

**LIVING TRUSTS: AVOID PROBATE
AND ESTATE TAXES**

BY GEOFFREY D. CHIN, ATTORNEY AT LAW

A Living Trust also known as a "revocable living trust" is a trust that is: (1) created and operative during the settlor's lifetime; and (2) capable of being revoked by the settlor (the owner of property transferred to trust), acting without any other person's consent. A revocable living trust is commonly referred to as a "revocable trust", a "living trust", a "family trust", or an "inter vivos trust". This article shall refer to "revocable living trusts as "living trusts".

Living Trusts, generally serve three main goals when created with other proper documents: (1) Avoiding probate; (2) Minimizing Federal Estate Taxes; and (3) Avoiding conservatorships in the event of incapacity.

There is an important difference between simple wills and trusts. A simple will is merely a set of instructions to the Probate Court as to how to distribute a decedent's assets. A Trust on the other hand is used to avoid the probate court proceedings. A Trust is usually prepared with a pour-over will that instructs the trustee/executor to pour any assets which may be left out of the Trust, into the trust upon death.

A common question is why should I avoid probate? Probate is a court procedure whereby the Probate Court authorizes the transfer of property to the decedent's heirs and loved ones upon death. Probate, like any other court proceeding can be very costly to the estate and quite time consuming. For example, probate in Los Angeles County can take anywhere from one to five years depending on the complexity of the estate.

Many people are unaware of the costs of probate. The Probate Code has set the minimum costs of probate depending on the size of the estate and such fees are noted later in this article. The Probate court does not take into consideration the debts (e.g. mortgage) owed by the estate in calculating probate fees because such fees are calculated based on gross estate values.

| <u>Gross Value of Probate Estate</u> | <u>Probate Fees (Attorney's Fees plus the Executor's Fees)</u> |
|--------------------------------------|----------------------------------------------------------------|
| \$150,000 | \$11,000 |
| \$300,000 | \$18,000 |
| \$500,000 | \$26,000 |
| \$1,000,000 | \$46,000 |

There are other problems associated with probate also. First, probate files are public documents. This means that anyone can find what assets are in the estate, what debts are owed at the time of death, and who received what and how much was received.

Second, assets are frozen and cannot be sold without court approval. Third, wills can be contested by anyone.

Living Trusts: Avoid Probate and Estate Taxes
(continued)

Many people believe that joint ownership with their children is the answer to avoiding the disadvantages of probate. However, such joint ownership can have adverse effects. Many people ask whether they should put the name of their children on their bank accounts and property. This can be very negative in two ways: (1) a transfer to a child may be deemed a gift and may be subject to federal gift taxes, depending on the size of the gift; and (2) bank accounts and property in such joint ownership will be subject to your children's creditors. For example, if your child has a court judgment against his or her name, then your joint bank account can be attached by the creditor with the judgment.

Editor's note: Geoffrey D. Chin is an attorney in Pasadena. His law firm primarily focuses upon Estate Planning, Trusts, Wills, Probate, Conservatorships, Post-Death Trust Administration, Guardianships and Business Law.

To contact him, call (626) 229-9971 at the Law Offices of Geoffrey D. Chin, 221 East Walnut Street, Suite 200, Pasadena, CA 91101. He is a graduate of the University of California, Los Angeles and Loyola Law School, Los Angeles. He also has a Master's degree from the University of Southern California. He is a member of the State Bar of California and the Trusts & Estates section of the Los Angeles County Bar Association.

The foregoing discussion is intended solely as a general overview of the law and may not apply to the reader's particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.