

# LAW OFFICES OF AFFORDABLE LIVING TRUSTS

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## COMPLETING YOUR TRUST BY MAIL

Thank you for your interest in completing your trust-by-mail through our law office.

**When it comes to pricing, we've done everything we can to incentivize you with an unprecedented low price for a quality trust package through a law office** (with a full money back guarantee). Even if we did your trust for free however, **we can't remove your part from the process**. There are things you need to know -- and decisions and choices only you can make. That is not something you can get around wherever or however you complete your trust no matter how much you pay for it.

That said, we believe **our trust by mail is more convenient, less time consuming, and less expensive than almost any other way you could choose to complete your trust through a law office**. You do it in the convenience of your own home, according to your schedule, (with our full phone support). The alternative is to pay a great deal more and do it on someone else's scheduling availability, requiring multiple appointments traveling to and from, along with the typical deluge of letters (covering, re-covering and re-iterating the requisite issues).

**Consider the value of essentially paying yourself \$500 an hour or more:** For married couples, reading and completing the paperwork typically involves less than an hour of your time, for singles approximately a half-hour. To put this in perspective, think about the value we are placing on your time to do so. If it allows you to save \$2000, \$1000, or \$500 – that is what you are paying yourself (tax-free) for the minimal time it takes to go through the issues and paperwork. (Also, re-read the first two paragraphs to put this in true perspective.)

**Our price is not only designed to encourage you to try our trust by mail, it is designed to finally motivate you to protect your family and loved ones.** Almost every client (since 1988) has told us they "had been meaning to complete a trust for years". We know from experience this is something that everyone sub-consciously keeps putting off but we also know from experience it may never get done or it may be years -- or worse yet, too late -- or you will be scrambling to do it at the last minute while you are getting ready to go on a distant vacation – **UNLESS YOU FINALLY SET YOUR MIND TO IT**. We've provided some extra incentive; the rest is up to you!

**The checklist of the paperwork you need to complete and submit is on the back of this page or the next page** (as well as some other information you need only read). Most of it is fairly straightforward and self-explanatory but if you have questions or need clarification please don't hesitate to give us a call. We are here to help and support you.

# LAW OFFICES OF AFFORDABLE LIVING TRUSTS



## Checklist & Instructions for Completing a Married Trust by Mail Packet

Please read and complete the following documents (we suggest doing so in order) then check them off the list as done:

<u>Check Below</u> (when Complete)	<u>Document Type &amp; Instructions</u>
(read & signed by both)	<b><u>Conflict Agreement</u></b> (required by the Bar): Please read and sign.
(read & signed by both)	<b><u>Community Property Worksheet:</u></b> Please indicate on this document if you would like us to prepare a Community Property Agreement as part of your Trust package.
(completed)	<b><u>Complete Real Estate Info &amp; Worksheet:</u></b> This contains information that may be helpful in locating a copy of the Deed for Real Estate Property owned. If you are unable to locate a copy of your Deed (or don't want to look for it) we can likely obtain a copy for you for a \$10 fee (our cost).
(Completed & Signed by both where applicable)	<b><u>Married Couple Questionnaire:</u></b> The form where you enter basic data about yourself, your children, your choice of successor trustees, inheritance ages, etc. Be sure to complete all parts of this form and <b>be sure that both husband and wife sign in both places on page 3.</b>
(Read, Signed, & Initialed by both where applicable)	<b><u>Married Couple Trust Worksheet:</u></b> This is an overview of the Trust Structure desired by most married couples Be sure that both the husband & wife sign this If this is the approach you desire.
(Initialed & Signed by both)	<b><u>Client Checklist:</u></b> This document contains some important facts about our office and the Living Trust process, read each paragraph and initial to acknowledge your understanding.
(Read)	<b><u>The Importance of Titling Your Assets:</u></b> A brief explanation of how to title your assets after your Trust has been executed.
<b><u>(Check enclosed)</u></b>	<b><u>Payment:</u></b> Kindly forward payment in the amount of \$399.00 (plus \$10 per deed requested, if applicable), made <b>payable to Landis Mahaffey</b> . We offer a full money back guarantee for 90 days following date of your trust (requires revocation and return of the trust).

When we receive the above noted documents, we are generally able to complete and forward your Living Trust very quickly, along with instructions for signing with a notary. As with all phases of the process, we encourage you to contact us to guide you and answer questions.

# LAW OFFICES OF AFFORDABLE LIVING TRUSTS



## **CONFLICT AGREEMENT**

(Reading & signing a requirement for all married couples wishing our office to prepare a joint living trust estate plan)

According to the Rules of Professional Conduct of the State Bar of California (the "rules"), a law office may not represent "multiple" clients who have conflicting or **potentially** conflicting interests without their informed written consent. This even applies to a husband and wife, who in the context of a joint estate plan are deemed to be multiple clients who might have potentially conflicting interests. Thus in order to represent the two of you together in the completion of your joint living trust I must obtain your informed written consent. These rules require us to advise you of any reasonably foreseeable adverse effects that may arise as a result of representing both of you. Accordingly it possible (although unlikely) that the following adverse effects could arise from representation of both of you in the preparation of your new estate plan:

1. Since we will be representing both of you, each of you is considered to be my client. As a result, matters which either of you discuss with us will **not** be protected by the attorney/client privilege from disclosure to the other. The rules prohibit us from agreeing with either of you to withhold information from each other. Anything either of you may discuss with us is, however, privileged from disclosure to **third** parties.

2. It is possible that the two of you have differences of opinion concerning your estate plan. We can discuss the pros and cons of such differing opinions, but the rules prohibit us, however (as the lawyer for both of you), from advocating one of your positions over the other.

3. Although we doubt it will happen, if conflicts do arise between you of such a nature that it is impossible, in our judgment, to perform our obligations to each of you in accordance with this letter, we will have to withdraw as your joint attorney and to advise you both to obtain separate, independent counsel. We would not, and could not, continue to represent either one of you under those circumstances.

4. You may each have a difference of opinion about who should get what property at each of your respective deaths and/or who should be in charge (trustee or executor). **We cannot take sides.** Nor can we continue with your living trust unless you do in fact agree. You hereby agree to inform us if you do not agree on your joint estate plan. If you do not agree, we can however, do separate estate plans for each of you. In the event you decide to complete individual estate plans, by signing this, you each agree to allow us to prepare estate plans for either or both of you, although you are under no obligation to utilize the services of this office. You each are entitled to or may wish to have independent counsel.

5. Finally, at the forefront of potential conflicts between a husband and a wife is the issue of community versus separate property. What belongs to the husband? What belongs to the wife? What is the right of each at death to dispose of their respective property as they see fit? How is property split in the event of a divorce? I refer you to the following discussion.

### **OPPORTUNITY TO CLARIFY PROPERTY AS COMMUNITY PROPERTY TO INSURE DOUBLE STEPPED UP INCOME TAX BASIS FOR A SURVIVING SPOUSE:**

One purpose of this office delving into the issue of community property and helping you declare any property as community property is to gain maximum income tax advantage at the first spouse's death for the surviving spouse. You should be aware that the Federal Tax Code grants a surviving spouse a double stepped-up income tax basis on many assets held as community. Such is not true of Joint Tenancy, Tenancy in Common, or if it is the Sole & Separate Property of one spouse. If it is the Surviving Spouse's sole and separate property there will be no step-up in basis whatsoever. Translated into layman's terms, if an asset is declared community property this means that the surviving spouse could sell the asset shortly after the first spouse's death and would often not owe any income tax (capital gains tax) – regardless of which spouse dies first. This advantage is only granted if there is written evidence that the asset is considered community property. In this office, you have the opportunity, if you desire, to sign a document called a "**Community Property Agreement**" that satisfies the IRS written requirements to obtain this benefit – and overrides any Joint-Tenancy designations or possible ambiguities on other assets in this regards. In the long run, the Community Property Agreement typically ends up being the single most valuable and beneficial document a married couple signs. (Future acquisitions may not be covered by the community property agreement you may have signed in this office. If you desire to gain the income tax benefits of community property you will have to declare in writing, with another document, the status of the property which you receive.) *(continued on back side or Pg 2)*

### **Further Potential Importance of Clarifying Community and Any Separate Property**

It is also important to clarify any separate and community issues of ownership and property rights between a husband and wife to prevent any ambiguities at death or misconceptions and assumptions each may have as they enter into the execution of a joint estate plan.

### **A Short Discussion on Community and Separate Property Rights & Repercussions**

When an asset is the separate property of one spouse, that spouse has full say what happens to that asset during life and upon death – and in the event of divorce should be awarded all separate property assets in their entirety. Conversely, any asset which is community property of the spouses generally means both spouses share ownership, management, and control of such assets and each would be awarded half the value of such assets upon divorce (notwithstanding any rights of reimbursement). (However, either spouse may bequest their share of community property to whomever and however such spouse sees fit.) In certain cases, this means there could be some **potentially serious consequences and repercussions in transmuting property through a Community Property Agreement (These potentially serious consequences and repercussions include any property which you may be acknowledging as the sole and separate property of your spouse).**

### **A Brief Overview of what is Community and Separate Property.**

In general, legally speaking, all assets owned prior to marriage, and any gifts and/or inheritances (even during marriage) are by law considered to be that spouse's separate property. Earnings and accumulations as a result of either spouse's labors during marriage are generally considered community property. (Also, by law, an agreement between spouses regarding the characterization of any property is legally binding – and this is so of any Community Property Agreement you may sign here.) However, the lines between separate and community property do not usually remain clean and distinct. This is a result of many factors I will not go into here. In divorces and death proceedings, lawyers wage great battles as to what is community and separate property. Understandably, spouses can easily become confused as to this. Often, a spouse may legally have a community property claim on what they believe to be one spouse's sole and separate property. Conversely, what was believed to be the community property of both spouses may in fact legally be the separate property of only one spouse. There may be rights of reimbursement, etc. Legal claims and theories seem to have no end.

### **Non-U.S. Citizen Spouses**

Finally, when one spouse gifts assets to a non-U.S.-citizen spouse there is an annual and lifetime gift tax limitation. When such spouses sign a community property agreement it is an extremely complex analysis to determine whether such would be considered a gift (given community property law).

### **The Central Theme on Our Role with Marital Property**

**This brings us to an important point: We are a living trust law office, not a family law practice or tax law specialists. It is not the business or expertise of this law office to analyze or determine or advise either spouse as to what is or is not the community property of either spouse; or what is or is not the separate property of either spouse -- or any rights thereto, or whether and to what extent a gift is occurring between non-citizen spouse. All we want to do is afford you the opportunity to declare as community property (and/or separate property) that which you are completely and unambiguously comfortable with doing so. In no way is any document that you sign here to be construed as a waiver of any spouse's right of reimbursement pursuant to Family Code Section 2640 (This code section allows the contributing spouse to seek reimbursement for the value of their separate contribution to community).**

**If you are not completely comfortable with, or you are confused, or do not understand, or if you are at all concerned about potential gift tax implication (non-citizen spouse) you are hereby instructed not to sign the community property agreement or any other document (such as a property deed) which states property to be community and/or sole and separate property. Although we can still prepare your living trust, you are hereby instructed to seek separate legal counsel for advice on community and separate property issues. Our office can not and will not analyze or advise a couple on spousal property rights.**

By signing you acknowledge that: **We have read the foregoing and understand its contents. We consent and agree to having your office represent both of us in connection with the preparation of our joint living trust estate plan. We understand the discussion of the issues set forth above. Also, any documents which your office prepares, stating property as community or separate is done so at our instruction and full agreement between us. We both take full responsibility for any repercussions and hold Landis Mahaffey, his employees and Affordable Living Trusts harmless for any consequences thereof.**

**Dated & Signed:**

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**Dated & Signed:**

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# Community Property Worksheet

## **Securing Double Stepped-Up Basis For Community Property (But Not Joint Tenancy)**

It is possible for a surviving spouse to gain an enormous tax benefit that allows the sale of capital assets to be completely income tax-free at the first spouse's death. Put another way, the IRS ignores all the appreciation that occurred up until the first spouse's death. So even if the surviving spouse sells the assets years later, the survivor will only pay taxes on the appreciation that occurred after the death of the first spouse.

This benefit can be referred to as the "Community Property Death Benefit" or the "Double Stepped-Up Basis for Community Property" because both the deceased and surviving spouse's basis steps up at the first death. Simply put, this is one of the most generous tax benefits in all of the tax code. However, the double stepped-up basis, **solely available to married couples residing in community property states, will only apply if there is written evidence or declarations that the property is considered community property, and at death, it is actually passed as community property.**

**A word of warning: Joint tenancy destroys this benefit. In other words this major tax advantage is not available if the couple holds title as Joint Tenants and passes the property to one another through Joint Tenancy** (or has children and others on title as joint tenants). The good news is that married couples are always free at any time to agree on property ownership rights so the effect of a written agreement stating that you consider assets community property overrides any Joint Tenancy designations.

Few legitimate opportunities exist to escape taxes – this is one of them. That is why taking steps to secure the community property death benefit is potentially one of the most important estate planning moves any couple can make – and why our law office and most law offices make it a routine part of the trust process. At your direction (by electing below) we will include a "**Community Property Agreement**" that satisfies the IRS written requirements to obtain this benefit – and overrides any Joint-Tenancy designations or possible ambiguities on other assets in this regards.

However, **we are only willing to prepare a community property agreement for those of you who consider all of (100% without exception) your current assets community property.** That's because we are a living trust law office, not a family law practice and it is not the business or expertise of this law office to analyze or determine or advise either spouse as to what is or is not the community property of either spouse; or what is or is not the separate property of either spouse - - or any rights thereto. Our objective is to help couples qualify for the tax benefit and only those who are completely and unambiguously comfortable declaring 100% their assets community property (meaning each owns 1/2 death or divorce).

If you are not completely comfortable with, or you are confused, or do not understand, you are hereby instructed not to sign the community property agreement or any other document (such as a property deed) which states property to be community and/or sole and separate property. Although we can still prepare your living trust, you are hereby instructed to seek separate legal counsel for advice on community and separate property issues. Our office cannot and will not analyze or advise a couple on spousal property rights.

While it is possible to execute marital property agreements that designate some assets as community and some assets as separate property our position is that such agreements are better left to the purview of family law attorneys. However, if you do have some (capital) assets you consider community property (and desire the tax benefit) we strongly suggest you consider executing documents that reflect such.

**(continued on page 2 – back of this page or next page)**

(continued from page 1)

## **Please Both Sign Below if You Wish to Designate All Assets As Community Property.**

By our signatures below, as husband and wife we acknowledge that no confusion, doubts or concerns exist regarding executing a document that clarifies that, regardless of how any asset is presently titled, we consider all our assets (100%) to be community property and we hereby instruct your office to prepare a community property agreement reflecting that we consider 100% of our assets to be community property without exception. We also acknowledge that we have read, signed, and understand the "Conflict Agreement" and Page 1 of this Community Property Worksheet.

If you accept this option 1 please sign below:

**Husband's Signature:** \_\_\_\_\_

**Wife's Signature:** \_\_\_\_\_

## **Option 2 We Decline the Preparation of a Community Property Agreement:**

By our signatures below, as husband and wife we acknowledge that we do not wish your office to prepare a community property agreement. In regards to our respective community property &/or separate property we are either not in full agreement, wish to further investigate or clarify the issues, or for our own reasons are uncomfortable executing such a document at this time. We also acknowledge that we have read, signed, and understand the "Conflict Agreement" and Page 1 of this Community Property Worksheet.

If you decline preparation of a "Community Property Agreement" please sign below:

**Husband's Signature:** \_\_\_\_\_

**Wife's Signature:** \_\_\_\_\_

# LAW OFFICES OF AFFORDABLE LIVING TRUSTS



## Real Estate Info & Worksheet

Please Be Sure to Complete & Read Part 1 and Part 2 (on the back of this page or page 2)

### Part 1 – Please List Your Real Estate

**What is Real Property?** Generally, real property is any ownership interest or right to land, whether or not there is a house or building on it. Timeshares, oil and mineral rights are also real property interests. Mobile homes are not a real property interest (but any land it sits on is if you own that). Contrary to an often popular belief, you are generally the full legal owner of your real estate property, regardless of any outstanding loans used to purchase the property (or funds obtained through equity loans). The lender does not enjoy any ownership interest, but rather holds something similar to a lien against the property. **In the space below please state the total number of real estate properties that you presently own. Please be sure to also count (as an additional piece of property) any property that may own only a part interest or percentage in as a co-owner.**

### Total Number of Real Estate Properties Owned

Please fill in an Address or other reference to the real estate property (also, please write yes or no in the next column if anyone else is on title to this real property)	Others on title (Yes or No)	Total Present Estimated Fair Market \$ Value of Property	Total Estimated \$ Loans, Mortgages Still Owed on Property	= Total Net \$ Value (Present Equity) in Property (Present value minus loans)
<b>Total Net Equity Value of All Real Property ⇒</b>				

*(Continued on Backside or Page 2)*

## **Part 2 – Needed Real Estate Documents**

### **You Must Execute A Deed For Each Real Property Interest That You Own**

Whether you now own 100% of a piece of real estate or, own a part interest as co-owner, **it is vitally important that you execute a deed for each whole or part interest – conveying and transferring it to your trust.** (This rule also applies to any whole or part interest that you acquire in the future.) As part of your trust process, this office generally prepares Quitclaim Deeds transferring title of real estate property that you own into the name of your living trust (if you provide the necessary information)

### **What Documents / Information You Need to Supply**

To transfer your real estate to your trust requires you to furnish a copy of the deed for each and every real estate property that you own (this includes partial interests and timeshares). Generally this is the deed (document) signed by the last owners which conveyed (transferred) the property to you – usually when you purchased the property. It is also possible that you received the property through a probated inheritance in which case you need to provide a copy of the final distribution order of the probate court. It is critical to provide **copies of your deeds** including the **address for each piece of property** as well as the **property tax parcel number (APN).**

### **What Is The Name of the Deed That You Need to Furnish**

**GRANT DEED - or - CORPORATION GRANT DEED - or - JOINT TENANCY DEED - or - WARRANTY DEED**

(The above shouldn't be confused with the deed of trust or mortgage papers which are really the loan papers on the property.)

**Note: If you are unable to locate your deed we can usually obtain a copy for you for the nominal fee of \$10**

### **What Are We Really Looking For (The Property Description) So Please Be Aware of Any Referenced Exhibit "A"**

We like to confirm the names and vesting on the title but **the most critical information we are looking for is the property description.** Most times this is 2 to 4 lines long and will typically be contained within the body of a one-page deed. However, sometimes the description is too long to fit on one page or for some other reason it will be attached on a separate page usually referred to as an Exhibit "A". **It is thus critical that you also furnish any referred to Exhibit "A".** Set forth below is an example of a typical property description and an example of the wording used when there is an Exhibit "A".

#### **Typical Property Description Example:**

*City of Saratoga, Santa Clara County, State of California*

*Lot 27 in Block 1, as shown on that certain Map entitled, "Tract No. 1277 Saratoga Orchards", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on March 22, 1954 in Book 48 of Maps, at page 25.*

**Please Be on Alert for Any Property Description that references an "Exhibit A" illustrated in the example on the next page**

#### **Typical Property Description Example With A Referred to Exhibit "A":**

*City of Saratoga, Santa Clara County, State of California*

*For the legal description see the attached Exhibit "A"*

#### **Other documents may contain the property description:**

Again, the ideal document is the Grant Deed (Joint Tenancy Deed of Warranty Deed). That said, if you cannot find the Grant Deed the property description can often be found buried in PRELIMINARY TITLE REPORTS, TITLE INSURANCE PAPERS, AND / OR DEEDS OF TRUST. (These documents almost always use an Exhibit "A" for the property description so please don't forget the Exhibit "A".) **Note: Deeds of Reconveyance will do no good at all (as they never contain the property description.)**

# LAW OFFICES OF AFFORDABLE LIVING TRUSTS



## **Married Couple Questionnaire for a Joint Living Trust**

**Instructions:** Please print and complete all information. **Confidentiality:** Please note that this and all provided information is held in the strictest of confidence and is never released to or shared with anyone.

Last Name: \_\_\_\_\_ County of Residence: \_\_\_\_\_

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

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

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

**E-Mail:** At times we may send out a newsletter or other information via e-mail. If you would like us to be able to contact you by e-mail you may list the information below. Again, we do not share this information with anyone.

**E-Mail Addresses:** \_\_\_\_\_

### **Initial Information:**

**Note on filling in name information below:** Generally use your customary names as you wish them to appear on documents rather than using the entire length of your name. For example, if your name is John Andrew Smith you may want to use John A. Smith or J. Andrew Smith (depending on whether you use John or Andrew).

Husband's Legal Name(s) \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Wife's Legal Name(s): \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Is Husband a U.S. Citizen? \_\_\_\_\_ Is Wife a U.S. Citizen? \_\_\_\_\_

**Approximate Year & Length of Current Marriage:** \_\_\_\_\_

**How many total legal children are there between the husband and the wife?** \_\_\_\_\_

**Do You Have A Pre or Post Nuptial Agreement:** \_\_\_\_\_

**Do either of you have separate children that are not also the legal child of your present spouse? Circle one below:**

**Yes                      No**

**Have either of you been married before? Circle one below: If yes please complete the form at the end of this questionnaire entitled "Prior Marriages"**

**Yes                      No**

**Do either of you presently have property or assets which you consider to be the sole and separate property of one spouse alone?**

**Yes                      No**

# Children

## Husband's Legal Children:

Please list the names of children that are husband's legal children (birth or legal Adoption). If the child has married please list the maiden name in parenthesis i.e. Mary (Smith) Jones:

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

**Husband's Deceased Children (if any):** Please List the Names of any deceased Children.

\_\_\_\_\_ Did any deceased child leave any children?

(describe) \_\_\_\_\_

**Are you (husband) presently obligated under any court ordered child support and/or agreements?**

\_\_\_\_\_ **No**

\_\_\_\_\_ **Yes (if yes please briefly describe below):**

## Wife's Legal Children:

Please list the names of children that are wife's legal children (birth or legal Adoption). If the child has married please list the maiden name in parenthesis i.e. Mary (Smith) Jones: (if same as husband's, indicate same as above).

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

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Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Child's Name: \_\_\_\_\_ Approx Current Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

**Wife's Deceased Children (if any):** Please List the Names of any deceased Children.

\_\_\_\_\_ Did any deceased child leave any children?

(describe) \_\_\_\_\_

**Are you (wife) presently obligated under any court ordered child support and/or agreements?**

\_\_\_\_\_ **No**

\_\_\_\_\_ **Yes (if yes please briefly describe below):**

## Distribution of Estate At First Spouse's Death Spouse as Sole Beneficiary

As detailed in our literature and website our trust-by-mail service is designed strictly for those married couples who wish their spouse to be the sole beneficiary at the first death (and during the remainder of the surviving spouse's lifetime). Though you are free to leave your estate to anyone, you must seek other legal counsel if it is your desire to leave any part of your estate to someone other than the surviving spouse (at the first spouse's death). Please sign below the confirming statement:

### **Confirming Our Intent of Entirely to the surviving spouse (outright or in trust)**

Should my spouse survive me, I **wish to leave my entire trust and estate exclusively to or exclusively for the benefit of my surviving spouse** until the surviving spouse's death. As discussed in the handout entitled "**Married Couple Trust Worksheet (Planning for Your Surviving Spouse)**" I understand I have the option to leave my estate outright to my surviving spouse (Disclaimer Approach) or in trust for my surviving spouse (AB or ABC trust approach) - but in either case we confirm our intent that no other person or child shall have any legal rights to demand ownership, use or benefit of assets during the life of the surviving spouse. By signing below this paragraph we each acknowledge that this statement expresses the sentiments and general intent of both spouses.

\_\_\_\_\_  
(Husband's Signature above)

\_\_\_\_\_  
(Wife's Signature above)

## Designation of Ultimate Beneficiaries Your Joint Children as Sole & Equal Beneficiaries

As also detailed in our literature and website **our trust-by-mail service is designed strictly for those married couples who**, after the death of the surviving spouse, **wish to leave their estate equally among their children** (More specifically to your descendants by right of representation – discussed below). Though you are free to leave your estate to anyone and in manner you choose, you must seek other legal counsel if you do not desire to leave your estate to your then living descendants by right of representation (meaning equally to your children if they all survive).

### **Confirming Our Intent of Entirely to leave our estate equally to our children (Descendants by Right of Representation)**

Specifying that your estate be distributed to your then living descendants by right of representation means your estate will be distributed **equally among your children if they all survive** you - but if a child does not survive you that child's share would be given to the non-survivor's children (if they had any). In other words they stand in their parent's stead. If your pre-deceased child has no legal descendants then such share would be divided equally among your other children. By signing below we each confirm that this statement expresses the sentiments and general intent of both spouses and we further agree that it is our intent, that for purposes of the ultimate division and distribution of our estate, there shall be no discrimination as to whether or not it is the legal child (descendant) of just one spouse and that in qualifying for distribution the legal child of just one spouse shall be treated as if it is the legal child of both of us.

\_\_\_\_\_  
(Husband's Signature above)

\_\_\_\_\_  
(Wife's Signature above)

**Note on Young &/or Immature Beneficiaries** We know that a young person cannot be given their share outright at an age they cannot or should not have it – but you still need to designate what that share is. For now, in this section, disregard beneficiaries' ages and concentrate on how you want your estate divided. The section that follows will deal with the issue of under-age and/or immature beneficiaries.

# Managing a Young Person's Inheritance

## Properly Managing Any Share Due To A Young Person Until They Reach A Responsible Age

The ability to manage a young person's inheritance is truly one of the great advantages and many reasons for having a trust. At what age a young person is capable and responsible enough to properly manage an inheritance is a matter of differing opinion. Certainly 15 years old isn't old enough, and it is doubtful that it magically occurs at age 18, or even age 21. In your living trust you get to decide what age that is. If the beneficiary is under the age you specify then that beneficiary's share remains in trust until they reach the specified age. **During the time a young person's share is held in trust the trustee is allowed to make distributions as needed for the young person's health, education, and support (college, living expenses, etc.).**

**Don't Forget The Trust Gives You the Ability to Also Manage Life Insurance Proceeds, etc. if You Name the Trust as the Paid on Death Beneficiary:** If you designate your children as the beneficiaries of life insurance and retirement accounts such amounts would be handed to them outright the moment they turned 18 (and these are often sizeable amounts). On the other hand if you name your trust as the designated beneficiary the proceeds would be managed until the ages you specify. That is why many singles designate the trust as the primary beneficiary on such assets and many married couples designate the trust as the secondary/contingent beneficiary (with the spouse usually the primary beneficiary).

**Please specify by choosing below (Note: The Most Common Choice is the first)**

Remains in Trust Until 25 & 30 with discretion to accelerate second half: Under this scenario the entire amount remains in trust held and used for the child's benefit until age 25 at which time the child receives the first one-half outright at age 25 and the final one-half stays in trust until they reach age 30 at which time they receive the balance. However, the trustee has the discretion to accelerate the final one-half to occur anywhere between 25 and 30 if the trustee deems the child mature and responsible enough to handle it.

Or

Remains in Trust Until \_\_\_\_\_ & \_\_\_\_\_ with discretion to accelerate second half: Same as above except you may fill in the two distribution ages you desire (with our imposed maximum age of 40).

or

Remains in Trust until 25 (100% distributed at 25): Under this scenario the entire amount remains in trust held and used for the child's benefit until age 25 at which time the child receives 100% at age 25.

or

Remains in Trust until \_\_\_\_\_ (100% distributed at specified age): Same as above except you may fill in the desired distribution age (with our imposed maximum age of 40).

# Designation of Successor Trustees

The person in charge of managing the trust and trust assets is called the trustee. As husband and wife, the two of you are the trustees during your joint lifetimes (and together you can do anything you want with your trust and trust assets).

**The surviving spouse takes over as trustee at the first death.** However, **in case both spouses die or become incapacitated you need to designate who you want to step in and carry out your instructions (per terms of the trust). This is called your successor trustee.** 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.

**Forewarnings about designating Co-successor trustees:** 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 ironically is a strong argument against anyone being nominated as a trustee at all). The choice is yours.

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

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

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

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

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

In nominating Guardians for your minor children the question is this: Should your nominated guardians be the same as your nominated trustees? Some believe that it is a good check and balance for the guardians to be different than the trustees or that some individuals make better guardians than they do trustees. Possibly; but think about this. Imagine if someone asked you to take their children but on the other hand didn't entrust you with managing the money. Put yourself in this place of taking care of and raising someone's children and being forced to ask someone else for money every time you needed it for their children. Also, while you may have a married couple in mind as guardians it may be best to nominate just the husband or the wife (whichever is your priority) because couples don't always stay together.

### **Initial Your Choice Below:**

I Want The Guardians to be the Same as the Successor Trustees

I Wish the Guardians to be different from the Successor Trustees per Below

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

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

# Assets & Net Worth Worksheet

Note: nothing on this worksheet shall be construed as an agreement or being legally binding between the husband & wife.  
 THE BELOW TOTALS DO NOT REQUIRE EXACT DOLLARS & CENTS AS ROUNDED APPROXIMATIONS ARE OK

Type of Asset	Total Approximate \$ Value
<b>Total Net Equity Value of All Real Properties</b> (total from real estate worksheet)	\$
<b>Husband's Total Qualified Retirement Plans</b> (in <u>Husband's</u> Name) (IRA's, 403B's, 401k's, TSA, State Retirement, etc.)	\$
<b>Wife's Total Qualified Retirement Plans</b> (in <u>Wife's</u> Name) (IRA's, 403B's, 401k's, TSA, State Retirement, etc.)	\$
<b>Total Bank, Savings, CD's, Money Market Accounts</b> (not part of a Qualified Retirement Plan)	\$
<b>Total Mutual Fund Accounts</b> (not part of a Qualified Retirement Plan)	\$
<b>Total Publicly Traded Stocks, Bonds, &amp; Other Securities</b> (not part of a Qualified Retirement Plan)	\$
<b>Total Private Stocks, Bonds, &amp; Other Securities</b> (not part of a Qualified Retirement Plan)	\$
<b>Total Partnership Interests</b>	\$
<b>Total Sole Proprietorships</b>	\$
<b>Total U.S. Savings Bonds</b>	\$
<b>Total Deeds of Trust or Mortgages Owed or Payable to You</b>	\$
<b>Total Notes Receivable Owed or Payable to You</b>	\$
<b>Total Mobile Homes</b>	\$
<b>Total Tax Deferred Annuities</b>	\$
<b>Death Benefit Totals of All Life Insurance Policies on Husband's Life</b> (not including accidental)	\$
<b>Death Benefit Totals of All Life Insurance Policies on Wife's Life</b> (not including accidental)	\$
<b>Other Valuable Assets</b>	\$
<b>Totals</b> ⇒⇒⇒⇒⇒⇒⇒⇒⇒⇒⇒⇒⇒⇒⇒⇒	\$



# Prior Marriages

## Husband's Previous Marriages (if any):

Please list the names of any previous spouses Husband was married to (write "none" if none) & be sure to note whether the marriage ended by death or divorce by circling the appropriate choice:

Previous Spouse's Name: \_\_\_\_\_ Circle how this Marriage ended: Death Divorce

Previous Spouse's Name: \_\_\_\_\_ Circle how this Marriage ended: Death Divorce

Previous Spouse's Name: \_\_\_\_\_ Circle how this Marriage ended: Death Divorce

Previous Spouse's Name: \_\_\_\_\_ Circle how this Marriage ended: Death Divorce

**Are you presently obligated under any court ordered spousal support, court ordered life insurance and/or beneficiary designations, or co-ownership of property or assets with a prior spouse governed by a court order / agreement. (Note: Court ordered child support is covered in a separate section)**

No

Yes (if yes please briefly describe below):

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## Wife's Previous Marriages (if any):

list the names of any previous spouses the Wife was married to (write "none" if none) & be sure to note whether the marriage ended by death or divorce by circling the appropriate choice:

Previous Spouse's Name: \_\_\_\_\_ Circle how this Marriage ended: Death Divorce

Previous Spouse's Name: \_\_\_\_\_ Circle how this Marriage ended: Death Divorce

Previous Spouse's Name: \_\_\_\_\_ Circle how this Marriage ended: Death Divorce

Previous Spouse's Name: \_\_\_\_\_ Circle how this Marriage ended: Death Divorce

**Are you presently obligated under any court ordered spousal support, court ordered life insurance and/or beneficiary designations, or co-ownership of property or assets with a prior spouse governed by a court order / agreement. (Note: Court ordered child support is covered in a separate section)**

No

Yes (if yes please briefly describe below):

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# LAW OFFICES OF AFFORDABLE LIVING TRUSTS



## Married Couple Trust Worksheet

### **Current Exemption is Now \$5 Million per Person (\$10 Million for a Surviving Spouse)**

The current estate tax exemption for one person has been raised to \$5 Million\*, but also under current law a surviving spouse can now pass up to \$10 Million estate tax-free. This is made possible by a law Congress passed called “portability”. Under portability the surviving spouse is permitted to use (attach) the deceased spouse’s exemption to theirs. So when the surviving spouse passes away, both exemptions apply for a total of \$10 million (under current law).

**Portability Eliminates The Tax Need for an AB Trust:** Prior to 2011 the only way to make use of both spouse’s exemptions was through the use of more complicated and restrictive exemption sub-trust planning, the most common of which was the AB trust. We mention this because we are trying to make everyone aware that, under portability, a married couple no longer needs to structure their trust as an AB trust in order to utilize both spouses’ exemptions. With portability, an AB, ABC (or even exercising a Disclaimer) will not buy you one extra dime in exemption. As long as portability remains law (and we think it will), from a tax standpoint there is no reason to have an AB or ABC trust and every reason not to if you wish matters to be as flexible, simple, and straightforward for your spouse as possible – and in fact having a B, C (or any exemption sub-trust) can easily become a tax negative. With portability spouses can safely do what most of them have been telling us they want to do for years: leave their estates outright to each other.

**Portability is A Sensible, Common Sense Reform:** As a law office that has met with countless surviving spouses we see portability as a sensible, common sense reform. That’s because (even under circumstances where it turned out to make tax-sense) **we never encountered a surviving spouse who liked (or didn’t hate or ignore or didn’t act surprised about) having to live with an AB or ABC trust.** We found that somehow they never seemed to share a lawyer’s or accountant’s opinion that administering an AB or any exemption trust “is no big deal”. Why?

### **An AB or ABC Trust Requires Adherence to Its Terms No Matter Net Worth or Exemption:**

If you currently have, know someone who has, or are somehow still contemplating an AB or ABC trust, everyone should clearly understand, whether or not there is portability, or even if the estate tax has been eliminated – an AB (or ABC) trust will still require adherence by the surviving spouse to its imposing strictures for the remainder of their life. This includes significant restrictions, and lifetime responsibilities, complications, accountability, tax filings, irrevocability, paperwork, and answerability to others. Worse yet, if it turns out that an AB or ABC trust is unnecessary to pass the combined assets estate tax free it can actually become a tax negative, exposing the surviving spouse and heirs to needlessly lost income tax advantages (no step-up in basis for the B or C trust assets at the surviving spouse’s death or capital gain exclusion for a residence allocated to the B or C trust). This does much to explain why surviving spouses seem to universally dislike being stuck with an AB trust. **(Continued on back side or next page)**

**We Began Offering a More Flexible Alternative called the Disclaimer Approach in 1999:**

Foreseeing the decreasing tax need for the AB (ABC) trust and how it could easily turn into a fruitless, negative burden on the surviving spouse our office began (in 1999) offering a more flexible alternative called the “Disclaimer Trust Approach”. All you really need to understand about this approach is that it allows the surviving spouse the option to activate an exemption sub-trust if circumstances warrant it. With portability much of this issue is moot but our married trusts will continue to contain the “Disclaimer Trust” as a safety valve and hedge against what the future may hold.

**\*The Disclaimer Option Remains as A Safety Valve For What the Future May Hold:**

As many of you are aware Congress has a crazy habit of passing temporary laws. So it is true with the estate tax laws for 2011 and 2012. They must again take this matter up before it expires or the exemption will revert to the 2000 level of \$1 Million. No doubt, as before, there will be a great deal of fear mongering in this regard to continue to co-opt people into AB trusts and other convoluted measures. As a matter of perspective, when they debated and passed the tax extensions in late 2010 neither party nor the President was pushing for the exemption to drop back to \$1 Million. (The debate was between \$3.5 Million; \$5 Million, and outright elimination of the estate tax.) More importantly there was little or no opposition to portability of the exemption between spouses. (The President and leadership of both parties were on record as favoring portability). Of course predicting the future is always an uncertain proposition but we think this is a pretty good indication about what it may hold. Nonetheless all our married trusts will continue to contain the Disclaimer Trust (exemption sub-trust) as a safety valve that the surviving spouse will have the option to utilize if future circumstances so warrant. It should be understood however that in order to exercise this option **any disclaimer must be made within nine months of the first spouse’s death and during that time the surviving spouse must not take ownership of the deceased spouse’s assets (nor start treating the assets as her/his own).**

**Instructions:** Those couples who wish the surviving spouse to inherit all assets at the first spouse’s death should read and sign below. Those who wish to pursue other strategies or use a B & C trust to restrict or limit the surviving spouse’s use and control of assets should not sign below and instead refer to the separate handout entitled “Restricting the Surviving Spouse”. *(In contemplating such alternative options we suggest to never forget you may be the surviving spouse!)*

**By our signatures below we certify that we both:**

- 1) have read and understand the foregoing (consisting of 2 pages)**
- 2) wish the surviving spouse to inherit all assets outright, without restrictions**
- 3) are comfortable with the surviving spouse deciding whether or not it makes sense to fund an exemption sub-trust through the use of disclaimers**
- 4) understand that it is vitally important to seek immediate competent legal and financial guidance immediately upon the first spouse’s death.**

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(Husband’s Signature)

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(Wife’s Signature)

# LAW OFFICES OF AFFORDABLE LIVING TRUSTS



## Client Checklist

### YOU HEREBY ACKNOWLEDGE THE FOLLOWING:

**(1) OFFICE SERVICES CONFINED TO LIVING TRUSTS:** Although living trusts can be considered a sub-part of estate planning, this law office does not engage in, or offer general estate planning -- (though our experience indicates a revocable living trust is all the estate planning most people want.) We confine our law practice to, and offer only revocable living trusts. We do not engage in other estate planning or other legal activities, such as advanced estate planning, irrevocable trusts, life insurance trusts, charitable trusts, elder care, Medicaid planning and trusts, (family) limited partnerships, nor asset protection plans -- nor has any such representation been made to you by this office.

**Initials:** \_\_\_\_\_

**(2) ESTATE TAXES:** A living trust is designed to keep your assets and estate out of probate (to avoid probate). Probate fees and estate taxes are not the same and are not to be confused with each other. As the law stands today each person can pass \$5 Million completely estate tax free (and a surviving spouse up to \$10 Million estate tax free). A living trust cannot and will not avoid death and estate taxes if your estate exceeds the amount you are allowed to pass tax free. If you anticipate that your estate will exceed the amount you can pass tax free you may want to seek additional legal advice on potential "advanced estate planning" methods which are available.

**Initials:** \_\_\_\_\_

**(3) LEGAL ADVICE AT DEATH:** Although a living trust can eliminate a lot of headache and paperwork at someone's death, this should not be construed to mean nothing has to be done. Whenever anyone dies it is important that legal and tax guidance be sought shortly afterwards. It is important that certain formalities and tasks be completed so that all legalities are met and to ensure that among other things all available protections, abilities to disclaim, tax options, and other tax advantages. Though we do offer advice at death, you are under no obligation to utilize this office.

**Initials:** \_\_\_\_\_

**(4) A REVOCABLE, AMENDABLE TRUST:** While you are alive, you can revoke your trust, or amend (change) your trust anytime you wish. When you do so, it is important to observe certain formalities. **WARNING:** A note in the margin of your document, writing on your document, or striking out words does not constitute a valid amendment. While you can employ this office to accomplish an amendment, you are under no obligation to -- nor do you need our permission or blessing. However, unless we prepare the amendment, we cannot become involved in judging its legal sufficiency or content -- and we take no responsibility for any amendment prepared independently outside our office.

**Initials:** \_\_\_\_\_

**(5) CHANGING ASSETS IS NOT CHANGING (AMENDING) YOUR TRUST:** Simply adding or disposing of assets in the name of your trust is not an amendment, nor is there normally a need for an amendment in such a case unless you wish to change the actual terms of the trust itself (i.e., To gift that new asset to a certain person). However, if your trust names a specific asset or account to go to someone and you sell or dispose of it, 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.

**Initials:** \_\_\_\_\_

**(6) IMPORTANCE OF TITLING YOUR ASSETS IN THE NAME OF THE TRUST:** (With the exception of qualified retirement plans) it is vitally important to make certain that all of the assets which you own now and all of the assets you acquire in the future are properly titled in the name of your living trust -- **and that such is your responsibility.** (this is often referred to as "funding" your trust.) This includes, but is not limited, to real estate, bank accounts, credit union accounts, stocks, bonds, securities, partnership interests, sole proprietorships, mutual funds, money markets, treasury notes, treasury accounts, mobile homes, notes receivable, mortgages and deeds of trust, etc. -- virtually everything you own. The name and proper wording is explained on the first page of your trust. Detailed instructions and explanations are contained in the handout entitled "Titling Your Assets in the Name of Your Trust" -- which you **hereby agree to read and refer to in these regards.**

**Initials:** \_\_\_\_\_

**(7) EXCEPTION -- RETIREMENT PLANS NOT TO BE TITLED IN TRUST:** Qualified retirement plans (such as IRA's, Keogh's, 401k's, 403b's, etc.) are the one major exception to the above rule and **should not be titled in the name of your trust.** Instead (like life insurance) you are allowed to designate beneficiaries. The "Titling Your Assets" handout sets forth guidelines for doing so, which you hereby agree to read. These are guidelines from a trust administration and management point of view and do not necessarily coincide with optimal tax strategy. There seems to be an unending number of potential tax saving options and repercussions that can occur by pursuing various beneficiary designation strategies that may give more optimal long term tax advantages than spouse / trust beneficiary designations. We cannot advise you on this. You should discuss these other available options with a professional tax advisor versed in the intricacies of qualified retirement plans.

**Initials:** \_\_\_\_\_

**(8) "POUR-OVER" WILL** The "Pour-Over" Will that comes with your trust package is a regular Will which simply says you leave everything to your trust. It functions as an emergency backup to "pour" any assets which may exist outside of the trust at your death, into your trust. Of course, anything which goes through a Will must go through probate, so your goal is to make sure this Will is of little or no use. **If you title all your assets in the trust as you are supposed to, you will achieve this goal. Also, the practicality and application of the "Pour-Over" Will depends upon the existence of your living trust. If you revoke or amend your trust you need to do a new will.**

**Initials:** \_\_\_\_\_

**(9) Legal Advice Upon Any Change In Marital Status:** Any change in marital status necessitates revisiting, updating and restating your estate plan from both a practical and legal standpoint. **If you marry, remarry, separate, file for, or become divorced this can vastly affect your intentions, estate plan and trust -- and will likely invalidate such. You are hereby instructed that you should seek immediate legal advice from a qualified attorney and update your estate plan upon any such change in marital status.**

**Initials:** \_\_\_\_\_

**(10) Gifts to Care Custodians Require Certificate of Independent Review (Probate Code 21350):** If you are leaving a gift or part of your estate to a caretaker / care custodian, then you are hereby advised that for such a gift to be upheld and valid, California law requires you to obtain a "Certificate of Independent Review" [pursuant to Probate Code 21351(b)] from a separate lawyer outside of this office. This law is designed to help protect dependent adults from fraud, duress, or undue influence from caretakers and care custodians. Failure to obtain this certificate will likely invalidate any gift to a caretaker / care custodian. Note: Certain courts are giving a widely expanded definition to the term care custodian to include anyone who is providing help or care or what they consider "caretaking" roles. To be safe we are therefore advising you to obtain a "Certificate of Independent Review" even for a relative, neighbor, friend, acquaintance, or anyone else who helps "look after" or otherwise provides informal help or care in some manner.

**Initials:** \_\_\_\_\_

# REAL ESTATE ISSUES

**(11) THE IMPORTANCE OF A EXECUTING QUITCLAIM DEED FOR EACH REAL ESTATE PROPERTY (CURRENT & FUTURE ):** It is vitally important to title all current and future real estate property in the name of your trust by executing and recording a deed transferring it to your trust. As part of your trust process, this office generally prepares Quitclaim Deeds for transferring your current real estate properties to your trust (if you have provided the necessary information). It must be emphasized that the Quitclaim Deed will transfer to your trust the exact interest you own (whatever that is) in the described property at the time you sign the deed. **DO NOT FORGET that if you later acquire new real estate or more of or a greater percentage or interest in a property that you will need to execute a new "Quitclaim Deed"**.

**Initials:** \_\_\_\_\_

**(12) WARNING WHEN REFINANCING A PROPERTY OWNED BY YOUR TRUST:** In the course of a refinance, property is often "taken out of the trust" and titled back into your individual name. Therefore, at the close of the refinance process, the real property must be re-titled in the name of the trust – or – as it is sometimes referred to: "put back in the trust." Since we have no way of knowing what occurs in each individual financing transaction, whether or not a property was taken out of the trust, and whether or not it was put back in the trust **our blanket advice is to make sure you execute and record a new Quitclaim Deed" to your trust after the close of any financing transaction on the property.**

**Initials:** \_\_\_\_\_

**(13) TRANSFERS TO A REVOCABLE LIVING TRUST ARE GENERALLY EXEMPT FROM RE-ASSESSMENT:** Nearly 100% of real property transfers to a living trust are exempt from property tax reassessment under California law. (Experience indicates this to be true of all states though we cannot make a blanket statement.) However, if you currently own property in Joint Tenancy with a non-spouse or non-child and during the creation of this joint tenancy and a reassessment was avoided under special provisions of Revenue & Tax Code Section 68 (f), you need to be aware that some counties are attempting to reassess if the Joint Tenancy is broken through transfer to a living trust.

**Initials:** \_\_\_\_\_

**(14) CLEARING UP TITLE ISSUES:** We find that other people are often on title and listed on the deed as part owners or joint tenants (often put on for loan or other purposes). For whatever reason they are on title, under the law they are viewed as having an ownership interest. Unfortunately, this is often not the intent, but it is still the result. This can create problems as well as unintended gift tax implications. If you have such a situation, we advise you to consider "clearing it up". You may need to seek advice from a real estate attorney and/or tax advisor because it can become quite complex to unweave these problems, including but not limited to: deciding whether these people actually own an interest or asking these people to sign off; possible gift tax implications; possible city tax and documentary transfer taxes etc. We do not offer this service. You also understand that you are not engaging us to conduct title research, determine current ownership or titling, or guarantee title or accuracy of title or property descriptions in any way. (You must engage outside counsel if you wish such services.)

**Initials:** \_\_\_\_\_

**(15) TRUST ORIGINALS & COPIES:** All in-office clients leave our office in possession of both (1) All signed trust originals and related documents (in a clear plastic envelope) and (2) A complete page-for-page copy of all signed originals in a 3 ring binder (except trust by mail clients who are supplied with a PDF copy) and (3) are e-mailed an electronic PDF copy (if desired). We highly advise separating the originals (plastic envelope contents) from copies (white binder contents) and to store these in two different places for safekeeping. Also from time to time, we receive requests from clients and other interested parties for another copy of their documents. Please be aware that we impose significant fees for this as a way to discourage using us as a repository, secretarial or copy service. We would much rather you keep your money and make your own copy. So please, we encourage you to make all the copies you feel necessary so at least one would be available if the need arises. As a final note, even if the fees are paid we will not take instructions from or supply copies of any documents to anyone other than the client or successor trustee of a deceased client (whereupon it is the client's responsibility to forward such needed documentation to the institution or interested party).

**Initials:** \_\_\_\_\_

**(16) 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). In conducting many reviews it is rare for us not to catch something and in many cases it is property that the client has failed to title in their trust (which alone has the potential to trigger probate and cause huge problems and expense if not remedied). 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). The decision is ultimately yours but our advice remains the same.

**Initials:** \_\_\_\_\_

**(17) IT IS IMPORTANT FOR YOU OR YOUR REPRESENTATIVES TO NOTIFY US OF ANY ADDRESS AND/OR PHONE CHANGES OR ANY OF YOUR DEATHS:** It is possible that at times, we may need to contact or give instructions to you, (or whoever is in charge of your trust and affairs at the time) – and it may be about something critically important. That is quite impossible to do if we do not have a current address and phone number – or are even aware that someone has died. While no one is under a legal obligation to do so, if there is a death or a change of address or phone number for relevant information to go to, you hereby agree to inform us of this **in writing, by a letter delivered by registered mail (and agree to inform and charge your successor representatives and trustees with this same duty).** You hereby agree that any letters or notices sent to the last address provided us as stated shall constitute diligent and reasonable effort to contact you, your representatives, your successor trustees, or other successors in trust and such shall constitute full legal notice to any of the above, and be considered properly sent – and **YOU HEREBY AGREE TO HOLD US HARMLESS FOR ANY RESULT OF ANY FAILURE TO FOLLOW SAID PROCEDURE INVOLVING RELEVANT ADDRESS CHANGES OR ANY FAILURE TO INFORM US OF A DEATH.**

**EXECUTION:** It is understood that the items covered in this document are not to be construed as limiting or covering everything which was explained or discussed. By my signature, **whether or not a paragraph is individually initialed**, I have read, agree to, and understand all the points and paragraphs covered in this 4 page document.

**Dated & Signed:** \_\_\_\_\_

**Dated & Signed:** \_\_\_\_\_

# THE IMPORTANCE OF TITLING YOUR ASSETS IN THE NAME OF YOUR TRUST



## CLIENT GOLDEN RULE -- ALL CURRENT AND FUTURE ASSETS NEED TO BE TITLED IN THE NAME OF YOUR TRUST (EXCEPT QUALIFIED RETIREMENT PLANS):

Compared to probate, the ease with which a living trust can pass an estate is remarkably smooth and hassle free. Though the attorney plays a crucial role, **YOU -- MORE THAN ANYONE ELSE -- determine the smooth and successful outcome of your trust.** Whether or not your loved ones avoid the "probate quagmire" depends upon your current and continued diligence in making sure that all the assets which you presently own -- and all of the assets you acquire in the future -- are transferred to, and titled in, the name of your trust (except qualified retirement plans). That is your part in the process and doing so is not difficult, nor does it change your life in any way. You still maintain complete control over your assets to do with as you please; **real property cannot be re-assessed for transferring it to your trust; your social security number continues to function as your trust Tax I.D. #, and you continue to report, file, and pay your income taxes just as before.** Other than needing to title your assets in the trust, its present real effect on your life is completely transparent and neutral.

**"Qualified Retirement Plans" SHOULD NOT BE TITLED IN YOUR TRUST.** These include but are not limited to IRA's; KEOGH's, 401K's; 403B's. A discussion on how to identify a "Qualified Plan" and what to do with it is discussed under "QUALIFIED RETIREMENT PLANS".

**PROPER WORDING FOR TITLING IN THE NAME OF YOUR TRUST.** There are three essential elements for titling assets in a trust:

- 1) The Present Trustee (s) -- YOU!
- 2) The Name of the Trust (Usually "your last name trust")
- 3) The Date of the Trust

The very first page of your trust will set forth the proper wording in big bold letters and will read something like: **John Smith and Mary Smith, trustees of the Smith Trust, created on January 1, 1980.**

*Note: Sometimes clients concern themselves that there may be other "Smith Trusts". Again, all three of the above elements distinguish the trust -- plus your social security number(s). (Note that there is no legal requirement that the title include the wording "Revocable Living Trust", as it only adds useless verbiage.*

**TITLING PROCEDURES FOR MOST ASSET TYPES ARE DISCUSSED IN THE FOLLOWING PAGES:** Though each institution (or asset type) differs slightly in their particular procedures and policies, nothing substitutes for your common sense and persistence in the asset re-titling process.

Complying with their paperwork requirements helps guarantee a completed transfer, accurately reflected by their records, insuring a smooth transition at someone's death or incapacity (your true goal). Do not however, make the mistake of thinking this process to be a legally technical task. It is not -- and it is something you should be able to accomplish with minimal time and effort since most institutions receive such requests daily. Simply use a goal-oriented approach, tell them you want your asset titled in your trust, and ask what they need.

**HELPFUL DOCUMENTATION (PROOF PAGES):** Whenever you approach anyone to title an asset or account in the name of your trust we suggest you begin by **supplying a copy of the first page of your trust (“Declaration Page”) and last page (“Signature Page”) of your trust.** The first page (“Declaration Page”) provides titling and other relevant information for titling purposes, and when coupled with the “Signature Page” it proves the existence of your trust (which is why we refer to these as the “Proof Pages” of your trust). Generally this is the only paperwork from your trust that you need to supply. Once you give them a copy of the “Proof Pages” many entities will then only need your signature in a few places. Others however, may ask you to fill out some short forms sometimes referred to as a “Trust Certification Form”.

**FILLING OUT A TRUST CERTIFICATION FORM:** In filling out any forms remember the answer is almost always you (or you and your spouse if married)!

Who is the **Trustor**? You are (and your spouse if married).

Who is the **Settlor**? You are (and your spouse if married).

Who is the **Grantor**? You are (and your spouse if married).

Who is the **Trustee**? You are (and your spouse if married).

Who is the **Beneficiary**? You are (and your spouse if married).

**Successor Trustees?** That’s who you named to take over management of the trust if something happens to you (if you don’t remember the names are listed on page 2 of your trust).

**Powers and Authorizations?** As a rule, anything they are asking about is usually already spelled out and specifically authorized by your trust. Further, this is your trust and you are essentially empowered to do anything you want, so answering “yes” to the question can be considered your authorization anyway!

**AUTHORIZING OTHERS TO SIGN ON OR REMAIN ON AN ACCOUNT:** Our advice is to **title all your accounts in the name of your trust.** If you then wish another “authorized signer” (such as a child) to remain on, or be placed on your account then you will generally have to appoint them as an authorized co-trustee and you can do so by using a form available on our website called “Appointment of Co-Trustee”. Before doing so however please be sure to read the full discussion on granting others signature power as it is important to remember you are essentially giving someone the keys to the safe. If they misuse the asset you still have to pursue them and collect from them! (If they have squandered all the money this could prove difficult to say the least.) So be careful who you grant signature power to. If on balance you are comfortable with authorizing someone to sign on an account then execute the “Appointment of Co-Trustee” form and supply a copy to the appropriate institution. Doing so will allow you to title the account in the trust and should allow the person to be added or to remain on the account.

**Beneficiary or POD Accounts:** Some types of accounts allow designating a beneficiary to be paid directly on your death. (Sometimes called POD accounts – Paid on Death.) Though this avoids probate, it does nothing to deal with the event of your incapacity -- **and often unintentionally enriches the beneficiary with a greater portion of your total estate than others (contrary to what you really intended).** The general advice is to title the account in the trust unless it is a small account that you have earmarked for a special person such as a grandchild, or you are sure you understand the repercussions and wish it to stay that way.

# Individual Type Assets Discussed

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**(1) Bank, Savings, & Credit Union Accounts, Etc.:** As a general rule you should title **ALL** bank accounts in your trust. Doing so is one of the easiest procedures as most banks are extremely accommodating and current in their practices regarding living trusts. Do not listen to misinformed advice to leave accounts out of your trust. Your checks do not change. What is printed on your checks does not change. (Nothing about the trust needs to be printed on your checks.) Your account number does not change. How you sign your checks does not change. Everything still appears the same to the outside world. The bank usually only modifies its internal records. The only change you need to look for is a reference to the trust or trustees on your monthly bank statements (as confirmation that it is in the trust).

**(2) Certificates of Deposit or CD's** CD's are treated the same as other accounts at the bank. Most banks will re-title your CD's immediately. In rare instances some banks will not re-title until the CD matures (an arbitrary stance that should give you thoughts of banking elsewhere).

**(3) Treasury Notes and T-Bills** are usually accounts held through the Federal Reserve Bank. Re-titling these accounts in the name of your trust is handled much the same as you handle your bank accounts. Contact the appropriate Federal Reserve Bank (where the account is held) and tell them you would like to title the account(s) in your trust.

**(4) Money Market and Mutual Funds Accounts (Franklin, Fidelity, Vanguard etc.)** are basically handled the same as bank and other type accounts. Contact them and tell them you want to title the account(s) in your trust. (Remember not to title the Qualified Retirement Plan portion of the account in your trust.)

**(5) Real Estate Property:** Whether you now own 100% of a piece of real estate or, own a part interest as co-owner, **it is vitally important that you execute a deed for each whole or part interest – conveying and transferring it to your trust** (if you want your trust to pass the property). Generally, real property is any ownership interest in or right to land, whether or not there is a house or building on it. Oil and mineral rights are also a real property interest. Mobile homes are not a real property interest (but any land it sits on is if you own that). Contrary to an often popular belief, you are the full legal owner of your real estate property, regardless of any outstanding loans used to purchase the property (or funds obtained through equity loans). The lender does not enjoy any ownership interest, but rather holds a “lien” against the property.

**New Real Estate:** It is very common for people to forget to title their new real estate in their trust. **Don't forget about this!** If you want your trust to pass the property then **be sure to execute a deed transferring and titling any new (whole or part) interest in real estate into the name of your trust** (unless you acquire title directly in the name of your trust).

**Warning about Re-Financing Transactions:** If you re-finance property which is, or should be part of your trust, we advise doing a new deed immediately after the closing. That is because more often than not, (to make it easier), they demand and have you remove the property from the trust and/or obtain the financing in your individual name.

**(6) Mobile Homes:** The agency in California for re-titling your mobile home into your trust is the Housing and Community Development Department. This agency is usually very helpful in the process. Look in the front of your White Pages phone book under State Government Offices. If you still have a loan on your mobile home, you will also need to work with your lender.

**(7) QUALIFIED RETIREMENT PLANS (IRA, 401K, 403B, ETC) -- Cannot title in trust but can Designate a Pay on Death Beneficiary:** TAX LAWS DO NOT PERMIT TITLING ANY QUALIFIED PLAN INTO YOUR TRUST (UNLESS YOU WISH TO INCUR VERY UNFAVORABLE TAX CONSEQUENCES). Any qualified plan must be in an individual's name. Fortunately, most qualified plans allow you to name a beneficiary to receive it upon your death – thus avoiding probate. In this regards most of our married clients continue with their spouse as the primary beneficiary and often name their trust as the contingent/secondary beneficiary (especially if they have young children so the trust can manage the funds until the stated age milestones). For those latter reasons many single folks with young children decide to name the trust as the primary beneficiary (to manage the funds to the specified ages).

**Identifying a Qualified Plan:** The unending variation and list of "qualified plans" make it impractical to name them all. However, you can usually identify a qualified plan since most seem to share the following characteristics: **1) Tax-Sheltered Income** -- Any amounts funneled into it are deductible from your taxable income. (In other words you are not presently taxed on this money.) **2) Tax-Sheltered Growth** -- Any growth, interest, or other income which occurs with-in it is also are not presently taxed. **3) Tax-Deferred Until Drawn On** -- You are only taxed on the amounts which you withdraw. (Theoretically occurring only after retirement when you are in a lower tax bracket.). In some instances there are **plans that are part qualified and part unqualified**. For estate planning purposes, **practicality dictates treating it as if all parts were qualified** (relying on the beneficiary designation).

**Other Notes on Qualified Plans:** Many clients have significant amounts invested in their Qualified Plans. Remember, the qualified plan exists outside of your trust and therefore your trust and trustees are powerless to access it should you become incapacitated. You may want to consider providing a way for someone to access these funds (power of attorney) in the event of your incapacity. Finally, qualified plans are a highly complex, specialized area of law. If you wish to pursue a different beneficiary designation strategy, check with the experts (we are not). The above rules are general desired and applicable to most folks.

**(8) Other Non-Qualified Retirement & Pensions Plans:** Many times a company provides pension payments during a retired employee's lifetime. Sometimes these payments continue on through the surviving spouse's life. After the surviving spouse's death all rights terminate. No action is required in such situations since no property or assets are left to pass on. In other situations a residual amount can remain after death. In such a case, investigate actually titling it in your trust -- or if that is impractical -- investigate naming the trust as the beneficiary to receive the residual.

**(9) Life Insurance & Beneficiary Designations:** Several types of assets (including life insurance) allow designating a beneficiary. At your death an immediate payment is made to the named beneficiary. No probate is involved (unless someone took the misinformed step of designating their estate as the beneficiary). Therefore, even though you can, there is little need to title Life Insurance in your trust (unless you care about your trust exercising ownership options in case of your incapacity.)

**Why Name Your Trust as Beneficiary of Life Insurance or Anything Else:** Think of your living trust as your master estate plan. Theoretically, it is somewhat advantageous to have one master estate plan governing the distribution of the whole, rather than several part and partial plans -- and to have everything flow to and through the trust. Part and partial estate planning also sometimes has the unintended consequence of enriching a beneficiary with a larger portion of your total estate than you intended. Think of your trust as your one master estate plan. Usually, if you name the trust as beneficiary the funds end up with whom you want anyway. Further, **the trust has the advantage of addressing the issue of administering funds to minor children or who to pay if someone does not survive.** A simple beneficiary designation of a named individual does not. Also, it simplifies tax reporting and collecting. After consideration, you may favor leaving well enough alone (especially if it is a small amount). Regardless of your decision, any suggested change in beneficiary designation generally takes a lower priority to first titling your "probatable" assets in the trust.

**(10) Publicly Traded Stocks & Securities & Brokerage Accounts:** Generally you will know if you own this kind of stock or security -- because usually it is presently traded on an exchange of some sort. Though we most often associate this with stock in major corporations, it also extends to some types of bonds, some limited partnerships, and other types of rights and assets, etc. These types of assets are usually purchased and sold through a stock-broker or investment firm. (Privately held corporation stocks and other privately held securities are discussed in another section.)

**If you have a brokerage account** -- and your stock and other ownership certificates are held by the firm as part of your account, all you have to do is change ownership of the account into the name of your trust and your done. If you physically possess some (or all) of the certificates yourself, the easiest method is to deposit the certificates into an existing account that you have re-titled or opened in the name of your trust (easily done). You can always ask for them back later -- and the certificates will have the trust name on them (assuming the account is in the name of the trust when you ask for them back). Simply put, using a broker and/or brokerage account to re-title your securities is the easiest way to accomplish the task. (There are some brokers who will help you, without obligation, as a gesture of goodwill.) Absent your willingness to use a broker or brokerage account as advised, you must go through, for what is to most people, an arduous process. Contact the transfer agent listed on the certificate and ask their procedure.

***For many reasons it is more practical to leave your securities with a brokerage firm. (Decisions otherwise are usually based on emotion or misinformation.) It is a much easier transition if you pass away or become incapacitated. Also your holdings are generally consolidated, insured, and better safe-kept.***

**(11) Private Corporations (not publicly traded)** If you own private corporation stock, (also the case when you are incorporated and doing business as a corporation) you must **locate** who has, or is in charge, of **the stock certificate book** (and other corporate records). You need only **exchange the present certificate(s) for a re-issue of new ones in the name of your trust**. If such cannot be found you have bigger problems. It is very important that corporate formalities be observed, and the inability to locate something as basic towards that end as the stock certificate book indicates a serious deficiency in said formalities. It is suggested that you consult the appropriate attorney at once, not only about issuing the stock in your trust name, but also about cleaning up any other deficiencies in observing corporate formalities.

**(12) Limited Liability Companies -- LLC's (not publicly traded):** Much like corporations there are internal records and books (and often certificates) which reflect your ownership in an LLC. Again it is simply a matter of updating the internal records, and where applicable, exchanging your current certificate of ownership for one in the name of your trust.

**(13) Partnerships:** A partnership is a formal arrangement, with a formal name, with assets held in the name of the partnership, and filing of annual partnership tax returns. You will clearly know if this situation applies to you.

***Understanding the Difference Between a Partnership & Co-Ownership:** Confusion often arises when people own real estate together. If it is a partnership interest, the deed names the partnership as the owner and no individual name will appear. If it is co-ownership, the deed names individuals. In such cases, you own a real (estate) property interest which should be transferred to your trust by deed (covered under real estate). On the other hand, a partnership interest is not a real property interest -- even if the partnership owns real estate (and a deed is not appropriate).*

**(14) Limited Partnerships & LLP's:** A limited partnership is more like an investment or private security. Unlike a general partner, a limited partner does not engage in managing the business. Generally, the worst-case liability a limited partner faces is the lost investment. A limited partnership interest is often acquired through a dealer or some sort of point person. First ask the dealer or point person to handle the re-titling into your trust. (Reputable ones will perform this task for little or no charge.) If you are unable to work through the dealer, contact and instruct the general partner on your wishes. (If it is a publicly traded partnership see the previous section on publicly traded securities.)

**(15) General Partnerships:** A general partner enjoys full participatory rights in the day-to-day management of the business and is fully liable for the debts and obligations of said partnership. If you are involved in a partnership and you are not a limited partner then you can just about count on the fact that you are a general partner. You will usually know if you are a general partner. Ask that the partnership records be updated to reflect your interest (and any "buy-out" agreements) as being owned by your trust. **Assignment of Partnership Form** If you cannot obtain cooperation to title a partnership interest in the trust, utilize our downloadable form entitled "Assignment of Partnership". It will legally assign your interest to your trust -- though it is not the optimal method for doing so because those you leave behind will have to enforce it. Of course this may be the best way to deal with perceived low value partnership interests.

**(16) Sole Proprietorships:** (your own business, not a corporation, LLC, LLP, or Partnership). To transfer title of a sole proprietorship into your trust, first complete the downloadable form entitled "Assignment of Sole Proprietorship". If you are not operating under a fictitious name you can title all of the assets of the business, including bank accounts, directly in the name of your trust. If you are operating under a fictitious name, you can file a new fictitious business statement naming the trust (doing business as the "fictitious name") -- at which point you can title all of the assets directly in the name of the trust. If for all intents and purposes you are the real value (and value of all good will) of your business -- and there is nothing else of real value (equipment, contracts, other good

will) – there is little need to do anything. In such cases, once you are deceased, there is generally nothing of your business to leave to your beneficiaries!

**(17) Automobiles:** Given the relative value of most vehicles, the paperwork and process which the DMV requires to title your vehicle in the trust generally makes it more trouble than it is worth. On the other hand, the DMV's procedure for passing most vehicles at death is generally much less cumbersome than normal probate. The method which some clients use is to pre-sign the pink-slip **without dating it**. The pre-signed pink slip is then put in a safe place, with attached instructions and wishes. You rely on the goodwill of those left behind (who have access to the papers) to fill in a then current date and follow your instructions. Of course you must own the vehicle outright to utilize this method.

**Valuable Vehicles:** *If you own or purchase a very valuable vehicle you may want to consider going through the DMV process to title it in your trust. The more valuable the vehicle, the more seriously you should consider this. It is a good idea to notify your insurance agent if you re-title the vehicle in your trust.*

**(18) Boats, RV's & Airplanes:** Use the above guidelines and work through the logical entity if you need to presently title it in your trust.

**(19) U.S. Savings Bonds:** The U S. Treasury will re-issue savings bonds in the name of your trust when you fill out the appropriate form and turn in your bonds with the completed form. You can handle this directly through the Treasury/Federal Bank or usually through any institution which sells savings bonds. Request the form from them. This re-issue does not trigger any taxes but they may require issue of larger denomination bonds in exchange for certain smaller denomination bonds that have fully matured.

**(20) Deeds of Trust (owed to you):** It is important to note that this discussion pertains to deeds of trust **which are owed to you (you receive the payments)**. You do not need to worry about transferring debts to your trust -- meaning you don't need to worry about **deeds of trust you owe on (you make the payments.)** Also be aware that deeds of trust are not a real property interest (they are promissory note receivable secured by real property). Whether you provided financing directly and received a note secured by a deed of trust in return, -- or -- purchased deeds of trust as an investment, the path is the same. That is, you must execute an "Assignment Deed of Trust" transferring the interest to your living trust. If you purchased the deed of trust from a dealer they should be happy to help you with this as a courtesy or for a nominal fee. (Please emphasize that only the Assignment needs to be done – formal title searches and recording are unnecessary at this time.) For a reasonable charge we can draw this up if you provide us a copy of the deed of trust.

**(21) Other Type Loans, Money or Payments Owed to You:** When money is loaned, it is highly advisable to put it in writing (draw up a note) – which amounts to a written promise to pay according to the terms set forth. Otherwise, you or your heirs have no legal protection. Always document any loan or be ready to say goodbye to your money. Or maybe if the loan was to one of your heirs, if it is not put in writing they will unjustifiably receive a larger portion of your estate than they should have. Even if the person you loan the money to is completely honest, if something happens to that person, no one can substantiate your claim. Also, those left behind may not be so honorable. Undocumented loans should be put in writing with payment rights to your trust. Future loans should be handled the same. Present documented loans should either be assigned to your trust or a new note drawn naming the trust (preferred).

**(22) Other Miscellaneous Assets:** It is impractical to cover every kind of asset. If you don't see it discussed here, approach the logical person or entity in charge of titling or ownership records, tell them you want your asset titled in your trust, then comply with the necessary procedures and paperwork.