



## LAW OFFICES *of* AFFORDABLE LIVING TRUSTS

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Saturday, February 20, 2021

To whom it may concern:

We are sorry to hear about the loss of your loved one. We know through experience that this is a difficult time. Please accept our condolences. We know that a trust cannot do anything to make up for the human loss but the trust will help make the transition and management of assets much easier and more beneficial than it would be otherwise (if there was not a trust). **Please**, do not translate this into the mistaken belief that no paperwork and tasks must be observed and completed. In fact, it is vital that certain formalities, paperwork, and tasks be completed so that all legalities are met and to ensure that maximum tax advantage is enjoyed by all. These formalities are designed to ensure that the trust works the way it should, and that you and your survivors gain maximum tax advantage.

**A Failure to Observe Formalities and Procedures Can Prove Very Costly & Problematic:** Failure to take care of these formalities may result in loss of certain tax advantages and impose difficulties in the proper and smooth administration of the trust. That is why whenever anyone dies, it is very important that legal and tax guidance be sought shortly afterwards – and we advise such in the strongest of terms. We have seen refusals to seek this guidance result in very costly consequences, mostly in the form of lost tax advantages potentially costing tens of thousands to millions of dollars (not to mention other problems too numerous to list). Be smart and understand that paying for legal and accounting guidance at any death is money well invested.

**We Offer Affordable Trust Settlement Guidance:** We do offer advice and guidance for deceased trust estates if you like. While you are under no obligation to use this office, we think it makes certain sense – especially since our prices tend to be very reasonable compared to other law offices. As a point of reference, **many law offices (not ours) are charging 2% to 3% of the gross value of the trust estate** – and even those very high fees don't include everything. Also, it is not insignificant that we drafted the trust. Learn more about our Affordable Trust Settlement Guidance and why to use us by clicking here.

**Always Be Wary of Amateur Advice:** All too often survivors are inundated by advice from numerous sources on “what they should be doing” (aunts, uncles, neighbors, children, bankers, stockbrokers, county clerks, financial advisors, government workers, etc.). The first bit of advice we can give you is to ignore advice that emanates from such sources (no matter how well intentioned it may be). Most of the time it is wrong and many times it can turn out to be very costly to the survivors. Do not do anything -- make no moves -- unless guided by and instructed by a competent attorney and CPA. In the long run, misguided moves could turn out to be very expensive indeed. (We see it all the time.)

**Every Situation Is Slightly Different:** What we discuss in this section below does not amount to an all-inclusive list, nor does everything discussed always apply to everybody. Each situation is different. That is why it is important and necessary to examine the individual circumstances to come up with the correct tasks and approach. Taken one step at a time (with proper guidance), it is almost always a fairly straightforward process. It is only when people do not seek out competent guidance and/or try to understand and deal with it all at once that it becomes problematic. Our advice is to get proper legal and tax advice and take it one step at a time. We know from experience that if you follow such advice this will be a much easier and more tolerable experience.



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**Among the definitive checklist of procedures, paperwork, documentation, and record-keeping which should be followed:**

**Affidavits Death of Trustee:** Affidavits must be prepared, properly executed, and recorded along with Certified death certificates for each piece of real estate property. (The purpose of these affidavits is to give the successor trustee signature power over said property – without which they would be powerless to act.) Again, the proper county forms correctly filled out need to accompany these affidavits (to avoid re-assessment).

**Analysis of Assets:** What is in the trust, what is outside of the trust, what is the easiest way to get an asset in the trust which isn't titled in the trust, how are death benefits collected and how do they fit in, etc. These items and more need to be analyzed.

**Proper Valuation:** The fair market value of all assets needs to be established as of the date of death. There is a right way to do this to avoid potential problems with the IRS and many wrong ways.

**Tax Issues & Partnering With A Qualified CPA:** There are issues of final income tax returns, timely filed Portability elections by a surviving spouse (very important), the possible need for an estate tax return (the trustee is held personally liable for seeing that the return is filed and any taxes paid), properly establishing stepped up basis, properly establishing double stepped up basis for surviving spouses, EIN or tax numbers for the trust, 1041 Fiduciary returns, tax elections, possible disclaimer issues, etc. In addition to seeking legal guidance these are just some of the reasons for also partnering with a qualified CPA. In seeking out a CPA, be aware that as good as many CPA's are at income taxes, etc., very, very few CPA's understand the proper procedures for trusts, estate tax returns, ABC allocations, and other issues at death. This is no "cut" to many CPA's; it is just fact discussed at many legal seminars and consistent with our experience.

**Electing Portability:** As of 2011, surviving spouses can elect portability of their deceased spouse's exemption on a timely filed 706 estate tax return. Done properly and in a timely manner, this will allow most spouses to use their deceased spouse's exemption (currently up to \$5+ million) as well as their remaining exemption for a potential total of \$10+ million estate and gift tax-free. Again, it is important to emphasize that this election must be done properly and in a timely manner (within 9 months of death) or it is possible that the surviving spouse can lose this sizable benefit.

**Ascertaining Creditors and Paying Debts:** Attention must be paid to properly dealing with debts and creditors. It should also be ascertained as to whether or not a "creditor's claim process" is appropriate to head off any possible future claims.

**A/B/C & Other Sub-Trust Allocations:** Many "Married-couple trusts," especially those that have not been updated since 2000, require the trustee to allocate assets between sub-trusts (often referred to as A-B & C trusts or disclaimer trust). What rights does the surviving spouse have? What restrictions does the surviving spouse have? What are the survivor's duties? Parts of the trust become irrevocable at the first death. Sometimes there are other needed sub-trust allocations and accountings. Point is, failure to pay attention to these formalities can result in many problems and potential costs. Again, there is a right way to take care of these items and many wrong ways.

**IRS Time Limitation for Disclaiming:** Some married-couples elect a "Disclaimer trust approach" to their tax planning. This disclaimer approach allows the surviving spouse to choose (at the first spouse's death) whether or not (and to what extent) he/she wants to use an exemption sub-trust. Yet, if the surviving spouse takes ownership of the deceased spouse's assets (&/or starts treating them as her/his own) – or -- fails to exercise a qualified disclaimer within nine months (of the first spouse's death), the ability to exercise a disclaimer will be



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lost (negating any potential use of the deceased spouse's exemption). (Note: There are also instances when other beneficiaries might want to disclaim where the same rules and time limitations apply.)

### **Trustee Duties:**

The trustee is under the highest legal obligation to the beneficiaries to carry out the terms of the trust as set forth, and to also give trust accountings. Also, the trustee is required to serve certain notices on the beneficiaries and heirs. This requires a careful analysis of the trust terms and distribution provisions. There is also the issue of properly distributing or administering the trust assets to the beneficiaries while also protecting the trustee.

### **Recording Any Silent Deeds** (if any)

Some (because they chose so) have unrecorded (silent) Deeds transferring real estate property to the trust. If so, these "silent" deeds now need to be recorded at this point (**do not use joint tenancy or file an affidavit death of joint tenant to pass property**). Important to this process is the submittal with the deeds of the proper county forms correctly filled out and completed (to avoid re-assessment).

### **Other Potential Issues:**

As we said, this is not an all-inclusive list. Depending on circumstances, more or less may need to be done. That is why it is important and necessary to examine the individual circumstances to come up with the correct tasks and approach.

**The Living Trust Is Still A Very Wise Move & Never Make The Mistake of Thinking Joint Tenancy Is a Good Option:** It is important to re-emphasize that implementing a trust was a wise move. While you may think that the expenses and tasks which now need to be completed seem somewhat of a burden and hassle, we can only tell you that it is a minor task when compared to the tremendous amount of money, time, headache, and paperwork involved with Wills and Probate. Also never make the mistake of thinking joint tenancy would have been better. Though passing property via joint tenancy may seem a little easier on the surface, it usually comes at the expense of losing a major income tax advantage (not to mention introducing a host of other potential problems). Tax-wise, Joint Tenancy typically and uselessly exposes the survivors to \$50,000, \$100,000, \$150,000, and more in income taxes (upon the sale of the asset) which they otherwise would not have owed. Simply put, with a trust, there is no easier, less expensive way to pass property while also enjoying maximum income and estate tax advantages. Compared to probate, the tasks and expenses are minimal. Compared to joint tenancy, the income tax advantages of a trust dwarf any associated costs or work.

Sincerely,

Affordable Living Trusts

**Did you know, you will generally be able to avoid any income tax on all the appreciation that has occurred on assets during the decedent's lifetime. That's right, as long as you take the proper steps. Failure to do so, however, can jeopardize this huge benefit. Is the paperwork and hassle worth it? We think the answer is obvious!**