

DO I NEED A LIVING TRUST?

As practicing lawyer with twenty-five years of experience in estate planning, I have frequently been asked: “Do I need a living trust?” Quite frankly I have found that not everybody does. But I have also found that most people in California do. So here is a checklist to determine if you need a living trust for your estate plan.

- 1) Is the gross value of my estate, not counting life insurance or retirement plans over \$166,250? If your estate is less than \$166,250 it can probably be probated by affidavit for less than \$3-5,000 in legal fees and in less than six months. If it is over \$166,250 count on spending a minimum \$9,000 in legal and executor fees and twelve to eighteen months before your heirs receive their inheritance.
- 2) Do I own real estate? If you do, you are in for an extended probate.
- 3) Do I own real estate in more than one state? You must go through probate in every state in which you own real estate with all the increased expense, legal fees and time delays that are engendered by multi-state probates.
- 4) Do I or my spouse have children from a previous marriage whose inheritance we want to protect? It is very hard to do that in a will without complicated drafting. With no will (intestate succession) it is virtually impossible.
- 5) Do I want to protect the inheritance that my spouse and children receive from creditors and divorce? That is something that you cannot do with a simple will.
- 6) Do I want to ensure that my child’s inheritance will continue on to my grandchildren when my child dies? So you have left everything to your daughter but she dies shortly after you. With a simple will your son in law gets the inheritance and the next thing you know, it’s being spent on a second wife or girlfriend to the exclusion of your grandchildren. Is that really a result you want?
- 7) Do I want to avoid court supervision and control of my property in the event I or my spouse become incapacitated? If you become incapacitated and lose the ability to understand your financial affairs (from a stroke or Alzheimer’s disease for example), not only will you lose the ability to manage your affairs, but you spouse will as well (Think annuities, IRAs and property held in joint tenancy) The only way your spouse can get the authority to sign

your name on your behalf is to hire a lawyer and petition the probate court to set up a conservatorship on your behalf. And then all that property is under the jurisdiction of the probate court. Sound like fun? Not only is it time consuming and expensive, it is also humiliating for the spouse.

If you answered yes to any of these seven questions you need a living trust. See an experienced estate planning lawyer to guide you through the process to make certain you have addressed all of your needs and those of your family. It shouldn't cost more than a few thousand dollars, but compared to the expense and delay of probate, it is money well spent.