

# **LAW OFFICES OF AFFORDABLE LIVING TRUSTS**

## **Amendment Policy, Pricing, Procedures & Forms**

**Foreword:** Please understand that we do our best to keep our fees as reasonable as possible but as a law office, our charges must still reflect the amount of time and work involved. Most simply do not understand that it takes considerable time for our office (or any law office) to deal with an amendment. It may seem like such a “simple” change to you but from initiation to completion the process is much more involved and time consuming than one might realize. Outlined below is our present amendment policy, procedure, and general pricing. (We reserve the right to modify this at any time.)

**A Short Discussion on What Is and Is Not An Amendment:** Generally, an amendment is only necessary when you wish to change the terms of your trust. For most clients this is typically confined to a desire to change successor trustees and/or change the distribution of assets at death (who gets what). Sometimes it involves changing from an AB to a Disclaimer trust, etc. Though you should always make sure all assets (including new assets) are properly titled in the trust (see Titling Assets in Your Trust) simply adding or disposing of assets in the name of your trust does not generally require an amendment unless you wish to specifically gift that new asset to a certain person. However, if there is a specifically earmarked gift covered in the terms of your trust which you sell or dispose of, then you should amend your trust to deal with the fact that such asset no longer exists. Failure to address this can cause many problems, ambiguities, inequities and discrepancies after death and illustrates some of the many problems associated with trying to equitably divide and distribute an estate through specific gifting.

**Initiating An Amendment Request:** Amendments fall into two general categories (discussed below). Change of Successor Trustees and Change in the Distribution of Assets at Death. Included in this package is a 3 page amendment request form corresponding to these changes. You must complete all 3 pages of the amendment request form even if you only want one type of change.

Regardless of the type and category all amendment requests can only be initiated by:

1. **Fully completing, signing, and mailing all three pages of the amendment request form. (We do not accept e-mail requests).**
2. **Enclosing a check for the correct amount.**

**Please Note: We are unable to discuss or begin any amendment process without an enclosed check for the appropriate amount and compliance with the policies and procedures stated herein. Remember also that amendment requests can only be initiated and signed by the actual client(s) that established and signed the trust. Thank You.**

**Disclaimer:** A mere request for amendment does not mean we agree to complete the amendment or otherwise represent you in this process. (We will of course return your check if we do not agree to proceed). If you do not have some evidence, in writing, that we have agreed to represent you in the matter, then this office has not yet necessarily agreed to prepare the amendment or represent you in the matter. Also, we cannot always respond to amendment requests or complete the amendment in the time frame desired by the client. Though we strive to provide quality service and often complete amendments very quickly, circumstances do not always permit a quick turnaround, which is why our stated policy is to allow up to 30 days for the amendment. If our response time is not satisfactory to you, you are hereby instructed to immediately seek competent legal representation outside our office that can assist you in the matter which is more suited to your time frame and needs. Please be advised that **we cannot and will not involve ourselves in the approval, review, or legal sufficiency of any amendment or codicil prepared independent of this office** despite any document or copy you may send to us. For liability reasons we either have to prepare the amendment or have nothing to do with it at all.

## **Category 1 (\$200)**

### **Change of Successor Trustees Only:**

This involves engaging us to prepare an amendment to change **only** your **nomination of successor trustees / executors. Initiating a request for such an amendment can only be done through submitting (by mail) a \$200 check in advance along with the completed 3 page amendment request form (included in this package).** The amendment also requires preparation of new "Pour-Over Will(s)" (included) so the nominated executors of the "Pour-Over Will(s)" will read the same as the new nomination of successor trustees. If you have minor children we will also prepare a new nomination of guardianship (at no extra charge) to read the same as the new trustees if you so desire. Therefore, if you have minor children please indicate in the appropriate place on the form if you need a new nomination of guardianship that reflects the new nominated trustees as the new nominated guardians.

Assuming we agree to proceed with the amendment we will contact you once it is prepared (likely through a phone call). We are of course happy to mail the completed amendment to you ready for signature and notarization, along with new pour-over wills with directions for proper signing and witnessing, However, most clients (if able) choose to schedule an in office appointment with our notary to sign the documents (a separate fee of \$10 per notarized signature is payable directly to the notary). The advantages of this method are the fact the:

1. The notary explains the document along with how and where to sign.
2. Helps insure that the amendment is properly notarized. (Outside notaries often make mistakes)
3. Helps insure that the Wills are properly signed and witnessed. (a frequent area of mistake).
4. Makes copies of all documents for you.
5. Scans a copy of the completed documents into your file.

We will be happy to accommodate whichever signing method you choose (mail or in-office).

## **(\$300 to \$400 Charge)**

### **Change in Distribution at Death**

**(along with a change to trustees if desired):**

Any change to distributions at death (gifts, inheritances & beneficiary provisions) generally requires an in-office appointment (though we can arrange a phone appointment and complete the amendment through the mail when absolutely necessary). Charges for such amendments range between \$300 and \$400 (plus notary fees). The charge also includes the ability to change successor trustees / executors / guardians if desired. Generally speaking, most amendments can be completed for the \$300 fee. However, the \$300 charge does not encompass more complex or involved changes or ones that require more discussion and clarification – which changes will be billed at a higher rate.

Oftentimes, a change is much more involved or requires much more discussion and clarification than the person asking for the change realizes. Clients often do not foresee certain ramifications or open issues or questions of a proposed amendment, nor the potential problems and ramifications of excluding a child for instance. Determination as to which fee applies is at the complete and sole discretion of our office and cannot be determined by the client. As a matter of course, any requested change that involves excluding or largely excluding a close family

member (child, spouse) or heavily favoring some children over others will always be billed at the higher rate.

**Though we will not book an appointment without your consent, if you ultimately agree to an appointment for Category 2 changes you understand that will be charged between \$300 and \$400 and agree to pay the fee we determine at our discretion.** (If you do not ultimately agree to book an appointment any checks included with your initiating request will be returned to you).

**Initiating a request for a Category 2 amendment:**

Initiating a request for a Category 2 amendment can only be done through submitting (by mail) a \$300 check in advance along with the completed 3 page amendment request form (included in this package). We will contact you to schedule an appointment after we review and approve your request. Please contact our office if you don't receive a response within 18 days.

Please note: If you do not agree to an appointment or we do not approve the amendment request we will return your check to you.

**Remember – It May Be Smarter To Conduct A Complete Review (see “Why A Review”).**

At some point it is probably more practical and a better use of your money to conduct a complete update and review of your living trust. This is especially advisable if your trust is more than 3 years old or there have been fundamental changes in your life or holdings or the law that could impact your estate plan. This approach allows you to incorporate all of your desired changes, attain the benefit of updated language, and further coverage of many other issues and subject areas. Because of the change in tax law many couples are using this opportunity to change from an AB or ABC trust to the “Disclaimer Approach” which greatly simplifies things for the surviving spouse.

# **Why a Review**

**Prudence Dictates Periodic Reviews of Your Estate Plan:** Because life, laws, holdings, and circumstances often change, time erodes and “detunes” the best estate plan (regardless of whether it is a trust, will, or other alternate method). Thus prudence dictates an ongoing strategy of revisiting these matters as we survive long enough to outdate our estate plan. How often that is depends upon changes in the law and changes in your life, wishes, circumstances, and holdings. Experienced professionals advise a review every three years but the given pace of events and/or change of circumstances can accelerate or decelerate the need. Yet, since we can't track each client's life or predict future law changes, we therefore advise following the three-year rule of thumb (or sooner if there is a major change in circumstances). Unfortunately, some view this as a ploy to generate business, but such is not the case. This is reasonable and prudent advice you would receive from any experienced estate planning professional looking out for your best interests. The decision is ultimately yours but our advice remains the same. **The need to revisit and review your estate plan is a price of survivorship** (a tradeoff most of us would gladly make). **The potential cost and trouble of being caught with an outdated estate plan far exceed the cost of any review – and it is only you, or your spouse and your family, that will pay the ultimate price of a stale or outdated estate plan.**

**Drastically Increased Estate Tax Exemption:** The Economic Growth and Tax Relief Reconciliation Act of 2001 raises the amount that taxpayers can exempt from estate taxes with increasing amounts phased in over the period 2002 through 2009. In 2010 the Estate Tax is

scheduled to expire altogether. Because of these changes in the law, what was good strategy when you completed your trust, may no longer be so.

<u>Year</u>	<u>Exemption</u> (per person)
Pre 2004	\$1 Million
2004 & 2005	\$1.5 Million
2006, 2007 & 2008	\$2 Million
2009	\$3.5 million
2010	\$ Unlimited b/c estate tax eliminated that year (repealed)
2011 and thereafter.	\$ Good Question (or \$1 Million if Congress does not act)

However, unless Congress and the President enact additional legislation before 2011, the Act returns the exemption to the pre-2004 level of \$1 million. Though the future of the estate tax and exemption remain in flux (and subject to change) increasing exemption amounts provide compelling reasons to consider a review.

**Simplified Options For Married Couples:** If you are married we have incorporated language and options that now have the ability to better adapt to the “evolving exemption amount” wherever it (the exemption) happens to finally settle or be when someone passes away. Specifically, most married clients are now opting for the “Non AB with Disclaimer approach” (discussed in the enclosed worksheet). **This approach can save the surviving spouse from being stuck with the hassle of a trust structure** (justified under the old exemption) **they potentially no longer need** (because of the new larger exemptions). **It offers far greater flexibility and options to the surviving spouse than the traditional A-B (C) trust approach which you likely opted for when you completed your trust** (because of the tax situation at the time). **The cost of this update and review are nothing when compared to saving you from a structure you no longer may need. Bottom line: The optional/simplified trust structure can result in far less paperwork and hassle for the surviving spouse. You can learn about it in the “Married Couple Trust Worksheet” – something that is very important for both of you to read.** Regardless of the increased exemption **you still need a living trust to avoid probate.** (It is only the structure of the trust that you potentially need to change). You don’t want you or your family to have to go through probate! (If you have any doubts about the need to avoid probate call for our free video.)

**Current & Improved Legal Language, Drafting, Flow, Layout, and Package:** Legal wording, concepts, laws, and techniques are in a state of constant evolution. As these changes occur there is an ongoing effort on our part to continually update, refine and improve upon our package to reflect the most current laws, findings, and optimal techniques. Over time we do make changes and improvements to our system and our trust package. Though many of these changes may be subtle and small, they add up over time, and do make a difference. It is important that your trust not be too dated in these regards. In addition to more current language, the layout, flow, and readability of the trust has improved significantly over time. We now also include many “just in case forms” with our package.

**Newly Overhauled Health Care & Medical Decision Law :** Early on we began providing Cal. Medical Association “Durable Power of Attorney for Health Care” forms as part of our package. (Giving you the ability to appoint someone to make health care decisions for you if you were unable.) The early forms (prior to around 1993) expired after only 7 years -- and the forms before August of 2000 fail to reflect the latest laws. That’s because the California legislature enacted a major overhaul of this law effective as of August 2000. Though the new law did not invalidate earlier forms **the new forms add significant force and clarification provided by the new laws.** Therefore, any form prior to August 2000 fails to encompass important new safeguards and powers embodied by the new law.

**Property Values & Overall Net Worth:** Few would have predicted quite this high a level of present day property values -- and even fewer based their planning strategies around this wild occurrence. Whatever the reason – many of you have seen your net worth climb to unanticipated levels. Point is, you should take a fresh look at your trust strategy based on present values and tax laws.

**Unrecorded, New or Refinanced Property Not Titled In Trust:** For varying reasons we often find real property that is not titled in the trust – and **such is likely to cause huge problems**. This includes newly purchased properties, refinanced properties removed from the trust (often occurring in escrow without the client really understanding such has happened), adding others to title (usually a poor idea and for the wrong reasons), or reverting to joint tenancy. **Such actions either guarantee a trip through probate or, in the case of joint tenancy, usually a result in the long-term loss of a huge tax advantage.** Also, many of you have silent (unrecorded) deeds (which many of you requested). While silent deeds are perfectly legal and acceptable we find many clients ultimately become confused or uncomfortable with unrecorded deeds (thinking that the property is not in the trust when in fact it is). Refinances after the date of a “silent” trust deed can also cause problems. Reviewing matters allows us to either clarify and correct such matters or facilitate recording of the deeds to make you more comfortable.

**Other Assets Not Titled in Trust:** During your trust process we emphasized **the vital importance of and your responsibility of making sure that all of your assets (except Qualified Retirement Plans) were properly titled in the name of your trust** (present and future assets). This was stressed to you both orally and in written instructions. Despite heavy emphasis on this subject we are still finding instances where clients fail to follow through on this instruction. Be aware that owning real estate outside the trust is not the only thing that can trigger probate. Enough other kinds of assets outside the trust will trigger probate all by itself too. Even below such probate triggering levels, the paperwork and process necessary to gain control of such assets is still considerably more work than if the assets were properly titled in the trust.

**Prior Planning and Inheritance Provisions That No Longer Apply to Your Circumstances:** Children mature and get older, good kids become bad, bad kids become good, nominated successor trustees die or move away, children, trustees, or beneficiaries develop problems or disabilities, names change – on and on the list goes. Point being, things change that make previous planning or strategies inapplicable or inappropriate. A particularly glaring example and problem area is specific gifts (i.e “the Main Street house to John” or “the Bank of America account to Mary”). The trouble with specific gifts is that the asset is no longer owned at the time the person finally passes away. (i.e the house that John was supposed to get was sold years before and the bank account for Mary was dissolved long ago). This can cause enormous complications and bickering. We know that people seldom think to link the sale or shifting of an asset (or their net worth) with what is in their estate plan – which is why we have always discouraged specific gifts. Nonetheless, many clients insist. We know from experience that the gifting strategies in many clients’ estate plans can quickly become outdated and headed for problems because they are out of date.

**Excluded Heirs:** Largely or completely excluding children from inheriting an equal share of your estate invites potential challenges and conflict at death. Though never legally required, we now go to greater lengths to document any intent to exclude family members. While nothing can be done that legally prevents a contest this strategy helps to discourage and forestall them. If you have excluded family members it would be a highly preventative move to come in for a review to further document your intent.

**Double Check & Quality Control:** We are all human beings. There is always a possibility that an oversight, mistake, omission, misinterpretation, or misunderstanding could have occurred in the preparation of your trust and related documents. Reviews serve as a double check and quality control measure.

**Divorce, Marriage, Death:** **If you have become divorced or remarried this can vastly affect your estate plan and trust – even invalidate it.** Any change in marital status necessitates revisiting and restating your estate plan. If you have not sought estate planning legal advice and guidance since divorce or remarriage it is essential that you do so immediately. Finally, **whenever anyone dies it is very important that legal and tax guidance be sought immediately afterwards.**

# Amendment Request Form -- Cover Page (Pg. 1 of 3)

Name of Client(s): \_\_\_\_\_ Date of Trust \_\_\_\_\_  
(important)

Residence Address: \_\_\_\_\_

City: \_\_\_\_\_ St: \_\_\_\_\_ Zip: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Work/cell Phones: \_\_\_\_\_

Other Contact Info: \_\_\_\_\_

## **E-Mail Addresses (optional):**

In the limited case where clients are unable to come into the office to complete and sign an amendment you may wish to provide us with your e-mail address so that we can accommodate any potential request to also send you your amendment in an Adobe Acrobat PDF form (though we will still also send it by U.S. Mail). Please be aware however, that because of liability reasons we do not accept or respond to incoming e-mails.

## **Please Initial the Type of Amendment You are Requesting:**

Note: Please initial only one choice. For a Married Trust Both Husband & Wife Should Initial

**Change of Successor Trustee Only (\$200):** You wish only to change successor trustees / executors (and possibly nomination of guardian if you have minor children). You do not wish to make any other change or change in distribution at death or otherwise review any other portion of your trust or estate plan.

**Change in Distribution at Death Only Without Any Change of Successor Trustee (\$300+):** Under this scenario you do not wish to change successor trustees but you do wish only to change the how and/or to whom your estate is distributed at death (adding or deleting gifts, adding or eliminating beneficiaries, changing percentages, changing inheritance ages, etc.). You do not wish to make any other type of change or otherwise review any other portion of your trust or estate plan.

**Change in Distribution at Death Along with a Change of Successor Trustee Also (\$300+):** This encompasses both changes detailed above but you otherwise do not wish to make any other change or review any other portion of your trust or estate plan.

**I also acknowledge 1) that I have read the attached amendment policy and attached "Why a Review" and 2) that I am declining a full review** against our strong advice for any trust over 3 years old (or sooner if there is a major change in circumstances) and **3) that any services will be confined strictly to preparation of the amendment without review of any other area of your trust, estate or circumstances and that if I want more I must engage your services for a full review.**

**Signatures of both husband and wife required if a married trust amendment.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Spouse (if applicable)

## **Be sure to complete all forms regardless of the type of change:**

Even though you may only be making a change of trustee (no distribution change) please be sure to also indicate and sign on the distribution change form indicating that you do not wish a change in distribution. Likewise, even though you may only be making a distribution change (no trustee change) please be sure to also indicate and sign on the trustee change form indicating that you do not wish a change in trustees.

## **Please mail all completed forms with an enclosed check as follows:**

### **Mailing Address:**

Affordable Living Trusts  
14320-9 Saratoga-Sunnyvale Rd.  
Saratoga, CA 95070  
(408) 741-1627

### **Check Payable to Landis Mahaffey**

**\$200 for change of successor trustee only  
\$300 deposit for all other changes**

**Note:** We cannot process any amendment request without an included check for the appropriate amount.

# Amendment Request Form -- Trustee Page (Pg. 2 of 3)

## Choice #1 – No change in Successor Trustee

By my signature below I confirm that I do not wish to change successor trustees and that the nominated successor trustees shall remain as previously stated. If this is your choice sign below (**signatures of both husband and wife required if a married trust amendment request**).

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Spouse (if applicable)

## Choice #2 – Requesting a change in Successor Trustee

By my signature below I confirm that I wish to request a change of successor trustees as designated below and I intend the requested amendment to supersede, override and void any previous nominations of successor trustees and for the new nominees to serve in the requested order and priority.

**Signatures of both husband and wife required if a married trust amendment.**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Spouse (if applicable)

## Designation of New Successor Trustees / Executors

Please note that designating someone as a successor trustee does not entitle them to any part of (or more of) your estate (though a trustee can also be a beneficiary). In designating successor trustees we find most clients choose one of their children (unless the child is a minor). Nominating someone as successor trustee does not mean they have to serve (they can always decline). Whoever you choose, make sure it is someone you believe to be absolutely trustworthy and fair (the most important criteria). As a practical matter, if all else is equal, lean towards choosing someone geographically close to you. Although you are free to nominate co-successor trustees, we'd like to make you aware that our **experience indicates that as a rule, multiple co-trustees often tend to lengthen, drive up the cost, and complicate the ultimate administration of the trust.** Matters seem to follow this pattern every time we encounter a trust where a number of, or all of the children are named as co-trustees. That said, multiple co-trustees are appropriate if you believe a single trustee needs the checks and balances of a fellow co-trustee. In other words, there is a potential issue with one being fair and trustworthy (which is a strong argument against being nominated as a trustee at all).

### Please Name Below Your New Choices For Successor Trustee:

Note: In cases of a married trust the surviving spouse is the first successor trustee so the choices below only apply after the surviving spouse.

First Choice: \_\_\_\_\_

Second (Backup) Choice: \_\_\_\_\_

Third (Backup) Choice (Not Required): \_\_\_\_\_

## Nominating Guardians For Your Minor Children (if any)

\_\_\_\_\_  
**I Have Minor Children & Want The Guardians to be the Same as the Successor Trustees**

\_\_\_\_\_  
**I Have Minor Children & Wish the Guardians to be different from the Successor Trustees per Below**

First Choice: \_\_\_\_\_

Second Choice: \_\_\_\_\_

