



**ESTATE PLANNING ALERT**

**FOR THE PERSON WHO WANTS TO  
AVOID PROBATE AND REDUCE ESTATE TAXES**

**Simple Rules to Avoid Probate.** In Arizona, any assets that are held in your name outright must be probated to pass to the next generation or your intended beneficiaries heir(s). This includes property held as community property and tenants in common. However, there are many assets that never pass through a probate. For example, retirement plan benefits, IRA's and life insurance proceeds pass directly to the named beneficiaries. Property that is owned jointly with right of survivorship (or as community property with right of survivorship) goes directly to the other owner (survivor). With little effort, your estate can be arranged to avoid probate. Why should you have a living trust if probate can be relatively simple to avoid? The following are some of the advantages and disadvantages of a probate and a living trust.

ADVANTAGES OF PROBATE

-Notice to Creditors- can eliminate creditors' claims.

DISADVANTAGES OF PROBATE

-Cannot distribute until 120 days after Notice to Creditors.  
-Conservator/Guardian may be necessary  
-Inventory-Public Record  
-Additional cost of administration post death

ADVANTAGES OF LIVING TRUST

-Joint Agreement for spouses  
-Avoid conservatorship for assets in trust  
-Option to give notice to creditors  
-Ease of administration-no delay (if no notice to creditors) for distributions

DISADVANTAGES OF LIVING TRUST

-More cost up front

**Estate Taxes: Is there really Repeal?** In 2006, if you leave more than \$2,000,000 to anyone other than your spouse, your estate will be taxable. This "exemption" gradually increases to \$3,500,000 in 2009. The estate tax disappears in 2010, then comes back in 2011 with the exemption reverting back to \$1,000,000. In 2003, husband and wife can die with a \$2,000,000 estate with a properly structured "Bypass Trust" and "Survivor's Trust".

If you think only about avoiding probate, without proper estate tax planning, you and your spouse will lose the benefit of the "exemption" for one of you. A "Bypass Trust" is a trust that is funded with the exemption amount of the first spouse to die. The Bypass Trust is "carved out" of the estate of the first spouse to die. Until the surviving spouse dies, the "Bypass Trust" is available for his or her use, then it will pass to your children. The "Bypass Trust" is not included in your or your spouse's estate. The rest of the estate not used to fund the "Bypass Trust" is held for the benefit of your spouse in a "Survivor's Trust", then passes to your children upon your spouse's death.



Most married couples with an estate of \$2,000,000 or more plan for today. No one can predict exactly what will happen with the estate tax laws. Congress is likely to "fix" them by possibly permanently raising the exemption amount. Until that time, if you want more flexibility, your trust can provide that your share of the assets in the trust remains in trust for your surviving spouse. If your surviving spouse believes that there may be estate tax issues, and if the estate tax laws have not changed, your surviving spouse can have the right to "disclaim" or "renounce" a portion of the trust upon your death to a "Bypass Trust." Any disclaimer must be made within 9 months of your date of death and follow IRS requirements.

***What should you do?***

Here are simple questions to ask yourself to help plan for the inevitable:

- Should I have a will or living trust?
- Do I have sufficient liquid assets to pay estate taxes, care for my family and pay my debts?
- Have I checked beneficiary designations (e.g. life insurance and retirement accounts)?
- Have I made my intent clear?
- Do I need to talk to my heirs about my plans to help avoid conflict with I die?

The simple answer after reviewing these issues is to set up an appointment with an estate planning attorney to review your individual situation and to make appropriate recommendations.