same price for a Will or Living Trust, and they would save no money by leaving out these documents.

A Healthcare Power of Attorney is another document that can help settle some family problems before they start. This document empowers someone else to make health decisions if you are incapacitated. This will cover instances where you are unconscious and a decision is needed regarding surgery or other treatment. Healthcare Power of Attorney documents compliment Living Wills by making sure your healthcare decisions are made by specific people you choose, in a set order, so doctors have people to turn to for decisions, and the last decision of withholding or giving life support is made in advance.



Far too many times a doctor is stuck waiting for the closest living family members to agree on a decision. The patient may also not want that person to be making such decisions but never bothered to put this in writing. A wife may consider her husband too emotional and unable to make such decisions, so she would prefer her brother make these decisions. Or a husband may trust his wife's judgment, but would want a friend to make healthcare decisions if the wife is unavailable rather than his mother. A Healthcare Power of Attorney can prevent decision problems before they come up.

The Healthcare Power of Attorney and Living Will are necessary to complete any estate plan, and everyone should give due consideration to having these documents drafted and executed along with their Wills or Living Trust. ■

ILITs Save Heirs Substantial Estate Tax Dollars

An irrevocable life insurance trust, frequently referred to as an ILIT, can save substantial money in estate taxes. Life insurance policies are excellent sources of cash paid to beneficiaries in order to handle final expenses, provide for loved ones in replacing the lost income of the deceased, and paying estate taxes. However, the proceeds of the policy are taxed as part of the deceased person's estate *at the full payout value*. While insurance helps pay for estate taxes, life insurance proceeds actually add to the tax problem before solving it. Using an ILIT can allow the insurance proceeds to pass estate tax free to beneficiaries and actually leave more money in their hands and less in the hands of the government.

By gifting the policy to the ILIT (or creating a policy initially held by the trust), irrevocably appointing beneficiaries, and relinquishing control to an independent trustee, a person can avoid insurance policy amounts being included in their estate (if gifted more than three years before death). For people with estates well above the exemption amounts, it may be cost effective to place insurance policies in trust rather than to the estate, but it may be even more cost-effective to gift the policy directly to an heir before death. Please speak to any attorney or financial advisor to see what is best for you.

> *Using an Irrevocable Life Insurance Trust can pass the proceeds of an insurance policy on to your heirs Income Tax free <u>and</u> Estate Tax Free*

Typically, life insurance policies designate another person to receive the proceeds, and this avoids probate of the pay-out without using a trust. But because the policyholder retained "ownership" of the policy, the IRS considers all of the proceeds part of your taxable estate. An Irrevocable Life Insurance Trust works to avoid estate taxes only when a person gives up control.

In addition to avoiding estate taxes and probate, an ILIT can restrict property going to beneficiaries whereas only designating the beneficiary on the policy automatically gives them the money at age 18 without any restrictions. As an extreme example, a husband may have a $500,000 life insurance policy designating his 18 year-old son as the beneficiary while leaving the remainder of his property to his wife. He may have assumed that the money could be used to pay for taxes and expenses, but on his death the son could take the money, leave the wife with the tax bills, and spend the money as he pleases. An ILIT can specifically provide that the money will be held in trust until the son is 25 (or some other age), and that the trustee can use the funds to pay estate taxes in exchange for property from the estate.

An ILIT can be just as versatile as any estate plan, but it must be drafted properly the first time because it can not be amended later. The main drawback to using an irrevocable life insurance trust is that the policy purchaser loses control over the policy forever. However, the potential hundreds of thousands of dollars in tax savings usually makes the loss of control worth it. ■

What to Bring to an Initial Estate Planning Consultation

- Any recent net worth statements prepared by a financial advisor
- Copies of existing Wills or Trust documents
- A list of people you want as beneficiaries, including their dates of birth
- A general idea of how you want your property distributed

Many people do not have all this information, and our firm prefers to see you and discuss the information rather than put off this free, initial meeting.

Proper Planning Limits or Avoids Estate Taxes

The estate tax is one of the most frequently debated taxes in Congress aside from the income tax. Many representatives decry the tax as unfair because it taxes a persons wealth even though they have paid taxes on their income for their entire life. While it is probably a cynical view, our firm does not see the tax being eliminated any time soon since it always gives these same representatives an issue to run their campaigns on every two years whereas eliminating the tax would only be good for one campaign.

Under current law, estate taxes are levied upon death for estates larger than $1,500,000 (and progressively increasing until 2011.) Gift taxes are charged on gift amounts greater than $11,000 given to an individual in a year. Spouses are exempt from this tax when giving gifts to each other, and many times combine these exemptions to give $22,000 per year to a child or grandchild. Amounts greater than the $11,000 exempt gift per person are charged against the giver's lifetime exemptions of $1,000,000. Upon death, the IRS exempts property equal to the amount of exemptions left, and then taxes the remainder.

Gift Tax Example:

Mr. Smith and Mrs. Smith give $45,000 to their only child in 2003. Each has $11,000 a year exempt from the gift tax, so $23,000 is deducted from their lifetime exemptions. The IRS will now consider Mr. Smith to have $988,500 (the $1,000,000 allowed in 2003 minus $11,500) in exemptions and Mrs. Smith will also have $988,500 in exemptions.

Please keep in mind that these $11,000 exclusions are *per gift receiver*. A millionaire giving his entire fortune to 100 people in one year means each of 100 gifts of $10,000 is completely exempt from gift taxes. In addition, one or the other of the spouses may absorb the added gift tax, so Mr. Smith may have $977,000 of exemptions left and Mrs. Smith may have her full $1,000,000 in exemptions.

A simple credit shelter trust can potentially save your heirs more than $270,000 in estate taxes.

Estate Tax Example:

Mrs. Jones passed on in 1985 leaving everything to her husband. Mr. Smith has $1,000,000 in exemptions left. In 2003, he died leaving his only daughter behind to inherit his $1,500,000 estate. After the IRS exempted the first $1,000,000, his estate paid taxes on the added $500,000 for a total tax bill of $210,000. Credit shelter trust provisions in the Jones' Revocable Living Trust could have saved the daughter the entire $210,000.

The most common mistake in planning for estate taxes is not planning. A married couple each has $1,000,000 in lifetime exemptions (in 2003), and anything they leave to each other is tax exempt through the "unlimited marital deduction." Without planning for their $1.5 million estate, the wife may die leaving everything to her husband. Then, when the husband passes on, he leaves everything to his children. With his $1,000,000 exemption, the children have to pay estate taxes on the "extra" $500,000.

To save the wife's exemptions, the couple should have made use of the Y-Split credit shelter trust. The most common method of avoiding estate taxes occurs when married couples make full use of their lifetime exemptions by dividing their property between their spouse and a credit shelter trust for their heirs *after* the other spouse passes on. The most common type of trust is a Qualified Terminable Interest Property trust (QTIP). This effectively saves as much of their lifetime exemptions as possible while still giving the surviving spouse some control over the trust property. The assets in trust can be used by the spouse, the spouse can take up to 5% or $5,000 of the trust's principal per year, and can take out all of the income of the trust. Whatever is left over passes to the heirs making use of the $1,000,000 lifetime exemption of the spouse that passed on. The spouse remaining would then pass on using their own $1,000,000 in exemptions for their own assets. Most Living Trusts make use of this Y-Split to save on taxes, if needed.

For example, for a combined estate for a married couple in 2003, they may own $1,700,000. The husband and wife each have $1,000,000 worth of estate tax credits, and they leave their estate so that the survivor can allow property to go into a credit shelter trust. Upon the wife's death the husband allows $800,000 to go into the credit shelter trust and takes $900,000 himself. Upon his death later that year, the $900,000 he has passes estate-tax free to his daughter and the $800,000 in the credit shelter trust passes estate-tax free using the mother's estate tax credits. Had there been no use of the credit shelter trust, the daughter would have had to pay $300,000 in estate taxes.

It is clear that proper estate planning can save your heirs hundreds of thousands of dollars, and the cost is minor compared to the tax bill the IRS may give to your family upon your death. To make sure you do not have an estate tax problem, please contact The Law Offices of Jeffrey G. Marsocci, PLLC as soon as possible to schedule your free initial consultation. ■

Myths of Estate Planning

Myth 1: *“I don’t need a Will or Living Trust because everything goes to my spouse anyway.”*
Truth: In North Carolina, your estate is shared with your children or your parents if you die without a Will. In addition, your children would receive their inheritance at age 18 and is not preserved for expenses like college or buying a home.

Myth 2: *“I have a Will so my family does not have to worry about probate.”*
Truth: A Will is an order for a court to supervise the distribution of your property through the probate process. Unless you use a living trust or other probate-avoiding techniques, your estate will go through the court system.

Myth 3: *“I don’t have enough property to think about estate taxes.”*
Truth: Most middle class couples have a home, two vehicles and property that comes close to or exceeds the current estate tax exemption amount of $1,500,000. What these couples fail to realize is that life insurance payout values usually push this total well beyond the tax exemption limit.

Myth 4: *“There are no taxes on my life insurance policies when they pay out.”*
Truth: There are no *income* taxes on life insurance policies, but the IRS imposes estate taxes on the payout value of life insurance policies. An estate of exactly 1,500,000 without life insurance would have no estate taxes, but if there were a life insurance policy of $250,000, the life insurance would make the taxable estate $1,750,000. Estate taxes on this estate would be over $100,000.

Myth 5: *“My estate is set up so that it avoids probate, therefore I have no estate taxes.”*
Truth: Property within your control is subject to estate taxes regardless of whether or not it avoids probate. Proper tax planning can reduce or completely avoid estate taxes by changing your control over property and not just avoid probate.

Myth 6: *“I can handle my estate planning myself by using one of those kits or software programs from the office supply store.”*
Truth: Many of the most expensive estate problems occur when an attorney is needed to try to undue fatal mistakes in a do-it-yourself estate plan after the person has died. Before you attempt to do-it-yourself, ask if you would remove your own appendix. Chances are you’d hire a professional to do this for you, and your estate plan should be no different.

Myth 7: *“Trusts are for rich people, and I’m not rich.”*
Truth: Revocable Living Trusts are used more frequently today than they were only ten years ago because the public is becoming increasingly aware of its benefits. An investment of a few thousand dollars to establish a proper estate plan today potentially saves tens or hundreds of thousands of dollars in probate costs. Unfortunately, many attorneys and firms are still recommending Wills instead. However, please keep in mind that these same attorneys and firms could potentially earn those tens or hundreds of thousands of dollars for handling the probate work later.

Myth 8: *“I can take care of my estate planning next month.”*
Truth: Nobody knows what life holds. Proper planning *now* can prevent years of worrying. If there is an accident and you realize that you are not going to make it, you will not want your last thought to be “what will happen to my family.” We commit ourselves to completing all estate planning documents quickly and thoroughly so you will not have to worry about it.

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ESTATE PLANNING INFORMATION SHEET

The following is a list of information an attorney may ask for during an initial meeting. By taking the time to review these questions, you will not only save time but you may also realize there are things you may not have thought of. Please do not feel obligated to have all the answers before meeting with an attorney.

Personal Information

Name: ____ Married: ☐Yes ☐No

Spouse Name: _________________________________

Address:______________________________________

____

Phone Number: ________________________________

Children ☐Yes ☐No

Please list the names and dates of birth of all children

____

____

____

____

Net Assets

Would you say that your net assets (combined for a married couple) are roughly:

☐ Below $1,500,000 ☐Between $1,500,000-3,000,000 ☐ Above $3,000,000

Approximate Combined Life Insurance Payout Value: ______________________

How do you want your property distributed?

____

____

____

____

Who do you want to handle the financial and legal aspects of distributing your estate? Please list 3 in order.

1) ____

2) ____

3) ____

Who do you want to be guardian of any minor children you may have? Please list 3 in order.

1) ____

2) ____

3) ____

Who do you want to make healthcare decisions for you if you are incapacitated? Please list 3 in order.

1) ____

2) ____

3) ____

Please fill in as much as you can and bring with you when you have your free initial consultation at The Law Offices of Jeffrey G. Marsocci, PLLC. Call (919) 844-7993 to schedule a time and date.

The Law Offices of Jeffrey G. Marsocci, PLLC

A law firm focusing on

- *Estate Planning*
- *Wills and Revocable Living Trusts*
- *Healthcare Power of Attorney*
- *Living Wills*
- *Insurance and Charitable Trusts*
- *Medicaid Planning*
- *Incorporation & Contracts*

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"We are committed to protecting you and your family from unnecessary taxes and probate costs."

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