

## **7 IMPORTANT REASONS TO PREPARE A TRUST & ESTATE PLAN**

**My full estate plan kit contains at least 37 documents or parts. Contact me for full disclosure.**

**The following information explains the reasons why you should consider an estate plan**

### **HOW TO PROTECT YOU AND YOUR ESTATE:**

- 1. From probate (show typical probate file I've handled)**
- 2. From death taxes (must split H/W assets if over exemption/unified credit so each gets the full credit)**
- 3. From guardianship and incompetency problems**
- 4. From unwanted life support when irrevocably brain-dead**
- 5. From new spouse who may steal assets from you or your spouse (use Q-Tip)**
- 6. From improperly stored & preserved titles, deeds, policies, bank & investment records/locations**
- 7. From Medicare denial causing high nursing home expenditures & from improper asset retention and improper gifting (Legal spend-down to be Medicare friendly)**

You may need to have a Medicare Asset Protection Plan (M.A.P.). This entails a computerized analysis of your assets and how they should be re-positioned for conservation and safety. (Not risky investment vehicles). This is done by retaining an independent and experienced annuities and investment expert.

#### **I will:**

1. Enable your estate to become Medicare eligible.
2. Legally instruct you how to "spend down" by re-positioning your assets to become Medicaid friendly.
3. Teach and train you to avoid, and become familiar with the 5-year "look-back" rule.
4. Teach you about Medicare's 5-year "Snapshot" rule.
5. Inform you that the \$13,000 gift tax exemption is not Medicare friendly and is not a legal spend-down.
6. Show you how much assets you and your spouse may keep in your own names.  
(At home spouse maximum- approximately \$102,000.00; In-nursing-home care spouse maximum income and asset cap is limited to approximately \$2,200.00 per month.)
7. Teach you how to split your cash assets into separate accounts each not exceeding \$250,000.00 (F.D.I.C. insurance cap) to provide (as best as possible) government guaranteed protection for each account.

## **2010 Florida Medicare Asset Limits**

(Client's- see Medicare Letter in estate plan kit for more complete definition)

Congress changed the 3-years look-back to a **5-year look-back rule** a few years ago. This means that only legal spend-down of assets complies with Medicare rules. In other words if you give any valued gifts to people within 5 years of application for Medicare (by a parent or spouse) the gifts must be **returned** before Medicare will allow coverage or coverage will be off-set. This also applies to **legal gifts of** (as of 2010) **up to \$13,000** per person per year which are tax free because they are still considered gifts under Medicare guidelines. So when you apply for benefits, Medicare counselors will first look to see what assets were given away or hidden and what are available to help the government pay toward the applicant's coverage. Legal spend-down does not include asset purchase, but typically legal spend-downs include expenditures for medicals, food, vacations, gambling, etc.

### **Only the following tangible assets are set and exempt at this point by constitutional law;**

1. Your homestead of any value
2. Your automobile of any value
3. Your wedding ring of any value
4. A \$1,500 whole life insurance policy

**Additionally, the following intangible assets are exempt but the numbers slightly increase, yearly:**

1. Monthly gross income: \$2,200.00
2. Monthly personal needs allowance: \$35.00
3. Asset limit (individual): \$2,500.00
4. Asset limit (for both spouses): \$3,000.00
5. Community spouse resource allowance (for spouse not on Medicare): \$109,560.00
6. Minimum monthly maintenance income allowance: \$1,750.00
7. Maximum monthly maintenance needs allowance: \$2,739.00
8. Excess Shelter Credit: \$525.00

At the time of Medicare application, all procedures and methods will be revealed to Medicare so that there is no hint of impropriety.

**The Unified tax credit in year:**

2009 was \$3,500,000 per person and \$0 in 2010

2011 will revert back to the \$1,000,000 per person level

Please remember to seek legal counsel and review the effectiveness of your trust during these years.

THREE  
OF THE MOST  
FREQUENTLY USED METHODS TO

**PREPARE FOR MEDICARE REQUIREMENTS  
OR TO  
PAY LESS DEATH TAX**

1. HIDE YOUR ASSETS
2. GIVE AWAY YOUR ASSETS
3. SPEND DOWN YOUR ASSETS

(Hiding yours assets out of the country (like the Islands) or letting someone hold them for you is not legal for Medicare purposes and the 5-year look-back rule will apply. Any legal gift (including the tax free \$13,000.00 per person per year) within 5-years of a Medicare application is considered a gift causa-mortis, and it is a “countable” asset by Medicare. A good legal “spend-down” prior to the “snap-shot” (1<sup>st</sup> day of nursing home entry) may include fixed (not variable) irrevocable annuities. Legal “spend-down” includes an around-the-world trips, but not purchasing tangible assets such as gold and jewelry).

TWO  
OF THE MOST  
FREQUENTLY USED METHODS  
TO:

**AVOID PROBATE**

- 1 JOINT TENANCY
- 2 LIVING TRUST

## WHAT IS PROBATE?

Probate is a legal word meaning:

“The process of proving a will. You must go into Court to administer the assets and estate.”

The next few pages demonstrate the complex problems of going through probate with or without a will.

Now let’s look at all the nightmares your loved one (including your spouse) will experience by going through probate.

My purpose is to help you and your loved ones understand the problems associated with probate, how to avoid these problems and the high costs of settling an estate **by eliminating probate.**

### **What is wrong with a Will?**

Having a will means that all of your property must go through a probate court and the Last Will and Testament must be “probated”. This means that the probate judge makes sure he oversees that your property goes to your named heirs listed in a written will.

### **LOOK AT THE PROBLEMS YOUR LOVED ONES MAY EXPERIENCE GOING THROUGH PROBATE**

1. Attorneys fees
2. Executor fees
3. Forced asset division
4. Expensive litigation
5. Bonds to post
6. Probate court costs
7. Administrative fees
8. Long waiting periods
9. Creditors claims & suits
10. Expensive appraisals
11. Outside third party control
12. Asset evaluation charges
13. Forced asset liquidations
14. Testamentary trustee fees
15. Challenges to charitable gifts
16. Partition of real property
17. Untimely sales of assets
18. published notice to creditors
19. published notice of administration
20. Guardianship administrative costs
21. Will contests: challenges of competency
22. Public Disclosures: file open to review by strangers
23. Imposition of federal/state taxes on estate and inheritance
24. Safe deposit box unavailable or sealed; requiring court order to open

DO YOU REALLY WANT YOUR FAMILY TO GO THROUGH PROBATE?

THESE ARE THE REASONS WHY YOU SHOULD KEEP YOUR FAMILY OUT OF PROBATE

### **WHAT’S WRONG WITH JOINT TENANCY?**

(adding others to your ownership)

“I’ll just add my children as joint tenants on all of my property!!!”

1. Transferring title to a child means that the parent is making an immediate gift on ½ of that property. The parent loses control of that asset. In a sale, the child must join in executing the deed. If the child dies his personal representative must execute the deed through probate.
2. If the child is sued and a judgment is entered against him, the judgment creditor who is a total stranger, owns ½ of your property. If the property is non-homestead, the judgment creditor can seek partition of the land and force a foreclosure.
3. Upon the eventual death of the surviving child in joint ownership, he must pay capital gains tax when he sells, as opposed to no tax due on inherited property through a trust.
4. If the child has a falling out with the parent, he can cause plenty of trouble.

Some types of joint tenancy even between husband and wife can deprive a surviving spouse with the “stepped up basis.” If a child is a joint tenant, the property definitely loses ½ of the stepped up basis and taxes on sale are much higher. The “basis” of property is the value used to determine gain or loss for income tax purposes. Basically, it is the cost of the property meaning what you paid for it, say \$100,000 (minus any depreciation you’ve taken and adding the cost of capital improvements). The “stepped-up basis” is a new basis available to a surviving spouse valued on the death of the first spouse, but the step-up is only available to the survivor if the property were placed into a living trust prior to the death of the spouse. The value of the property on the death of the first spouse which lets say has increased in value to \$200,000 would then become the new basis and if the survivor spouse later sells for say \$250,000, the IRS looks at the sale as though the house were originally purchased for \$200,000 (the stepped-up basis) and the gain for capital gain tax purposes is charged against the \$50,000 and not \$130,000. This is not possible though if the property were held as joint tenants or as joint tenants with a child. If the property is held as joint tenants with a child, only ½ of the property gets a “stepped-up basis.” In that event, the new basis in this example would be \$250,000-\$100,000 for a \$150,000 net gain. One half only receives the stepped-up basis, or \$75,000 and the gain for capital gain tax purposes is charged against the other \$75,000.

### **WHO MUST GO THROUGH PROBATE?**

All persons without trusts and who own property when they die, (with or without a will) **and** who die with non-jointly held assets.

In Florida: If you own property valued at \$10,000 or more (fair market value, not equity)

Or

Personal assets of \$25,000 or more (Family Administration)

And:

If you own property in other states, you must go through probate in each of those states (ancillary administration)\*

### **TYPICAL ITEMS NEEDING TO BE PROBATED**

HOUSE; CARS; CD’S; BOATS; BONDS; STOCKS; TRAILERS; MOTOR HOMES; SAFE DEPOSIT BOXES; SAVINGS ACCOUNTS; BROKER ACCOUNTS; CHECKING ACCOUNTS; MONEY MARKET ACCOUNTS; LANDS IN OTHER STATES; ACCOUNTS IN OTHER STATES\*

(This is called ancillary administration which is the 2<sup>nd</sup> probate case)

## THE LIVING TRUST PERMITS YOU TO AVOID LIVING GUARDIANSHIP AS WELL AS PROBATE

Should you become unable to manage your affairs, due to Alzheimer's, incompetency, or Health Department initiated Baker Act proceedings, the probate court will appoint a guardian at your expense, to be responsible for you and to control your assets. This is embarrassing and expensive and it requires meticulous record keeping of expenditures. The living trust enables you to nominate a person in whom you place your greatest trust to be your guardian should you become unable to handle your assets safely or manage your estate. This individual becomes responsible for insuring your safety and well-being and will act in your best interests regarding the management of your assets and financial affairs. They will preserve your estate for you and your heirs.

NOW YOUR CHOICE IS:  
PAY THE I.R.S. OR LEAVE EVERYTHING POSSIBLE TO YOUR FAMILY  
**THE SOLUTION!**

TO LEGALLY  
avoid probate  
avoid death taxes  
avoid Medicare denial  
avoid high nursing home costs  
avoid court guardianship

YOU NEED TO ESTABLISH A

**LIVING TRUST PACKAGE**

Basically, a living trust is nothing more than a method of holding title to your property. You merely transfer the title from yourself individually, to yourself as trustee. The trust is revocable so you can amend it any way you desire at any time. There are no tax consequences and no requirements for a tax return (although the trust secures an EIN and uses your social security number and all income and expense typically flows through you to your 1040).

ADDITIONALLY YOU CAN  
THOROUGHLY PROTECT YOURSELF  
AND YOUR SPOUSE

AND IN THE PROCESS OF AVOIDING PROBATE YOU CAN ALSO  
RETAIN YOUR ASSETS  
AVOID ALL OR MOST DEATH TAXES  
SAVE HUGE AMOUNTS ON NURSING HOME COSTS  
PROVIDE FOR MENTAL ILLNESS AND INCOMPETENCY

By creating an owner controlled Medicare Asset Protection Plan which includes use of a:

- 1 Living Trust
- 2 Special Needs Trust
- 3 Irrevocable Insurance Trust (in some cases)
- 4 Living Will
- 5 Pour Over Will
- 6 Certificate of Trust
- 7 Affidavit of Domicile
- 8 Properly Funded Trust
- 9 DNR (Do Not Resuscitate Order)
- 10 Pre-Need Guardian Contract
- 11 Durable Power of Attorney with certifications
- 12 Limited Liability Corporation (in some cases)
- 13 Miscellaneous documents such as waive of elective share and financial affidavits
- 14 M.A.P. Contract (Medicaid Asset Protection Plan with certain types annuities)
- 15

REVOCABLE LIVING TRUST FOR SINGLE PERSONS

**TRUST**  
**You are the sole trustee**

- Complete control of assets
- Avoids guardianship
- Can be revoked or amended
- No change in income taxes
- No change in property taxes

**DEATH OF TRUSTEE**  
**You are the sole settlor and trustee**

- No probate of assets at death.
- Assets pass directly by operation of the trust to beneficiaries
- A \$1,000,000 death tax exemption will be instated in 2011
- It was 3,500,000 per person in 2009 and \$0 in 2010

- No outside interference
- Protects grandchildren if child dies
- Divided among children
- No capital gains tax
- Flexibility of distribution

**CHILD**  
**(or other beneficiary)**

REVOCABLE LIVING TRUST FOR  
MARRIED COUPLE WITH A TOTAL  
GROSS ESTATE OF \$2,000,000 OR LESS

**TRUST**  
**Co-Trustees**

- Complete control of assets
- Avoids guardianship
- Can be revoked or amended
- No change in income taxes
- No change in property taxes

**DEATH OF FIRST SPOUSE**

**TRUST**  
**Surviving spouse is now sole trustee & beneficiary**

- Right to spend or give away all assets
- Complete control of assets
- No probate on death of first spouse
- No estate tax on death of first spouse

**DEATH OF SURVIVING SPOUSE**  
 Successor trustee named in trust distribute assets free of probate

No probate on death of surviving spouse  
 \$2,000,000 can be passed estate tax free  
 No outside interference  
 Protects grandchildren if child dies  
 Divided among children  
 No capital gains tax  
 Flexibility of distribution

**CHILD**  
 (or other beneficiary)

REVOCABLE LIVING TRUST FOR A  
 MARRIED COUPLE WITH A TOTAL  
 ESTATE GREATER THAN \$2,000,000

**TRUST**  
 Co-Trustees

Complete control of assets  
 Avoids guardianship  
 Can be revoked or amended  
 No change in income taxes

Both spouses living;  
 Husband and Wife are settlors, Trustee/beneficiary  
 Autos, IRS's pensions may be outside trust  
 No change in property taxes

**DEATH OF FIRST SPOUSE**

Surviving spouse sole trustee, beneficiary

SURVIVOR'S TRUST A (Revocable)	All income Principal for needs 5% or \$5,000	DECEDENT'S TRUST B (Irrevocable)
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Complete control of assets  
 Right to give away assets

No probate on death of 1<sup>st</sup> spouse  
 No estate tax on death of 1<sup>st</sup> spouse  
 Grows estate tax free  
 Avoids guardianship for surviving spouse  
 Can eliminate capital gains tax on certain assets

Protected from creditors  
 Complete control of assets

**DEATH OF SURVIVING SPOUSE**

Successor Trustee distributes assets

**A + B**

Divided among children  
 No capital gains tax  
 No outside interference  
 Flexibility of distribution  
 Protects grandchildren if child dies  
 No probate on death of surviving spouse  
 \$2,000,000 (H&W) can be passed estate tax free (in 2011)

**CHILD OF OTHER BENEFICIARY**

## FUNDING THE LIVING TRUST

Planning Alternatives	Avoids Probate at Death of First spouse	Avoids probate at death of second spouse	Provides maximum tax savings	Avoids need for probate	Provides family privacy	Creates trust for heirs	Allows maker to pre-testament During lifetime	Prevents Attachments of Heirs assets
INTESTATE SUCCESSION (No will)	NO	NO	NO	NO	NO	NO	NO	NO
JOINT TENANCY	YES	NO	NO	NO	NO	NO	NO	NO
LIFE INSURANCE	SOME-TIMES	NO	NO	NO	SOME-TIMES	NO	NO	NO
SIMPLE WILL	NO	NO	NO	NO	NO	NO	NO	NO
TESTAMENTARY TRUST	NO	NO	SOME-TIMES	NO	NO	SOME-TIMES	NO	SOME-TIMES
UNFUNDED LIVING TRUST	NO	NO	SOME-TIMES	NO	NO	SOME-TIMES	NO	SOME-TIMES
<b>FUNDED LIVING TRUST</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>	<b>YES</b>

### Estate With a “probated last will and testament”

#### Example of an average estate

Fair Market Value		Loan Balances	
Home value	\$160,000	Home loan balance	\$50,000
Auto value	15,000	Auto loan balance	10,000
CD's, stock, etc.	<u>75,000</u>	Other debts	<u>10,000</u>
<b>Total estate</b>	<b>\$250,000</b>	<b>Total loans</b>	<b>\$70,000</b>

Gross estate valued @ \$250,000

Probate would incur the following expenses:

Attorney's fees 2.5% - 4% of <u>gross</u>	\$10,000
Executor's fees 2.5% - 4% of <u>gross</u>	\$10,000
<u>Administrative and misc. costs &amp; fees</u>	<u>\$2,500</u>
<b>Total fees/costs</b>	<b>\$22,500</b>

Net estate \$180,000 before probate expenses

Net estate \$157,500 after probate expenses

This person's loved one pays \$18,500 caused by probate.

These costs could have been avoided as well as the publicity of assets and suffering a waiting period of six months or more after death and until the distribution of the estate.

The average cost for a full estate plan trust is around \$2,800-\$3,500.00. Which would you rather spend?



**TYPICAL PROBATE FEES IN FLORIDA**

Estate Value	Approximate Attorney's & Personal Representative's costs & fees @ average 7% (and over \$1m @ 8%)
\$50,000	\$4,000
\$100,000	\$9,000
\$150,000	\$10,500
\$200,000	\$14,000
\$300,000	\$21,000
\$400,000	\$28,000
\$500,000	\$35,000
\$1,000,000	\$70,000
\$1,500,000	\$120,000
\$2,000,000	\$160,000
\$3,000,000	\$240,000

Schedule of Federal Estate Taxes (on taxable amount after exemption)  
Unlike probate, federal estate taxes are figured on net value

<u>Net estate value</u>	<u>Estate tax (approx)</u>
\$2,000,000	\$960,000
\$3,000,000	\$1,440,000
\$4,000,000	\$1,920,000
\$5,000,000	\$2,400,000