

## Elder Law Series

### Update from Steve Tillona, CPA, CWS®

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We have been providing a series of papers on Elder Law issues. Only 17 percent of people buy long term care, so they self-insure the risk of long term care. If this is the path you take, then you will need an attorney to protect what you have accumulated. Cost in Connecticut in 2016 is closing in on \$170,000 a year for a long term care.

We are interrupting our sequence of Elder Law Issues from Stephen Allaire, Esq. to provide you with some of the homework that Steve has been doing on Living Trusts. We want to learn as much as we can to assist you in structuring the best approach for titling and holding your assets. It varies by State, this is from the Connecticut perspective.

Steve recently attended a seminar put on by attorneys promoting the need for a Living Trust. Below is what he found out after listening to their presentation. We believe you may find this helpful.

### **Kicking the Tires on Living Trusts**

***Written by Steven Tillona, CPA, CWS®***

*What is a Living Trust? A Living Trust is a legal document created to hold some or all of your assets during your lifetime or to hold assets after your death. Funding a trust means that you actually make the Trust the legal owner of your assets to the extent that you re-title them in the name of the trust.*

*The trust will contain provisions for management of the trust assets during your lifetime and will include what happens to those assets upon your death as well. In the latter case the trust serves as a Will substitute. The Trustee will administer the trust in accordance with its terms. Most often the creator of the trust will also be the trustee "the person who manages the assets" and will name a spouse, child or someone else as Co-Trustee. If you are the only Trustee, you will name a spouse, child or someone else as your successor trustee to serve upon your death or disability.*

*A revocable living trust is "revocable", meaning that you can end it at any time. Since you created the trust, you can amend it, revoke it, change the trustee, and generally alter the trust however you please. Because you retain these rights, you are treated by the IRS as if you still own the property in the trust. Therefore, you will report on your state and federal tax returns (1040s) and any income generated by the transferred assets. As long as you are the Trustee or Co-Trustee of your trust, the trust will not have to file a separate tax return. If you are not the Trustee or Co-Trustee, the trust will file an information return, but you still report the income on your form 1040.*

*There are two advantages to having your assets held in a living trust vs. having a will upon your death; a living trust may provide a slightly faster transfer of assets, and has more privacy as it does not go*

through probate. It should be noted that a will is always needed anyway, because it is rare that all assets are put into the trust. For many families and individuals, a will along with the proper titling of your assets can provide an outcome very similar to that of a Living Trust. One does not have a death tax advantage over the other. There is no minimum net worth or wealth that is necessary to consider a living trust.

What does a Living Trust accomplish?

1. Those assets that have been transferred to the trust prior to your death will avoid probate. A primary purpose of a Probate Court is to facilitate the transfer of title from the person who died to the beneficiaries. In the case of a funded living trust, the trust did not die so the Probate Court does not get involved. Upon the creator's death, the trustee of the trust will do with the assets based on what the trust says. The trust serves a similar purpose as a will to the extent that it has assets in it.
2. Avoiding probate means that the assets can be transferred immediately after death to the beneficiaries without delay. It does not mean that the assets avoid death taxes, as previously discussed or that you avoid Probate Court fees. Probate Courts charge fees based on the size of the taxable estate, not the size of the probate estate. So whatever is funded in the living trust is subject to probate fees.
3. A living trust allows you to keep your affairs private. Unlike a will, which is a public document that must be filed with the Probate Court at death, a living trust is private and is not available for inspection by the public when you die.
4. The living trust will ensure that your assets are managed for your benefit in the event that you become incapacitated. If you become either physically or mentally disabled, your assets in a living trust will continue to be managed by your successor trustee in accordance with the terms that you have established.
5. If you have out of state property, a living trust that holds such property will avoid the need to go through that state's probate procedures and paying a lawyer from that state to handle the probate, usually at considerable cost for just the one asset.
6. If you are in a second marriage, or have children who do not get along, then a living trust may be best, "if your Trustee is faithful to your wishes", because it will be more difficult for a beneficiary to create trouble if they do not know what the trust contains or says, since it is a private document unlike a will.

Reasons for leaving IRA money to a trust:

1. The named beneficiary cannot be trusted with the money.
  - (A) A minor child,
  - (B) A spendthrift spouse,
  - (C) Spouse of a second marriage
  - (D) A disabled beneficiary
  - (E) An unsophisticated beneficiary
  - (F) An incompetent beneficiary

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2. *Mostly done for post death control.*
3. *For a trust to qualify as having a designated beneficiary, the following four elements must be met at the time of the Required Minimum Distributions are determined.*
  - (A) *The trust is valid under state law;*
  - (B) *The trust is Irrevocable;*
  - (C) *The trust beneficiaries are identifiable;*
  - (D) *Trust document is provided to the plan administrator by October 31 of the year following the participant's death.*
4. *If all four requirements are met, then each beneficiaries minimum required distribution will be calculated using the oldest trust beneficiary's life expectancy.*

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We are forever learning as we go through this process, since family dynamics, personal desires and amounts involved can be infinitely different. However, the patterns we see in personal behavior and decisions of our clients make our experience very helpful to most.

We hope you enjoy the personal journey as we cover each of these issues. Please rely upon us to help deliver the decisions that fit your desires and ultimately helping you to feel **empowered** about your retirement. Michael Callahan and Steve Tillona are available for any questions that may arise as you make this journey. You may contact us at:

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