

# **LAW OFFICES OF AFFORDABLE LIVING TRUSTS**

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Dear Successor Trustee:

We are sorry to hear the news about the loss of your loved one. We know through experience that this is a difficult time. Please accept our condolences.

We know that a trust cannot do anything to make up for the human loss but the trust will help make the transition and management of assets much easier and more beneficial than it would be otherwise (if there was not a trust). Please, do not translate that into the mistaken belief that no paperwork and tasks must be observed and completed. It is vital that certain formalities, paperwork, and tasks be completed so that all legalities are met and to insure that maximum tax advantage is enjoyed by all. These formalities are designed to insure that the trust works the way it should, and that you and your survivors gain maximum tax advantage. Failure to take care of these formalities may result in loss of certain tax advantages and impose difficulties in the proper and smooth administration of the trust. That is why whenever anyone dies it is very important that legal and tax guidance be sought shortly afterwards – and we are advising such in the strongest of terms. We do offer advice and guidance for deceased estates if you like. While you are under no obligation to use this office, we think it makes certain sense – especially since our prices tend to be very reasonable (compared to other law offices). Also, it is not insignificant that we drafted the trust.

Among the definitive checklist of procedures, paperwork, documentation, and record-keeping which should be followed:

- **Deeds transferring real estate property to your trust (which are unrecorded, if any) need to be recorded** at this point (**do not use joint tenancy or file an affidavit death of joint tenant to pass property**). Important to this process is the submittal with the deeds of the proper county forms correctly filled out and completed (to avoid re-assessment).
- **Affidavits Death of Trustee:** Affidavits must be prepared, properly executed, and recorded along with Certified death certificates for each piece of real estate property. (The purpose of these affidavits is to give the successor trustee signature power over said property – without which they would be powerless to act.) Again, the proper county forms correctly filled out need to accompany these affidavits (to avoid re-assessment).
- **Analysis of Assets:** What is in the trust, what is outside of the trust, what is the easiest way to get an asset in the trust which isn't titled in the trust, how are death benefits collected and how do they fit in; etc.. These items and more need to be analyzed.
- **Proper Valuation:** The fair market value of all assets needs to be established as of the date of death. **There is a right way to do this to avoid potential problems with the IRS and many wrong ways.**
- **Tax Issues:** There are issues of final income tax returns, depending on the value of the estate the possible need for an estate tax return (the trustee is held personally liable for seeing that the

return is filed and any taxes paid), properly establishing stepped up basis, properly establishing double stepped up basis for surviving spouses, EIN or tax numbers for the trust, 1041 Fiduciary returns, tax elections, possible disclaimer issues, etc..

- **Ascertaining Creditors and Paying Debts:** Attention must be paid to properly dealing with debts and creditors. It should also be ascertained as to whether or not a “creditor’s claim process” is appropriate to head off any possible future claims.
- **A/B/C Trust Allocation:** Approximately 90% of all “Married-couple trusts” require the trustee to allocate assets between sub-trusts (Often referred to as A-B & C trusts or disclaimer trust.) Failure to pay attention to these formalities can result in the loss of huge tax advantages (i.e. the loss of a large estate tax exclusion). What rights does the surviving spouse have? What restrictions does the surviving spouse have? What are the survivor’s duties? Parts of the trust become irrevocable at the first death. Again there is a right way to take care of these items and many wrong ways.
- **Need & IRS Time Limitation for Disclaiming:** Many married-couples elect a “Disclaimer trust approach” to their tax planning. This disclaimer approach allows the surviving spouse to choose (at the first spouse’s death) whether or not (and to what extent) he/she wants to use an exemption sub-trust. **Yet, if the surviving spouse takes ownership of the deceased spouse’s assets (&/or starts treating them as her/his own) – or -- fails to exercise a qualified disclaimer within nine months (of the first spouse’s death) – the ability to exercise a disclaimer will be lost (negating any potential use of the deceased spouse’s exemption).** (Note: There are also instances when other beneficiaries might want to disclaim where the same rules and time limitations apply.)
- **Trustee Duties:** The trustee is under the highest legal obligation to the beneficiaries to carry out the terms of the trust as set forth, and to also give trust accountings. Also **the trustee is required to serve certain notices on the beneficiaries and heirs.** This requires a careful analysis of the trust terms and distribution provisions. There is also the issue of properly distributing or administering the trust assets to the beneficiaries while also protecting the trustee.

On and on the issues can go. (The above is not an all-inclusive list). That is why it is important and necessary to examine the individual circumstances of the situation to come up with the correct tasks and approach. Taken one step at a time (with proper guidance) it is almost always a fairly straightforward process. It is only when people do not seek out competent guidance and/or try to understand and deal with it all at once that it becomes problematic. Our advice is to get proper legal and tax advice and take it one step at a time. We know from experience that if you follow such advice this will be a much easier and more tolerable experience.

It is important to re-emphasize that implementing a trust was a wise move. While you may think that the expenses and tasks which now need to be completed seem somewhat of a burden and hassle, we can only tell you that it is a minor task when compared to the tremendous amount of money, time, headache, and paperwork involved with Wills and Probate.

And do not make the mistake of thinking joint tenancy would have been better. Joint tenancy is the wrong way to avoid probate. Though passing property via joint tenancy may seem a little easier on the surface, it comes at the expense of losing a major income tax advantage. Typical cases of using joint tenancy uselessly expose the surviving individual(s) to \$50,000.00, \$100,000., \$150,000. and more in income taxes (upon the sale of the asset) which they otherwise would not have owed. Simply put, there is no

easier, less expensive way to pass property while also enjoying maximum income and estate tax advantages. Compared to probate, the tasks and expenses are minimal. Compared to joint tenancy, the income tax advantages of a trust dwarf any associated costs or work.

**Beware of Amateur Advice:** All too often survivors are inundated by advice from numerous sources on “what they should be doing” (aunts, uncles, neighbors, children, bankers, stockbrokers, county clerks, financial advisors, government workers, etc.). The first bit of advice we can give you is to ignore advice that emanates from such sources (no matter how well intentioned it may be). Most of the time it is wrong and many times it can turn out to be very costly to the survivors. Do not do anything -- make no moves -- unless guided by and instructed by a competent attorney and CPA. In the long run, misguided moves could turn out to be very expensive indeed. (We see it all the time.)

Also be aware that as competent as many CPA's are at income taxes, etc. very, very few CPA's understand the proper procedures for trusts, estate tax returns, ABC allocations, and other issues at death. (This seeming “1 in a 100 phenomenon” is regularly discussed at attorney estate planning conferences.)

**Don't be penny wise and pound foolish:** Our fees for advice and work at death average around \$800 and the fees charged by the CPA we send you to average around \$400 to \$800. (Our fees increase slightly for each additional real estate property and/or if it requires our involvement in getting assets transferred to the trust. The CPA's fees also increase depending on complexity, sub-trust allocations, and the requirement for an Estate Tax Return if the estate exceeds the estate tax exemption). Point being, we have seen folks refuse to avail themselves of this guidance only to turn around and cost themselves \$40,000, or \$50,000 or \$100,000 or more in lost tax advantages. Not a very good trade-off! Be smart and understand that paying for legal and accounting guidance at death is money well invested.

We will be happy to schedule an appointment for you if you wish to use our services.

Sincerely,  
Landis Mahaffey  
Attorney

## Did you know?

**Did you know you will likely be generally able to avoid any income tax on all the appreciation that has occurred on assets during the decedent's lifetime. That's right! (as long as you take the proper steps.) Fail to take the proper steps and you jeopardize this huge benefit. Is the paperwork and hassle worth it? The answer should be obvious!**