



Hope for a Better World



A Creative Estate Planning Newsletter for friends of Ananda

“A Trust for all Reasons”

How do you want your heirs to remember you? As a person who likes things neat and orderly - or messy and chaotic? One way or another you will be remembered, no doubt about it. *How* depends on the planning you do this side of your personal eternity.

In our last issue we discussed the need for careful planning through the use of a will to transfer property to one's heirs. As good and as necessary a carefully drawn will is in estate planning, there are three things that one must consider: a will can be challenged by disgruntled heirs; a will must be "proven" in a probate court, which can be a significant drain on the financial assets of the estate; a will, once it is filed by the executor, becomes a public document. For a few dollars anyone can request a copy from the clerk in the county in which the will was filed for probate.

Will vs. Living Trust

When it comes to estate planning and the use of wills and trusts, it's not a matter of "*either/or*" but of "*both/and*." The will is the base upon which the estate plan is built. Trusts and other instruments are the building blocks.

Expect the unexpected is good advice whether you are driving down a quiet street, a busy highway, or are planning your estate. Murphy's law - *if something can go wrong it will* - gives us fair warning. It helps us remember the dangers of not doing everything possible to ensure that what we want to achieve with our estate planning will happen; and that it will happen with the least amount of distress and expense to our loved ones.

Too often would-be planners fail to anticipate the problems they are creating or how family members will respond to them. For most American families the enemy of their estate planning isn't the dreaded IRS - *it's members of their own family*. The biggest cause for family discord after the death of parents is that they didn't make clear what they wanted to achieve and then use all the tools available to them to reach those goals.

Pour-over Wills and Trusts

When a person dies, certain legal, personal and financial matters must be settled. It is a lot easier, simpler and less expensive for the executor of a will to handle these matters with assets still left in the estate than for the trustee to use assets which previously had been placed in a trust or trusts.

Once probate is over - usually 6 months if things go smoothly - then the executor can finish his duties by "scooping up" everything of value in the residual estate and "pouring over" these remaining assets into the trust for management and distribution. Meanwhile family needs were met with the assets previously transferred to the trust.

Based on cases across the nation, the average cost of probate is 5-8% of the value of the estate. *This is a pretty high toll expense which could have been avoided* if the most valuable assets had been transferred to a trust while the planner was still living.

Living vs. Testamentary Trusts

Unlike a living trust, the testamentary trust does not begin to function until after the death of the planner and all the assets of the planner have gone through the probate process. Assets in living trusts



avoid probate and for this reason living trusts are superior to testamentary trusts.

A revocable living trust is a legal agreement in which the planner/grantor transfers ownership of property to the trustee of the trust who then manages it for the lifetime of the planner/grantor. The trustee has the power to use, rent or sell the property *but only when and if the planner/grantor has so instructed*. The planner/grantor has the final say as to what happens to all trust assets.

It is called "revocable" because the grantor/planner can amend or end the trust agreement at any time, or appoint a different trustee. Property may be added to or taken out of the trust as needed.

The planner/grantor remains in control of the property in the trust at all times. The planner/grantor may be the primary trustee of the trust and simply name a successor trustee should certain conditions occur, such as accident, disability or death.

Trusts have been used to manage and protect property since Roman times. English knights used trusts to protect their lands when they went off to battle or on a crusade. Trusts were used in America to help the colonists protect their property from English taxes and government confiscation.

What Trusts Can Do

Trusts are so versatile and capable that you would think everyone would want to have one or more. *Yes, in the beginning they are more expensive to create than a will.* But, one way or another, to transfer valuable assets to one's heirs is going to cost money. The only question is: ***who is going to pay the bill and when?***

On pure dollars saved, the consensus is that it's more affordable and efficient for the planner/grantor to pay it on the front end than the executor of a will on the back end.

Trusts can:

Avoid probate. Most states require estates with \$30,000 in asset value to be probated. Do the

math: At 5% or more you *start* with \$1,500 to \$2,000 in costs for probating a will. (In California the amount is \$100,000 and above.)

Avoid unnecessary estate taxation. Currently, each tax payer's Unified Credit protects \$3.5 million of estate value, *at least through the end of 2010*, unless Congress does something to change or amend current legislation. *What it will revert to in 2011 is anyone's guess.* Regardless, with proper planning a husband and wife can arrange their separate estates so that each spouse takes advantage of the "credit" or estate tax forgiveness with what are called A - B Trusts.

Maintain Control. Having a trust guarantees that your beneficiaries will be provided for *as you have directed in the trust*. Meanwhile, it gives you full use of your assets while you are alive.

Provide Conservatorship. Incapacity or disability is not something you plan on but certainly something you can plan for, whether it is for yourself or for a loved one. Trusts are the best tools to achieve this!

Perpetuate lifetime values. There are many ways you can financially support the charities and causes you believe in both now and after your death. But, if you project your estate to have sufficient and significant value in the future and you could use income tax savings now, you owe it to yourself to explore how a **charitable remainder trust** might fit into your estate plan and benefit yourself, your heirs and the charities whose work you would like to support beyond your lifetime. Ask us or a trusted financial advisor for more information.

We'll explore this topic in depth in our next issue of this newsletter.

For further information you can request the brochures: *A Guide to Planning Your Will* and/or *Planning for the Future*. We'll be happy to send them to you. **Return the card in this mailing, or contact Parvati Hansen at the Janaka Foundation Office:**
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