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WHO WANTS TO AVOID PROBATE?

CONSIDER A REVOCABLE LIVING TRUST.

By Dorothy L. Korszen
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Would you like to avoid probate? If you like saving time and money, the answer could be yes. Probate is a court-supervised process in which the court makes sure you pay your creditors and that your assets are distributed in accordance with your will (or with the intestacy law, if you do not have a will). Probate can be time consuming and costly. Moreover, probate is a public process.

Because probate is only required for assets titled in your name alone, it can be avoided by titling assets jointly with rights of survivorship or by naming beneficiaries. For example, you can title real property and bank accounts jointly with your spouse or another person, name beneficiaries to your life insurance policies and IRA's, and title investments as payable on death to another person. Then probate will only be required after the second spouse passes away. Please note that you should check with your attorney and tax advisor before titling assets –especially appreciated assets – jointly with someone other than your spouse.

Often it is not prudent to title assets jointly, from a tax, liability, Medicaid, or gifting perspective. In these cases an estate planning tool used to avoid probate is a revocable living trust. A revocable living trust is a legal document where the grantor, that is, you as the owner of assets, name a trustee to manage assets for your beneficiaries. The trust document provides a set of instructions stating how you want your assets controlled during your life and upon your death. Then you "fund" the trust, meaning you transfer assets to the trust. During your life, you may act as both the trustee and as the beneficiary. The trust names a successor trustee who will act after you resign, become incapacitated, or die.

During your life your trust is revocable, meaning you can amend or revoke the trust as long as you are competent. After your death your trust becomes irrevocable. The successor trustee named in the document then takes over and follows the instructions set forth in the trust. The successor trustee can be a spouse, a family member, or a corporate trustee such as a financial institution. Generally the successor trustee will be directed to distribute your assets to your beneficiaries or to hold certain assets in further trust for a beneficiary. Because the successor trustee can act almost immediately your heirs may greatly reduce the time required to transfer your assets.

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Married couples may either create one joint family trust, or a separate trust for each spouse. If the couple has an estate in excess of the estate tax exemption amount ($2 million in 2006), they should consult with an estate planning attorney and their financial planner to consider strategies to reduce estate taxes.

A two-trust estate plan uses a "credit shelter trust" to "shelter" or take advantage of the first spouse's estate tax exemption amount. This means that at the grantor's death some assets –usually up to the estate tax exemption amount – will pass to a credit shelter trust which becomes irrevocable (meaning it can no longer be changed) and the rest of the assets can either pass to the surviving spouse or to another trust. The surviving spouse can receive some benefits from the assets in the credit shelter trust during his or her life, and then, if the trust has been properly established and administered, the assets will pass to the grantor's heirs free from estate taxes upon the surviving spouse's death.

In summary, a revocable living trust will allow your heirs to avoid probate for the assets funded in your trust, thereby saving time and money. Although there are expenses associated with trust administration, they are far less than probate expenses. Also, trust administration can be completed more quickly than probate. To save time and money for your beneficiaries, discuss a revocable living trust with your attorney.

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