

Preface to the Second Edition

A second edition of *Living Trusts for Everyone* seemed timely given significant changes in the law. I have updated, rewritten, and expanded sections in response to reader feedback. The first edition was very well received, and I have gotten numerous emails thanking me for making this information available. I have rewritten much of the text just for my own purposes to make it more readable, so I hope you find this new edition educational and useful.

You will now find information on the federal estate tax that may enable you to simplify an existing trust or allow you to create a new one with fewer complications. The trust you create now should be easier to understand and should be less expensive to set up due to simple trusts now being appropriate for nearly everyone.

Nowadays, there are many more kinds of assets to protect than there were even a few years ago. Such things as online investment accounts, banking, credit cards, websites, domain names, and even online gaming or gambling accounts as well as other intangible assets often have significant value and need to be brought under the umbrella of trust protection.

Former clients and readers of the book have reported real concerns with trustees who ignore the trust instructions, fail to communicate with the heirs of an estate, waste or even steal the estate assets, and commit other malfeasance. I go over ways to set up your trust so that these sorts of actions are eliminated or minimized.

More information is included on how to deal with trust assets during your lifetime. For example, how does the trust sell real estate? What are trust certificates, and why do banks and title companies want new ones all the time? When and how can a trust be cancelled? When should a trust be made irrevocable? How about incapacity—should you define the specifics as to what constitutes mental incapacity and who makes that decision? A new FAQ section covers common concerns with specific examples.

While I do not recommend doing your own trust or using a fill-in-the-blank form, I have set out the decisions you need to make before you ever visit a lawyer so that you have had time to discuss and think about your options. Who gets what and when are some of the decisions, but who is in charge and under what circumstances are others. Having these decisions made ahead of time should reduce the attorney time and—we hope—your attorney fees.

I have seen attorneys actually giving away free copies of *Living Trusts for Everyone* as an assist to their clients in understanding the basics of trusts, so I know the book has been well used.

Much has been written about using the living trust to avoid probate. One would assume from the information out there that probate avoidance is the most important value of having a trust. But, for many people, there are far more important and even critical reasons to have a trust rather than a will.

There are four fundamental purposes and advantages of a trust.

The first is asset management. It could be a mistake to give certain beneficiaries a lump sum inheritance. They may be too young to properly manage money on their own, may be mentally incapable of managing it, or may not have enough maturity or good sense to be good money managers. Using a will to leave your assets to your young children may result in money going to someone too young to properly manage it. Trusts solve that problem.

Minors can inherit from their parents or others. Unless the inheritance is left to them in a trust, the money would be kept for them by their guardian and conservator. Then, when they reach the “age of majority” (adulthood—usually eighteen), whatever is left of the money they inherit is turned over to them as a lump sum whether they are responsible with money or not.

Even adult heirs may be incapable of managing money properly. Having their share in trust for them allows someone else to be sure it is properly invested and managed. Those who receive certain governmental benefits, including disabled heirs who need help with medical costs and rely on

Medicaid, may be disqualified from receiving those benefits if they inherit too much that is not in the right sort of trust for them.

The second benefit is tax reduction. While the estate tax now hits fewer people than before due to the high threshold, a trust of one kind or another can either eliminate or greatly reduce estate and inheritance taxes. This purpose is considered by many nonexpert attorneys to be the only reason to have a trust—thus their oft-given yet erroneous advice: you don't have enough money to need a trust.

The third advantage is probate avoidance, which is a valuable benefit. The big lie put forth by some attorneys and bar associations is that probate is not that expensive and there is no good reason to try to avoid it. The truth is that probate is usually very expensive (because of attorney fees) and is in nearly all cases totally unnecessary if a properly prepared and funded living trust had been prepared. Attorneys who say a trust is not needed are either unaware of the value of trusts or have a vested interest in seeing probate continue.

The fourth benefit is for those who wish to avoid a court-ordered conservatorship should they become so disabled as to be unable to manage their own affairs. If, for example, a person has dementia, the trust can have provisions that allow a successor trustee (the one who would take control at death or disability) to take over financial management of the trust assets. This helps the person avoid the expense and embarrassment of court supervision.

There is also a grab bag of additional benefits, including privacy (probate is public record; trusts are most often not), low cost (there are no court costs, filing fees, or estate inventory fees on a trust at death), ease of administration, lower likelihood of someone contesting the estate, and elimination of the time delay caused by probate of a will.

I have also included in this volume a set of instructions for the family to follow at the death or disability of the trust maker. Most often, attorneys do not provide instructions and the family has no idea what to do when the trust maker dies. So they go back to the attorney who prepared the trust and end up paying a lot of money to find out what to do. The fact is that a trustee does not need legal services to settle the trust because the things that need to be done are mostly clerical, not legal, in nature. Why pay attorney rates for clerical work? The information in this section is invaluable and not available from most sources.

The information contained herein will benefit both those who do not have

a trust as well as those who do. This is not a textbook or a comprehensive treatise on all the many kinds of trusts that can be done for various reasons, nor will you find out how to do your own trust. This is a book for the 95 percent of the population that has done no estate planning, so that they are informed and will not be misled by incorrect information pushed by those with vested interests in seeing the probate process continue.