

SPECIAL REPORT #1

How To Distribute Your Estate To Your Heirs Quickly, At The Lowest Possible Expense, And Make Sure Your Wishes Are Followed

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Congress has passed laws that now allow an individual to pass up to \$11.2 million to their heirs free of Federal estate tax. The current Illinois estate tax credit amount is \$4 million. Does that mean that all those folks with smaller, but sizable estates less than \$4 million, can shrug off estate planning? Only if you believe that estate planning is about avoiding death taxes, which it is not.

Actually, **estate planning is about distributing your assets according to your wishes, without disputes and problems.** Unfortunately, most people that have estates of moderate and significant size, do not do that very well. This report will tell you how the Illinois **Probate** “system” operates and will provide you with planning information that you can use for your estate.

DO YOU KNOW WHAT PROBATE IS?

It is the legal system found in all 50 states, (it varies somewhat from state to state) by which **the local court supervises the transfer of your assets to your heirs after your death.** It always takes place in the county in which you reside at your death. It also takes place in any other state in which you own real estate.

Following your death, your family usually hires an attorney to file the Probate case. The first thing the Court does is scrutinize your Will (assuming you have one) to make sure it meets all requirements of the law. If the Will is properly prepared, it is “admitted” to Probate and the Court appoints the Executor named in your Will.

The Executor handles all of the legal and financial affairs of your estate (paying bills, closing accounts, selling property, distributing assets, filing tax returns, etc.). If you have not created a Will, the Court will choose the person who will handle these duties (when the Court chooses this person, he or she is called an Administrator).

NEXT, THE COURT “FREEZES” YOUR ASSETS!!

This is done to allow any possible creditors you have, to file a claim in the Court so they can get paid. These **claims are paid before any assets are given to your heirs**. This is called the “creditors claims period” and in Illinois, this period is **six months long**. Since it usually takes a few months following death, for this claims period to begin, **your heirs will not receive a penny for at least eight months after you’re gone**.

What if you own a summer home in Michigan or a winter home in Florida? If that’s the case, another Probate case must be filed in the state where that real estate is located. This is called an “ancillary” probate.

WHAT DOES PROBATE COST?

There are a number of fees and costs related to doing business with the Probate Court. For example, in Cook County, Illinois, court costs are a minimum of \$700. Another cost is the Executor’s fee which can be as high as 3% of the gross value of the estate. And then there’s the attorney’s fee, which in Illinois, is only required to be “reasonable.” **Reasonable attorneys’ fees range between 3% and 10% of the gross value of the estate**. For example, if your entire estate consists of your Illinois home, bank accounts, CD’s, stocks, bonds, automobile and miscellaneous personal effects, and has a value of \$300,000.00, the average cost to probate your estate in Cook County will be as follows: \$700 for court costs and publication fees, \$9,000 for Executor’s fees; and \$15,000 for attorney’s fees; the total being \$24,700. If the summer home you owned in Michigan is valued at \$100,000, attorney’s fees, court costs, etc., to probate the Michigan property could cost an additional \$8,000.00 or more, in the state of Michigan. All fees must be approved by the Probate Court in Illinois.

DID YOU THINK THAT YOUR WILL WOULD AVOID PROBATE?

This is a common misconception. In Illinois, assets that are distributed through your Will, must go through Probate! There is an exception however, to this rule. If the total assets owned in your name alone, are less than \$100,000.00, they can pass through your Will without Probate. This is called the Small Estate Exemption. Few people fall within this exemption amount. **Certainly if you own a home in your name or have any sizable investments or accounts, your estate will require Probate**.

DO YOU WANT EVERYONE TO KNOW WHAT YOU’RE WORTH?

All documents filed in the Probate Court are **public records**. This means that **anyone can look at them**. Documents in the Probate file include your Will, lists of your assets, names and addresses of your heirs, how much was paid to heirs, how much was paid to your creditors, etc. Many of these records are **now available through the internet** in the Probate Court Clerk’s website. **The private details of your estate can be viewed by anyone**.

JOINT TENANCY IS NOT THE SOLUTION

You probably thought that you did not need to worry about Probate because you own all of your assets in joint tenancy with your spouse. If you own assets jointly with your spouse, at the first spouse's death those assets will pass to your surviving spouse without Probate. But watch out! At the second spouse's death, those assets will go through Probate because there is no longer a surviving joint tenant. So joint tenancy does not avoid Probate, it only postpones it. If husband and wife died simultaneously in an accident, joint tenancy property must go through Probate. If you're thinking about transferring your investments and real estate into joint tenancy with your children, you had better get some tax advice from a lawyer or CPA first. **Title transfers into joint tenancy with your heirs may create additional gift tax and capital gains tax problems.** In addition once you place your children's names on title to your assets, those valuable investments and real estate are subject to the claims of your children's creditors and possibly their spouses, if there is a divorce.

WHAT SHOULD YOU DO?

Probate is expensive, it takes a long time and it violates your privacy. Joint tenancy has a whole different group of problems attached to it. By now you are probably wondering, "is there a way that I can be sure that my assets pass to my loved ones, my wishes are followed, but without going through the Probate court?" The answer is, **YES**. The **Living Trust** (also known as a Revocable Trust or an Inter Vivos Trust) is an effective and affordable alternative to a Will that **avoids the Probate system**. A Living Trust is a written agreement which an attorney prepares for you that takes effect immediately (unlike a Will, which does not become effective until after death). If a Living Trust is properly drafted and you transfer your assets to your trust (a process called "funding" your trust) **it will work every time. It will avoid Probate of your assets at death.** We know this because over the past 30 years, we have seen Living Trusts prepared by our office, work over and over again to keep families out of the Probate Court.

The Living Trust also provides you with the ability to manage your financial affairs without a court Guardianship if you become disabled (request our **Special Report #2** on "How To Maintain Control Of Your Assets and Avoid Guardianship if You Are Disabled").

WHAT IS A LIVING TRUST

You've probably heard about it. Your friends and relatives may have even prepared a Living Trust. **Should you prepare one?** If your total estate is less than \$100,000.00 in value and you do not own any real estate, then a Living Trust is not for you. But if your

estate is worth more than \$100,000.00 or you own real estate and you would like to distribute your estate to your heirs quickly, in a totally private manner, with little or no expense, then a Living Trust is the right estate planning document for you.

HOW DOES A LIVING TRUST WORK?

You retain an attorney and he/she will prepare a written agreement for you after conducting an analysis of your assets and determining what your wishes and objectives are. This agreement is established by you (the “Grantor” or “Settlor”) and the assets in the Trust are managed and distributed by you as the “Trustee.” You wear both “hats.” Under Illinois law, this agreement, once signed and witnessed, creates a new legal entity that can own your assets (house in Illinois, condominium in Florida, bank accounts, stocks, mutual funds, bonds, etc.). You can also name your Trust as the beneficiary of your insurance policies, retirement plans, IRA’s, and annuities. You can always add additional assets to your Trust. You simply provide the name of your Trust to the bank, stock broker, mutual fund company, etc. and sign their form. To put your real estate (local or out-of state) in the Trust, the attorney prepares and records a new deed for you. The Trust even uses your name. (a Trust created by John and Mary Smith would be called the “John and Mary Smith Living Trust”). **You (and your spouse) retain full control over the assets in your Trust during your life.**

WILL I GIVE UP ANY CONTROL OVER MY ASSETS?

You decide what to buy and when to buy. You decide when to sell. You (and your spouse) are the only persons authorized to withdraw interest and dividends. You (and your spouse) are the only persons who can use the principal. **You don’t give up any control!** You don’t even change the way you file your income taxes. If you became disabled, special provisions are included in your Trust for the continued management and control of your Trust (request our **Special Report #2** on “How To Maintain Control Of Your Assets and Avoid Guardianship if You Are Disabled”).

But, how does the trust avoid Probate? Remember, Probate is required to transfer assets that you own at the time of your death. But if you transfer all of your assets to your trust (except for furniture, clothing, cars, and personal effects), you won’t own any assets in your name when you pass on. Your Trust owns your assets and your Trust is a legal entity that continues to live, after you’re gone. **Your family doesn’t need the Probate court to transfer the title to your assets after your death** because you already transferred those titles to your Trust while you were alive.

Your trust appoints someone you choose to take over the operation of your Trust after you are gone. That person is called the Successor Trustee. Your Trust includes specific instructions telling your Successor Trustee what to do. **There are no delays, no court costs,**

and it remains totally private. Your heirs can actually receive their inheritance in a matter of weeks.

TRUSTS HAVE LOTS OF OTHER BENEFITS, TOO!

Unlike a Will, your Trust has the ability to keep on working after your death, if you want it to. It can provide for a distribution of funds over a period of time (as long or short of a duration as you want) for those who might need it. For example, you probably want to control the distribution of funds to a person who is a minor child, who has a disability, who is in an unstable marriage, or who has poor money management skills. **You can even set up your Trust so that it “bulletproofs” your children’s inheritance from lawsuits, creditor’s claims, and divorces.** The Trust allows you to leave instructions for those who need continuing protection and financial guidance. For those who don’t require that type of control, the Trust can provide for a distribution immediately following your demise. A Trust is not just a way to avoid Probate. It gives you **PEACE OF MIND**, knowing your estate will be distributed to the persons you want, in the **amount** you want, **when** you want, and **how** you want.

Oh, by the way, in Illinois, it is nearly impossible to successfully contest and overturn the distribution provisions of a properly drafted Trust. So if there happens to be that “someone” who you do not want to receive an equal part or any part of your estate, once that instruction is included in your Trust, you can rest assured that it will be followed to the letter. That same instruction in a Will, is nearly always contested in the Probate Court.

Our experts are available to create an estate plan utilizing a Living Trust that will work for you. Please contact us if avoiding Probate is a concern to you, to schedule a FREE initial consultation. (847) 670-8200.

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