

Price & Farrington's Estate and Tax Planning FastFaxts

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Estate, Tax, Business and Wealth Planning for Advisors and Clients

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REVOCABLE LIVING TRUSTS:

Frequently Asked Questions & Some Comments

Best of luck! 

Recently the Puget Sound Business Journal asked us to write a short article for their readers on the topic of revocable living trusts. Because the living trust is a common, but often misunderstood, estate planning tool, we jumped at the chance to share our own educational ABCs on the topic. Living trusts are marvelous planning tools when appropriate. But beware the professional living trust hucksters (e.g., lawyers, "estate planning advisors" and so on.) who have their own agendas for indiscriminately pushing living trusts on every prospect within sight. (See Sidebar, page 2). Here's our article:



Everyone of adult age should have an estate plan. The living trust is one way of creating such a plan. Here are nine frequently asked questions to help you determine whether a living trust is right for you or your clients.

WHAT IS A TRUST?

A trust is a legal arrangement. The **trustor** who creates the trust names a person or institution who will serve as **trustee** and transfers assets to the trustee to manage for the benefit of the **beneficiary**. You can wear all three hats at the same time, i.e., you can be the **creator**, **trustee** and **beneficiary** of your own living trust. You continue to enjoy full control over all of the property you have transferred to the trust, decide who manages the trust assets if you become disabled and determine how the trust assets will be distributed following your death.

WHAT IS A LIVING TRUST?

It is what Latin-loving lawyers call an *inter vivos* trust, a trust you create during your lifetime to take effect immediately, as opposed to a "testamentary" trust that is created inside your will or

living trust and springs into existence upon your death.

WHAT IS "FUNDING" MY TRUST?

You "fund" your living trust by re-titling to yourself as trustee assets you currently own in your own name, e.g., your home, other real estate, bank accounts, stock certificates and bonds. The paperwork that is required to fund your trust property is worth the effort because you achieve valuable benefits such as strong lifetime disability planning, increased privacy and probate avoidance at death. After the initial funding, any property you acquire in the future is simply titled to your living trust at the time you acquire it. You should not title to your trust an asset that carries a *beneficiary designation*, such as an annuity, life insurance policy and retirement plan. Instead, you might decide to name your living trust as the beneficiary - not the owner - of those assets. It is important that you get professional advice in this regard so that your estate, tax, retirement and death planning are congruent and effective.

HOW DOES MY LIVING TRUST AVOID PROBATE?

A major advantage of a living trust is that the assets it holds do not have to detour through probate before they are distributed to your beneficiaries. Probate is the public, court-supervised legal process that includes, among other things, filing your will, marshalling your assets, paying your debts, and distributing your property to your intended beneficiaries according to the instructions in your will. For a married couple, a probate administration is required on the death of each spouse. Avoiding probate can result in lower professional fees, more efficiency and



Glenn D. Price (left) and Charles P. Farrington.

greater privacy. If your living trust holds title to real property located in more than one state, you will be able to avoid the costs and consequences of an additional probate in each state where the real property is located.

IS MY LIVING TRUST MORE PRIVATE?

A will becomes a matter of public record during the probate process, as do all other documents filed with the probate court. A living trust, on the other hand, is not required to be filed with the court and does not trigger a public administration of the estate. This results in a more private, confidential and efficient estate administration that is more difficult, expensive and inconvenient for a disgruntled heir to challenge than contesting a will during the public probate process.

CAN MY LIVING TRUST MINIMIZE OR AVOID ESTATE TAXES?

Yes, but there is no inherent estate tax advantage to using a living trust. Identical estate tax planning can be included in a will. The difference is that the

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will must be probated in order to implement the estate tax planning.

DOES MY LIVING TRUST AVOID INCOME TAXES?

No. The grantor (creator) is treated as the owner of the trust assets for income tax purposes and is required to report all trust income on his or her personal income tax return. Grantor trusts are “invisible” to the I.R.S. for income tax reporting purposes.

WHAT ARE THE PRIMARY ADVANTAGES OF A LIVING TRUST?

1. You can act as your own trustee or have another person or institution act as trustee or co-trustee to make investment or other management decisions for you.

2. You can achieve more effective lifetime disability planning with a living trust than you can by relying exclusively on a durable power of attorney in a will-based estate plan.

3. At your death your trustee can distribute assets directly to your beneficiaries without triggering one or more probate administrations.

4. The management of your estate during your life and following your death can be more efficient, private and confidential.

5. It can be much more difficult for your heirs to challenge your living trust than to contest a will.

WHAT IS THE BEST ADVICE FOR CONSUMERS?

Proper estate planning should always reflect your goals and circumstances and not someone else’s idea of what is right for you or what fits their agenda. Avoid dealing with anyone but

a knowledgeable, trusted and well-regarded estate planning attorney in your community who will take the time and effort to help you design and implement the estate plan that is best for you. Your goals, circumstances and a detailed consultation with an experienced attorney will determine whether or not your estate plan should include a living trust. (end of article)

Sidebar

Thinking About Getting a \$199 Living Trust?

Think Again, Very Carefully...

Crooks, books and schnooks.

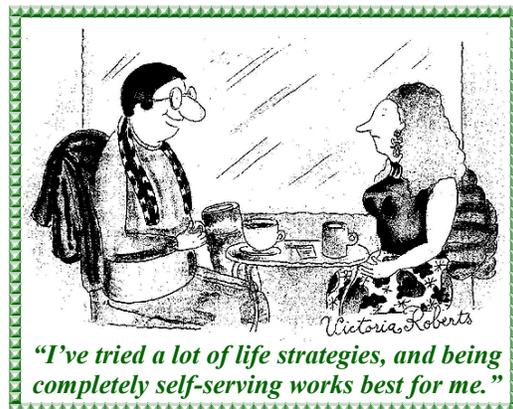
Before you jump to get a bargain trust (How about a do-it-yourselfer from a \$19.95 “Create Your Own Living Trust” book?), be sure you know all the facts — and pitfalls. “Trust mills” usually produce “bargain trusts” in a high volume in order to make a profit. And while they often try to give the

Want to read more about how to avoid shortchanging yourself and your planning? Take a look at our February, 2003 FastFacts: “Trust in a Box: The Perils of Foolish Frugality” by clicking inside this box.

appearance of being a law firm (and may even have an attorney give the presentation), they’re hiding the real truth from you; you will probably have no direct contact with an attorney during the process of establishing your trust. That’s like getting critical surgery from a doctor you’ve never met with and who has never examined you!

The sale of a living trust is often used as a “loss leader” by the hucksters, which opens the door for them to sell something else that’s much more profitable—for them! Like insurance or annuities. And there’s always the pressure to “act now” and make a deposit “immediately” in order to get your “discount”.

Don’t be a schnook! No legal consultation, no customization, one-size-fits-all, hidden disclaimers, high pressure and secret agendas all sound like a great way to do your and your



“I’ve tried a lot of life strategies, and being completely self-serving works best for me.”

family’s estate planning. But, hey! It’s cheap!

Alas, some attorneys do it too.

And here’s what really grates on us: how many hundreds of times over the last ten years have you seen a newspaper ad placed by an attorney inviting you to a **Free Living Trust Seminar!** Think there’s an agenda there for you or your client? Hmm? At Price & Farrington we have never pushed a legal “product” or an agenda, suggesting *one product fits all*. It doesn’t and never will. Instead, we prefer to present to the public, professional advisors and our clients an **Estate Planning Seminar**. Among many other topics, we discuss the living trust as a powerful planning tool where appropriate. As estate planning attorneys, our primary goal, always, is to help folks do the planning that’s right for them, not for us.

For a copy of our five-page P&F Legal Advisory with the same title as this article, contact us and we’ll be happy to oblige. Read it and give a copy to your parents, colleagues, friends or clients. ■



Re-Defining

AVIODABLE: *What a bullfighter tried to do.*

CONTROL: *A short, ugly inmate.*

EYEDROPPER: *A clumsy ophthalmologist*

MISTY: *How golfers create divots.*

PARASITES: *Seen from the Eiffel Tower.*

PHARMACIST: *A helper on the farm.*

POLARIZE: *What penguins see with.*

RELIEF: *What trees do in the Spring.*

SELFISH: *What the owner of a seafood store does.*

SUDAFED: *Brought litigation against a government official.*