

SETTING UP A LIVING TRUST:

HOW TO FIND THE RIGHT ATTORNEY

By Jim and Vickie Schumacher

It is very important that your living trust is set up properly or it will not function as intended. Trust documents are usually prepared from standardized trust forms. This may sound simple, and it is—as long as you use an estate planning attorney who is experienced doing living trusts and can make the necessary modifications.

With more than 65 million Americans now over the age of 50, more people than ever have started to think about how to transfer their assets and provide for their loved ones after they are gone. Indeed it is an important topic to consider because without proper planning, a large portion of one's assets could be lost unnecessarily to probate court costs, legal fees, unintended heirs and estate taxes.

One approach to dealing with these issues that has become much more popular in recent years is the use of a revocable living trust. A living trust is a legal document that, like a will, contains your instructions for what you want to happen to your assets when you die. But, unlike a will, a living trust avoids probate at death, and lets you keep control of your assets while you are living—even if you become incapacitated—and after you die.

There are pros and cons to setting up a living trust; they will not appeal to everyone. But if you are one of many to whom they are appealing, there are some important steps you need to take to make sure your living trust is set up properly. And one of the most important is selecting the right attorney.

When you set up a living trust, you transfer ownership of your titled assets from your individual name to the name of your living trust—which you control. The attorney you select prepares your living trust from your decisions about what you want to happen to your assets if you become incapacitated and when you die.

Trust documents are usually prepared from standardized trust forms. Your attorney will probably not need to create something completely new and customized for you. This may sound pretty simple, and it is—as long as you use an estate planning attorney who is experienced doing living trusts and can make the necessary modifications to handle your family's situation. It is very important that your living trust is done properly.

FINDING AN ATTORNEY

You have to be careful (and even a bit skeptical) as you search for the attorney who will prepare your living trust for you. You'll want to make sure the attorney has experience *specifically* with living trusts, not simply estate planning since that usually means wills and probate. In addition, you will want someone with whom you feel comfortable sharing your personal and financial situation and, of course, someone who will charge you a fair price.

The first step in locating your attorney is to get referrals from people you know and trust. Friends and associates who have living trusts are probably your best source. You can also ask other professionals who work with estate planning attorneys—your banker, trust officer, accountant, life insurance agent, and financial planner are usually good sources.

Here are some other possible sources:

Certification programs: The bar associations in some states have certifica-

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tion programs for attorneys who specialize in estate planning. Requirements vary, but usually the attorney must devote a certain amount of his/her practice to estate planning, complete a certain number of hours of continuing education courses each year, and may have to pass periodic exams.

Seminars: With the growing popularity of living trusts, some attorneys present free seminars, which is a good way to observe and evaluate the attorney from a distance. Usually, the attorney will stay after the seminar to meet the attendees, answer individual questions, and schedule appointments. Many offer a free consultation. However, if you do attend a seminar, remember that the quality of the seminar is only part of it—in the end, what counts is the quality of the documents the attorney prepares for you. You will still want to interview and evaluate the attorney.

Prepaid legal services plans: Many employers, associations and unions offer prepaid legal services plans to employees and members. Under these plans, some legal services are free, while others may be offered at discounts. Most of these plans use local attorneys to provide the services. If you belong to or qualify for membership in one of these plans, this may be a way to have your living trust done at a lower cost. However, a referral from the plan does not guarantee that an attorney has experience in living trusts. You will still need to personally interview the plan's attorneys.

Local bar associations: Your local bar association can give you the names of some estate planning attorneys, but that's about all they can do—they cannot recommend one attorney over another. Attorneys often pay a fee to be on the referral list. And the bar just rotates down the list—usually with no knowledge of the attorney's experience or qualifications. In many cases, you might just as well use the yellow pages.

Web site: Schumacher Publishing [the author's company] maintains an on-line directory of over 1,000 estate planning attorneys. Many contain ratings and reviews from actual clients. It's accessible to the public at no cost through www.estateplanning.com.

Watch out for scams and rip-offs—they are out there. The most publicized scams are non-attorneys, using high pressure tactics, selling "cookie cutter" living trusts in seminars and door-to-door. Your best protection is to become an informed and educated consumer, with an understanding of what constitutes a living trust. And, of course, you must use common sense.

EVALUATING AN ATTORNEY

Once you have several attorneys to consider, you will need to start narrowing down your list. Keep in mind that you are looking for an attorney who has experience, has the right personality for you, and whose fees, services, and qualifications match your needs.

The next step is to call the attorneys on your list. You don't need to have a lengthy conversation at this point—try to keep it to about five minutes. That's plenty of time to find out whether or not this attorney may be right for you.

Here are some specific questions you will want to ask:

- Tell the attorney you want a living trust document that will avoid probate when you die and a conservatorship (guardianship) if you become incapacitated. Then ask the attorney if he/she does revocable living trusts. If the attorney tries to talk you out of a living trust, ask him or her to explain why. If you are not satisfied with the explanation, find another attorney.
- Ask the attorney how many years he/she has been doing living trusts and about how many he/she has done. Ask what percentage of his/her practice is devoted to living

trusts.

- If your estate is more than the federal estate tax exemption (\$675,000 in 2000), ask how many living trusts with A-B and A-B-C provisions the attorney has done and over how many years. (These are typical approaches used to help minimize estate taxes).
- Ask who will actually write your trust document. In larger firms, it would not be unusual for the attorney you meet with to collect your information, instruct an associate to draft the document, then review it to make sure it is accurate. This is perfectly acceptable—and will be less costly than if a senior attorney did the actual writing.
- Ask how many living trusts the attorney has administered (or settled) when clients became incapacitated or died. Some attorneys have written a lot of living trusts, but—either by choice or lack of experience—have little or no experience administering them. An attorney who has "hands-on" experience administering living trusts at incapacity and death—and has seen his/her trust documents work—could be very helpful to your family later on if they have questions or need assistance with your trust.
- Ask how much the attorney charges for living trusts. Many attorneys charge a flat fee if your estate is less than the federal estate tax exemption (\$675,000 in 2000), and another flat fee if your are married and your combined estate is less than two exemptions (\$1.35 million in 2000). Be sure to ask if there are any charges that are in addition to this fee, such as for transferring assets into your trust. If the attorney charges by the hour, it will be harder to get an estimate over the phone. Tell the attorney how much your estate is worth, and ask if he/she can give you a "ballpark" estimate—or what the cost has been

for similar size estates. In either case, be wary if the attorney is reluctant to talk about pricing.

- Ask how long it will take, and decide if that is acceptable to you. If you are prepared and organized, usually the attorney will be able to provide you with a first draft of the documents within a couple of weeks. It may take another couple of weeks for you to review them and have any corrections made. However, if you or the person who is getting the trust (for example, a parent) is ill, that may be too long. If you need the trust done sooner for a valid reason, ask if the attorney will accommodate you. Remember, *you're* the customer.
- Ask the attorney to send you a biography. (Most will be happy to do so.) When you receive it, look to see where the attorney went to school. Does he/she have any advanced degrees or professional designations? Does the attorney take continuing education courses? Does he/she teach or write on topics for other attorneys?
- Ask how much malpractice insurance the attorney has. If your assets are worth \$1 million, would you want to go to an attorney who only has \$100,000 of malpractice insurance?
- Ask to come in for a free consultation. Many attorneys are willing to spend 15-20 minutes with you at no charge to answer your general questions. However, if the attorney charges a reasonable fee for this meeting, it may still be worth it—depending on the size of your estate, the qualifications of the attorney, and the strength of the referral.

PERSONAL INTERVIEW

The next step is to schedule a personal meeting with the attorneys who are at the top of your list. Be considerate and keep your time limit in mind. If your meeting is for 20 minutes, take no more than 20 minutes.

Here are some things to look for and ask:

- Confirm the price estimate.
- Ask what documents are included in the cost.
- Most attorneys will prepare the following documents *in addition* to your living trust document: pour over will (a short will that acts as a safety net for items not necessarily covered in the trust document); durable power of attorney for property management; living will and/or durable power of attorney for health care.
- Find out how much assistance the attorney will provide for changing titles and beneficiary designations—an important part of the living trust process. Does the attorney do any for you, and is there an additional charge? If you have a problem, will the attorney call on your behalf? Many attorneys also include pre-written letters you can send to your bank, savings and loan, etc. with instructions for changing titles (these are very helpful). How much assistance the attorney gives you is usually another good indication of the quality of work he/she does.
- Ask if the attorney minds if you get a second opinion of his/her recommendations or if you have the documents reviewed by another attorney after they are done. If the attorney is confident in his/her work, not only should

he/she *not* mind, he/she should *encourage* you to do this. (By the way, it should only cost you \$100–\$200 for the review—and that's money well-spent for the peace of mind you will have when you know your trust is done properly.)

- Ask if the attorney will notify you of any changes in the law that might affect your living trust. The more conscientious attorneys think of you as a lifelong client, and want to make sure your trust does not go out of date. Other attorneys don't feel they have any responsibility to you once your trust is done.
- Ask if there are any clients you can call for a referral. (If clients have given their permission, this is perfectly okay.)
- Ask to see a sample of the documents you will receive. Look for the living trust document, then the additional documents. The documents should be well-organized and easy to follow. Some attorneys put the documents in a binder, with a table of contents, divided sections, and a summary of each document in simple English. While the way the documents are written and organized can be a good reflection of the type of work the attorney does, keep in mind that a pretty package does not necessarily mean that the documents are well-written. It may still be a good idea to have the attorney's work reviewed by another attorney.

Trust your instincts. If you feel good about the meeting, this may be the right attorney for you.

But if something doesn't feel right, then it probably isn't—and you'll want to keep looking. ♦