

## WHAT TO DO IF A DEATH OCCURS

One of the most common misconceptions about Living Trusts is that when a death occurs, no action will be necessary simply because you have a Living Trust. While it is certainly true that the Living Trust will help smooth the path, tasks still remain to be done, some of which can be critical, especially in terms of timing.

### Asset Titles

A Living Trust will not avoid probate unless the titles to assets are held in the trust name. Often, the trust is created and funded but over time some assets are acquired outside the trust, or are transferred out of the trust for one reason or another. A crucial step is to review the titles of all the assets at the time of death to determine if a probate is required because assets are held outside the trust.

### Evaluate and Settle Debts

Probate estates used to be desirable for resolving all claims by the creditors of a decedent. Now, a notice to creditors can also be published for a Living Trust, which will require creditors to file a creditor's claim against the trust if the creditor wishes to be paid. Publishing a notice to creditors can extinguish debts if the creditor fails to file a claim. Failure to publish the notice can mean that the trustee and the trust continue to be liable for the decedent's debts (including debts you may not know about, such as potential lawsuits). At the same time, you should be certain to cancel credit cards which are in the decedent's name to be certain that no future charges are made on those accounts.

### Apply for Payment of Life Insurance Proceeds

You will need to notify life insurance companies with which the decedent was insured and fill out their claim forms to ensure prompt payment of the proceeds. This will include group insurance through the decedent's employer, personal policies, accidental death policies, travel insurance (if applicable) and possibly others.

### Arrange for Payment of Retirement Plan Benefits

The surviving spouse is most commonly the person named as the beneficiary of retirement plans and IRAs at the death of the other spouse. If such funds are paid to you, you can "roll them over" into your own IRA and continue to avoid the income tax which would otherwise be due upon the distribution of the plan proceeds. In other cases, the form of payment can be determined by election of the plan beneficiary and you should review with us the best method of arranging those payments.

In addition, sometimes a withdrawal is required to be made from a retirement plan

by December 31 of the year the death occurs. It is very important to make any such required withdrawal to avoid a 50% penalty.

### **Notify Social Security**

If the decedent was receiving Social Security benefits, you must promptly notify the Social Security Administration that a death has occurred. Social Security checks which are received or directly deposited in the month of the decedent's death, or thereafter, must be returned to the Social Security Administration.

### **Deposit Will with Superior Court**

It is the responsibility of the named Executor or other person in possession of the decedent's Will to deposit the Will with the Superior Court within 30 days after death. This is true even if no probate is required.

### **Determine if Disclaimer Required**

Many estate plans are drafted in a fashion that requires the surviving spouse to disclaim assets in order to fund a trust to achieve the best tax results. This disclaimer must be filed within nine months of the decedent's death, and the recipient must not have "accepted" any benefit from the property in the meantime. ***This can be critical in terms of maximizing the benefits of your estate plan and must not be overlooked!***

Even if your plan does not require a disclaimer, good tax planning sometimes calls for disclaiming assets that might otherwise pass outright to you or another beneficiary. These questions should be reviewed with us or with your tax advisor relatively soon after death occurs so the proper steps can be taken to ensure for the disclaimer is made in a timely fashion.

### **File Estate Tax Return**

If the value of the decedent's gross estate exceeds \$1,000,000 (including the value of life insurance policies which were owned by the decedent), an estate tax return must be filed. The estate tax return is also the vehicle used to claim the appropriate marital deduction. Any taxes must be paid within nine months to avoid interest and/or penalties. Even if a return is not required, it may be worthwhile to file one since it will establish the asset values at the decedent's death, which will determine the income tax basis of the assets in the future. Preparing this return is not for the faint of heart and you are advised to consult our office for professional advice on valuing assets and completing this return.

### **Fund the Trust and Distribute Assets**

Even if you have a trust, and all the assets were placed in the trust prior to death,

your estate plan can still fail if you neglect to properly allocate the trust assets to the bypass (credit shelter) and/or marital trusts that are created under the plan. This is another area where expert advice should be sought in order to fund the trusts in a manner which will maximize the benefits of the estate tax Applicable Credit which each of us has to apply against federal estate taxes. The selection of assets to fund each trust can have a significant impact on the death taxes that will be due at the death of the surviving spouse.

Failure to follow the trust terms and make the proper distributions can result in the IRS disregarding the trust altogether and imposing estate tax on the entire estate (both the decedent's assets and the surviving spouse's assets) at the surviving spouse's death.

If you do not have a trust, you (or the estate executor if that is someone else) should follow through with changing the titles to assets from the decedent's name to the proper recipients. This can involve drafting deeds to change real property titles, filing affidavits to terminate joint tenancy ownerships, dealing with stock brokers to change securities and brokerage account titles, contacting the DMV to change automobile registrations and a host of other tasks.

### **Set up Accounting System for the Trust**

Once a death occurs, most trusts become non-revocable and therefore become separate "tax entities" for which annual income tax returns will be required. If you are the Trustee of the trust, you will need to obtain taxpayer identification numbers for the trusts which are created under the estate plan, and begin to account for income, distributions and the status of the principal (the assets themselves) on an ongoing basis. Certain rules must be followed in order to keep proper records and properly deal with the trust assets and income. You should consult with your attorney or CPA to set up a system for keeping track of this information both for income tax purposes and to ensure the tax minimization aspects of the estate plan.

### **Conclusion**

As you can see, even if you have a trust, many things must be done when a death occurs. The above review is not exhaustive, but covers some of the major tasks to be considered. Having professional assistance and advice through this very emotional and trying period can make the process go much more smoothly, and avoid unfortunate -- and sometimes very costly -- problems in the future.



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