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LIVING TRUST MEMORANDUM

A will is generally your single most important estate planning document. Dying without a will can cost your heirs and loved ones literally thousands of dollars in sometimes unnecessary court, bonding, and attorney's fees. Furthermore, without a will, the state will direct the distribution of your estate. Most married couples leave their estates outright to each other. However, without a will, the state dictates that only one-half of a decedent's estate goes to the surviving spouse if there are children and the other one-half is split by the children.

As important as a will is, there is an option called a LIVING TRUST which should be considered when drafting one's estate plan. The advantages of a LIVING TRUST are numerous. The most valuable advantage is that a LIVING TRUST, properly drafted and funded, will avoid the necessity of costly proceedings in probate court. Probate is the legal procedure by which a will is processed through the court system, changing title to assets and distributing them in accordance with the directions contained in a decedent's will. The probate process is expensive. Depending on the complexity of the estate, attorneys can charge an hourly rate for probating a will or may charge a percentage of the assets ranging between 2-15%, or more, of the estate.

In addition, the probate process is a "public" process. That means that anyone who inquires can learn the amount of the probate assets and to whom they are to be distributed via the will. Another disadvantage to probate is the length of time it takes. It often requires a minimum of one to two years to settle an estate. The probate estate must be open for a minimum of six months just to let creditors come forward to present claims against the estate. This delay may result in financial and emotional hardship on the deceased's family.

A LIVING TRUST is generally a far more cost effective way to transfer assets. In a LIVING TRUST, the trustor or grantor (the person making the trust) transfers all or most of his or her assets to a LIVING TRUST. This transfer to a trust does not affect the control of the assets because the maker of the trust names himself as the TRUSTEE of the trust, with full power to distribute the assets to himself as the BENEFICIARY of the trust. As the maker of the TRUST, the transferor retains the power to amend the trust at any time during his life. When creating the TRUST, a successor TRUSTEE is named who (upon the maker's death) will continue to administer the trust and distribute the assets directly to the beneficiaries that have been named. At death, the trust maker's assets go directly to those persons named in the trust.

Another advantage of a LIVING TRUST is that, should the maker of the trust ever become incompetent or otherwise unable to manage his or her affairs, the successor TRUSTEE can step in and assist in the handling of the maker's financial affairs. This avoids the costly procedure of having to petition the court for the appointment of a guardian.

Traditionally utilized in many larger estates, this estate planning tool is now becoming increasingly popular among individuals with average estates. Although the document is more expensive to draft initially (than a simple will), the advantages of speedy distribution of one's estate, savings in attorney and court fees, as well as privacy in the disposition of assets generally outweigh the higher initial cost. The LIVING TRUST does not completely take the place of a will. A simple "pour over" will is still prepared to transfer to the LIVING TRUST (that is, to "pour over" into the LIVING TRUST) any assets, such as an automobile, checking account funds, or any other asset not already titled (transferred) in the TRUST.