SOLUTIONS TO ESTATE PLANNING

Estate Planning: Clients come in saying they want a will or a trust, but most don't know the difference or the impacts. Wills are usually worthless for making your property go where you want without an expensive probate unless your estate has no real property or real property worth less than $20,000 and a total estate value less than $100,000. Otherwise, probate of a will costs about 3% of the TOTAL estate value for attorney fees and court costs. A trust can drastically reduce such 3% mainly by keeping out of probate.

Estate Planning Is Far More: Trusts and wills are just the beginning of true "estate planning", which includes further actions to:

1) protect assets from scammers and wrongful creditors;

2) save taxes;

3) protect family members who need special protection;

4) just some of the "tools" used are: how deeds are written + changeable trust + unchangeable trust + wills + annuities + repeated gift patterns + qualifying for supplemental social security income + qualifying for Medi-Cal + avoiding death taxes + incurring debts + filling all the "buckets" of classes of assets which are exempt from creditors + investing in overseas Lichenstein Trusts + alien accounts + various asset investments + Joint account advise + <u>conservatorships</u> for adults and guardianships for minors + avoiding probates with declarations, and title holding, and especially when not to + on and on and on. However, BEFORE all these techniques, your will and trust are the BASICS!

What is a Trust?
A contract with a trustee (who can be you - really a contract/declaration with yourself) to hold your assets for you. Trusts have existed since Biblical times.

A **living will** isn't a trust or will at all but is a set of conditions for when their relatives may kill what's left of them as when they have a stroke or are basically a "vegetable".

There are many kinds of trust, but most people are really asking what is a "living trust" since it saves those 3 1/3% probate attorney fees, but costs less than $2000 to set up and maybe up to 1% to "settle" a trust as is explained further on. A "living" trust is just any trust created during life a dead trust is created by a dead person in their will and doesn't start until a judge conveys assets from a probate to the trustee after probate.

It avoids probate since it the successor trustee does all that would otherwise be done in probate. So, you’ve GOT TO trust the appointed successor trustee or they will steal it all and lead to expensive law suits costing far, far more than any probate costs.

What Is A Living Trust?
It is a written contract perhaps 20 to 150 pages long saying who owns property, who controls it, and who gets it. It’s between the living person(s) owning property and themselves or another persons(s) who agree(s) to receive, hold, manage and distribute such property as the owner sets out in this written contract. [Yes, I understand that a normal sensible person could say all that in 2 paragraphs but attorneys need 30 pages to say all that]. Since the body (collection) of the owner’s property is literally held by the trustee who may at first be the owner and after his/her death be a friend or family member or whoever the owner appoints, there is no need for a judge to decided whether there is a will, or who is administer it, or who the distributes of it are, there is no court proceeding and thus no need for an attorney to represent anyone to the court and thus no probate attorney fees of 3.3% or more, which saves the family but not the dead persons money! That’s the main reason for them.

For most people trusts only save the children about 3% of the estate's value for probate attorneys' fees, (one of the children is usually the personal representative/executor and gets the other 3%) and attorney fees to create and maintain a conservatorship for you if you become incapacitated or senile, and those truly are important.

The word "trust" should make it plain that you MUST trust your successor trustee!! However, those you appoint to be your successor may be off on a long vacation, too old, dead, too occupied with their own lives to be able to accept your appointment. So, successor trustees should be appointed, and there should be a process in your trust to replace trustees and appoint new ones. Successor trustees manage your trust after you cease to be trustee, and are supposed to read the trust and be familiar with it. If it is detailed enough there should not be much need for another document beyond the 20+ pages of the trust. Having a "Trustee's Manual" requires your successor to read something like the whole LA times edition. They'll appreciate that. Your kids the beneficiaries of the trust often think they "Own" it, but YOU own it, and the kids have only an "expectancy", a "hope" you will leave it to them. Truly, they are not the trust's "owners". Giving the kids a list of what to sue the successor trustee's for will make it easier for you to convince your "buddies" to be your trustee and carry out your wishes they have learned from decades of being with you.

You need to understand what your trust says and means; and also reflect on who should receive the results of your lifetime of effort and pain. Occasionally review your trust with your trusted attorney and not anyone with less than an attorney's license from the State of California.

Some provisions used to sell trusts and the results of having them:

1. Savings inheritances from divorces, lawsuits, creditors and government claims is simple - Give the trustee total control so your kids live with an allowance the rest of their lives so that they will hate you, all to save taxes.

2. New Goal: A few years ago trusts were also used to reduce federal death taxes, but the “federalies” currently don’t tax any estate less than 5 million (I ought to add up all my pocket change, yes?), though that may be reduced in the future. If your estate is greater than say 1 or 5 million, the tax starts at 45% and rises to 55% at the highest. You pay that with a simple check to the IRS and put it in a simple mail box and go away crying. So, the main reason for trusts currently is to save probate attorney fees and the inconvenience of accounting to your brothers and sisters and being honest (hah hah). Spending less than $2000 set up a trust which saves $30,000 probate fees is seen by many as a waste, but that’s how it is.

3. Create a money "Legacy" like on South Fork. It's simple, keep your estate in a trust. That way your kids grow to hate you since you never trusted them, but you do your great grand-kids, whom you knew so very well.

4. Your spouse won't have a lot of paperwork if your "A-B" trust does not "over qualify" trust "B". Explanation = trusts often say that on the first death as many assets as are necessary to equal the federal non-tax amount is to be put into trust "B". That's not necessary if the estate is less than the exception. Usually the only reason there even is a trust "B" is to save taxes and it's not necessary when the total estate is less than the non-tax amount. This is simple: The federal government only tax the amount greater than the non-tax amount. So, by putting enough into trust "B" that the survivor's estate is less than the non-tax amount, ends up with no tax on the first to die and on

the survivor's death. But if the total estate is less than the exception to the taxed amount, why put any into trust "b" and thereby force the survivor to keep extra records and file extra tax returns?

5. When you die your trust usually becomes fixed in concrete (irrevocable). A common way to give some flexibility is to provide for a "disclaimer trust". The effect of this is that if someone who is to get something from your trust, "disclaims" all or a part of it within 6 months of your death, that amount they disclaim goes as provided for in your trust. Another way is to give your trusted friend, who we call your "protector" the power to change YOUR trust to cut out maybe your kids or others. Doing that will endear you to your kids all to save taxes. Isn't that more important than helping your kids?

6. Avoiding probate is a BIG selling reason for trusts, and that they can do well IF the trustee is competent and honest and trustworthy. BUT, your trust has NO effect or power over any of your property which is not put into the trust. If your property is not put into the trust, your friends may have to go to court and get a probate with an executor appointed for you to take charge of your property, you did not put into your trust. Don't forget though that paying 1/2 of 1 percent of your estate for costs plus 6% (approx. 3% attorney & 3% executor) for probate of it may be cheap "insurance" from a person in a black robe guaranteeing that every penny balances. I thought one reason you created you trust was to avoid the courts and attorney fees.

If you are thinking about getting a trust call me at 949-581-0951 for an appointment to talk over what you would need in a trust.

Some examples of past cases in the following areas:
Trust Correction

Tax-saving trusts mistakenly mistyped resulting in loss of tax savings redeemed by properly showing a good judge how to interpret the entire trust to save the tax saving purposes of the trust;

Correcting on review of trusts not written by me, a failure to place valuable assets into trust, or failure to clearly say when a successor trustee becomes the trustee.

<u>Heggstadd Petitions</u> - petitions to put assets into the trust after trustor(s) has died that were listed in the schedule's of the trust but were not titled in the trust.

You will need to deal with the federal HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPPA) which generally prevents hospitals and doctors from telling even relatives about your medical condition. You can waive these protections for specific people, and most hospitals and doctors have forms to do that. You can also waive your protections in a power of attorney or trust as well. I just hope they find these documents in time.

Trust Problems come from dishonesty and, or incompetency of the trustee. Although a trust is far cheaper than a probate and is quicker, delay and expenses can arise from the following problems. <u>So, choose carefully the successor trustee</u>. Some disadvantages of any trust are:

-thick contract/declaration to read;

-dead person's assets not actually titled into the trust name & may have to be probated to get them into the trust;

-no judge in black robes is checking on a trustee without a law suit claiming the trustee is doing wrong;

-without a court, the actual trustee may not actually:

√ send to the beneficiaries a true account; or

√ may not follow the trust; or

√ may ignore the law; or

√ may truly not understand the trust or is stubborn; or

√ may mix together his personal funds and trust funds thus subjecting trust funds to the trustee's own debts;

and thus may need to be sued in court to force them to do such.

If you are having a trust problem give me a call at 949-581-0951 to discuss your problem and possible solutions to that problem.

Medical power of attorney: now usually called California Advance Health-care Directive. An "emergency card" is helpful, but more helpful is to keep your California Advance Health-care Directive in your car's glove-box as that's the most likely place to easily find it if you have to go to an emergency room. That's wise advice. A wise old lady who was a client of mine also kept a copy in a clear plastic bag taped to the back of her front door. Anyone coming in to take her away for any medical condition cannot get her out of her place without seeing it. Pay attention to it! Further if you get the CA Medical Associations' California Advance Health-care Directive it has an emergency card saying who your doctor is and gives phone number and any allergies you have and your medications and conditions. REGARDLESS OF ATTORNEYS AND TRUSTS, YOU SHOULD KEEP ALL THIS AND MORE ON YOU ATTACHED TO YOUR DRIVER'S LICENSE!

IRAs

Your IRAs are often made payable to your trust, and thus would be subject to your estate's debts. However, if they are payable to just named beneficiaries, they are not subject to your debts. Investment-wise, you probably understand that the tiny amount of appreciation on most IRAs barely keeps above the inflation amount. The result is that the buying power of the amount you have in such investments is barely increasing. Ben Franklin, Albert Einstein and others brag about the effect of "compound interest". Government uses that to encourage you to put more into IRAs etc. saying that the minuscule interest on your IRAs you don't have to pay taxes on. Thus these little interest amounts can themselves produce income the following year and each year thereafter. Until you take the money out. So, the government eventually gets more tax as you have made more money. In the meantime, who do you think your bank and credit union ultimately lend your money to so as to make the tiny interest it gives you. You guessed it - the government, which pays the interest from YOUR taxes. Save more, so the government has more. You could invest that IRA money in real estate, specific stocks or other investments if you use an independent IRA trustee.