

Living Trusts: Myths vs. Realities

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Seminars

- Living Trusts
- Real Estate & Probate
- Administering Decedents Estates
- Probate & Unclaimed Property
- Conservatorships
- Estate Taxes in Connecticut
- Guardianships
- Probate Reform

Articles



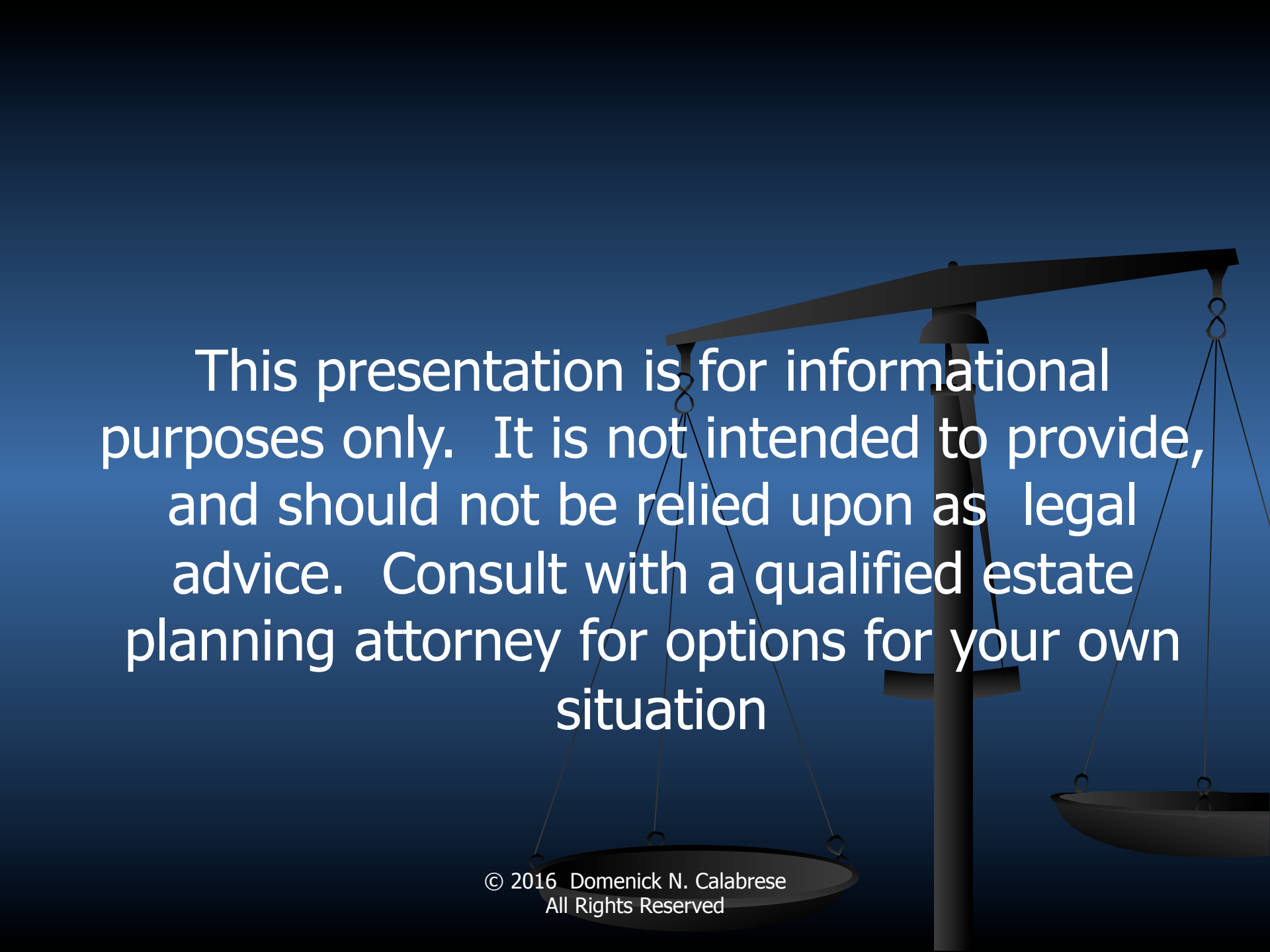
- Estate Taxes
- Living Trusts
- Pet Trusts
- Probate & Real Estate
- Unclaimed Property in Connecticut
- Wills
- Website:
 - <http://www.southbury-ct.org/content/996/278/353/default.aspx>



Living Trusts

Myths versus Realities

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This presentation is for informational purposes only. It is not intended to provide, and should not be relied upon as legal advice. Consult with a qualified estate planning attorney for options for your own situation

Agenda

- Seminar Objectives
- What are Living Trusts?
- Living Trusts: Myths & Realities
- Utility of Living Trusts
- Living Trust Alternatives
- Examples
- Estate Planning
- Questions



Living Trusts: Myths & Realities

SEMINAR OBJECTIVES

Objectives

To provide balanced information on living trusts and alternatives to help you to make informed decisions



Living Trusts: Myths & Realities

WHAT ARE LIVING TRUSTS?

Living Trusts




- Trust = a means of ownership
- There are many different kinds of trusts for different purposes
- Living Trust = Trust set up during one's lifetime
 - Revocable
 - The creator of the living trust may revoke it
 - Irrevocable



Living Trusts: Myths & Realities

MYTHS & REALITIES



The “Myths” in this presentation were taken from an actual living trust seminar presented regularly our area.

Living Trusts: Myths & Realities



- Myth: Without a living trust, most people can lose 50% or more of their estate to taxes and probate fees
- Reality
 - For the vast majority of estates worth \$2.0 million or less, estate taxes are negligible
 - In Connecticut, probate fees average 0.33% - that is, one third of one percent
 - Attorney's fees run between 1% and 5%, with most between 1% and 3%

Living Trusts: Myths & Realities



- Myth: Unlike wills, a living trust can insure that your wishes are carried out & not subject to legal challenge
- Reality
 - Living trusts can be challenged in court, just as wills can be challenged
 - The probate process places a time limit beyond which challenges to a will are not permitted; there is no similar provision for living trusts

Living Trusts: Myths & Realities



- Myth: You can place all of your assets in a living trust
- Reality:
 - Certain types of assets cannot be placed in living trusts:
 - Most forms of stock options
 - Certain qualified pension & profit-sharing benefits
 - Surviving spouse's share of community property (i.e., house in California purchased by Connecticut married couple)

Living Trusts: Myths & Realities



- Myth: A living trust will help your family avoid probate fees
- Reality
 - LIVING TRUSTS DO NOT REDUCE OR ELIMINATE PROBATE FEES!
 - All assets in a living trust are included in calculating the probate fee
 - When calculating the cost of setting up the living trust (attorney's fees), there may be no cost savings; it may even be more expensive to set up a living trust

Living Trusts: Myths & Realities

- Myth: A living trust will help your heirs avoid probate
- Reality
 - Even if most of a decedent's assets are in a living trust, an application must still be filed with the probate court
 - Assets in the living trust will not be subject to full administration in probate court

Living Trusts: Myths & Realities



- A living trust can save money for anyone with assets valued at \$75,000 or more
- Reality
 - Tax savings realized by living trusts are most significant for estates with substantial asset levels
 - Lower cost alternatives to living trusts can accomplish the same objectives



Living Trusts: Myths & Realities

UTILITY OF LIVING TRUSTS

Utility of Living Trusts

■ Advantages*

- Death of creator may automatically trigger asset transfer
- Allow for management of assets in the absence or incapacity of the creator
- Avoid probate administration
- Reduce probate control over family trusts
- Provide for potential incapacity
- Privacy

Utility of Living Trusts (cont' d)

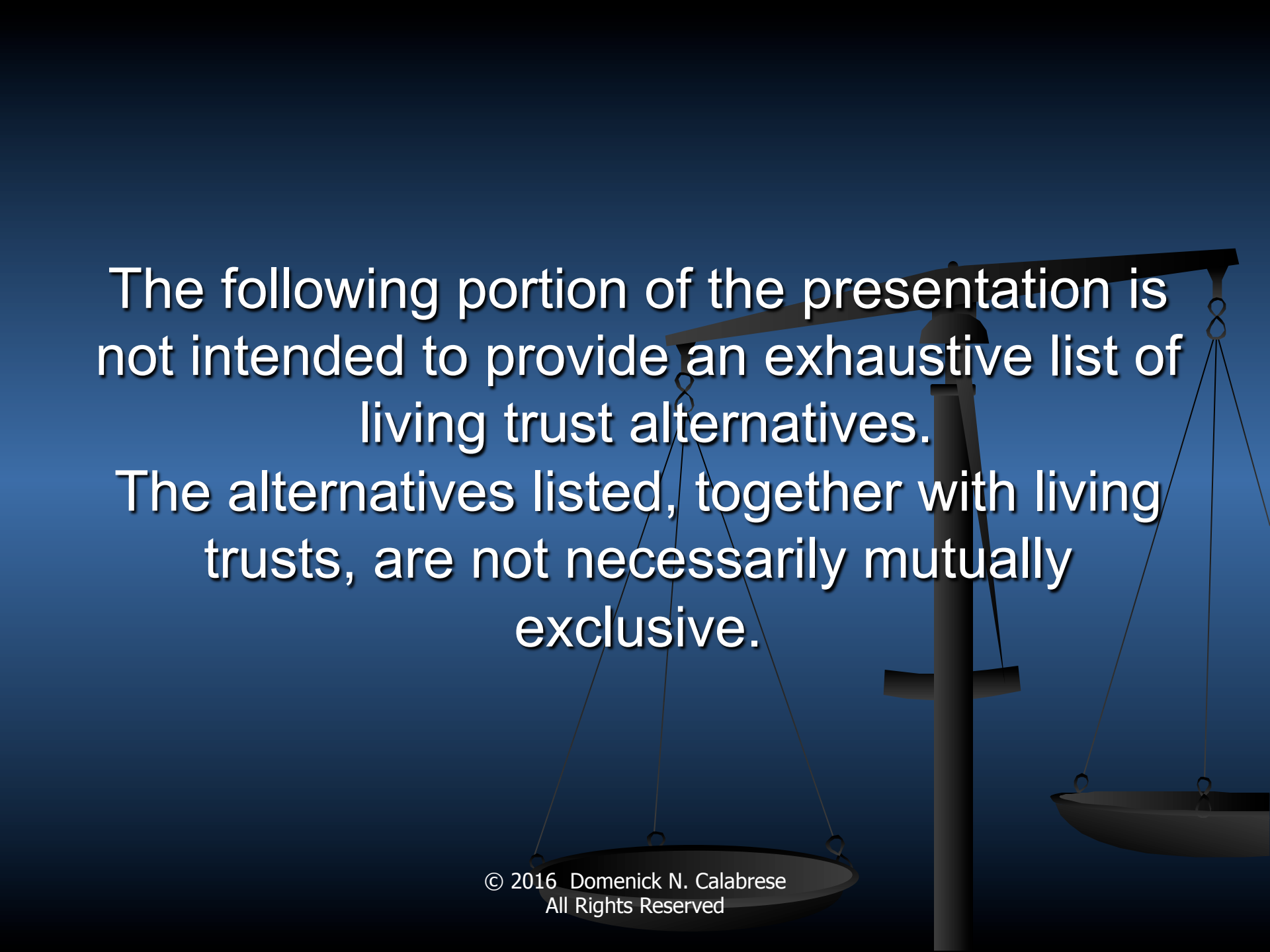
■ Disadvantages

- Effective only for assets transferred to the trust prior to the death of the trust creator
- Expense in creating and funding trust
- Will not reduce probate fees
- Cannot transfer all assets to living trust
- Subject to challenge in court
- Lack of probate oversight
- Less expensive alternatives may accomplish the same objectives
- Existence of the trust must be disclosed to the probate court & tax authorities



Living Trusts: Myths & Realities

LIVING TRUST ALTERNATIVES



The following portion of the presentation is not intended to provide an exhaustive list of living trust alternatives.

The alternatives listed, together with living trusts, are not necessarily mutually exclusive.

Survivorship

- Application:
 - Real Estate
 - Personal Property
 - Motor vehicles
 - Bank Accounts
 - IRAs/401(k)s
 - Other assets

Survivorship (cont' d)

■ Advantages

- Decedent's ownership automatically transfers to the other owner(s) upon death of decedent owner, without the need for probate proceedings.

Survivorship (cont' d)

- Disadvantages:
 - Loss of control of asset
 - Liability issues
 - Potential gift tax issues
 - Real estate: may trigger “due on transfer” provision of mortgage
 - Still must get estate tax clearance from probate court for real property
 - Does not reduce probate fees

Will

- Application: solely owned assets
- Advantages:
 - Ensures assets are distributed as the testator wishes
 - Easy to change
 - Does not require change in asset ownership
 - Inexpensive
 - Challenges to a will are limited to a specific time period

Will (cont' d)

■ Disadvantages

- Assets must pass through probate
 - Time (8-12 months)
 - Expense in administration in probate court
 - Can be contested (limitations)
 - Once admitted to probate, becomes subject to public disclosure
- Does not apply to certain non-solely owned assets

Will (cont' d)

Disadvantages (cont' d)

- Certain events revoke a will by operation of law
 - Divorce
 - Birth or adoption of a child not provided for in will
- Does not provide for asset management during testator's lifetime

Gifts

- Application: most assets
- Gift during lifetime of grantor
 - Advantages:
 - Get to see recipients enjoy the gift
 - Not subject to probate administration
 - Certainty
 - For grantor: who the recipient is
 - For recipient: owner's intentions as to ownership
 - May reduce probate fees if made >3 yrs prior to death
 - May completely preclude the need to file with probate court if a decedent owns nothing at the time of his/her death

Gifts (cont' d)

- Disadvantages
 - Loss of control of asset
 - Potential gift tax issues
 - May create period of ineligibility for public benefits (e.g., Title XIX) for the grantor

Durable Power of Attorney

■ Advantages:

- Remains in effect, even when the grantor becomes incapacitated
- Flexible: powers granted can be broad, or very narrow
- May preclude the need for appointment of a conservator

Durable Power of Attorney (cont' d)

■ Disadvantages:

- Effective immediately upon execution of document
- In the wrong hands, can create havoc
- May get lost
- Powers granted may be insufficient for unforeseen circumstances
- May not be recognized universally
- Granting of healthcare decision making is better accomplished via appointment of healthcare representative

Healthcare Representative

■ Advantages:

- Together with durable power of attorney, may preclude appointment of conservator
- Allows flexibility in dealing with healthcare professionals, who may be reluctant to share medical information with family members (HIPAA)
- Provision for dealing with medical emergencies when grantor is incapacitated

Healthcare Representative (cont' d)

- Disadvantages:
 - May not be recognized by healthcare providers
 - If designated representative is unwilling or incapable of serving, no utility

Advance Designation of Conservator

- Advantage:
 - If application for involuntary conservator is made, ensures respondent's choice of conservator will be appointed
 - Probate court must appoint designee who is willing and able to serve as conservator

Advance Designation of Conservator (cont' d)

- Disadvantage:
 - If designated conservator is incapable or unwilling to serve, court must appoint someone else

Living Trusts: Myths & Realities

EXAMPLES



Example 1

John and Mary Smith, husband and wife, have \$240,000 in jointly owned assets

- Home: \$200,000
- Bank CDs:\$40,000
- 2 adult children together; no other children
- No will

Example 1 (cont' d)

John, the husband of Mary, dies

Now what happens?

Mary goes to probate court. Because the house and CDs were in survivorship (John & Mary), she can submit an affidavit in lieu of administration, which will greatly shorten the time it will take to settle her late husband's estate. Mary gets the house & bank CDs

Probate fees: approximately \$800

Estate taxes: \$0

Total expenses: approximately \$800

Mary gets all assets

Example 2

John & Mary attend a “Living Trust Seminar.” They then decide that they should have a living trust prepared for them. They make an appointment with the law firm that conducted the seminar and have a living trust, will, power of attorney, and advance designation of conservator prepared. All assets are then transferred to the trust.*

Example 2 (cont' d)

As in Example 1, John passes away. Mary goes to probate court. The outcome is the same as in Example 1 – Mary gets the house and bank CDs that were placed into the living trust (according to the terms of the living trust.)

Expenses:

Preparation of the living trust & other estate planning documents from seminar:
\$2,500-8,000

Probate fees: \$800

Estate taxes: \$0

Total expenses: ~~\$3,300~~ = \$8,800

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Example 3

John and Mary Smith, as in the previous 2 examples. In this example, their assets are the same, except that the house is in John's name only. There is no will or living trust. John dies.

Example 3 (cont' d)

Because the house is in John's name only, a full decedent's estate must be opened in the probate court.

Expenses:

Probate fees: \$800

Attorney's fees: \$3,000

Estate taxes: \$0

Total expenses: \$3,800

Mary gets the first \$100,000 plus 50% of the remainder of John's assets; the surviving children divide the remaining assets equally.



Living Trusts: Myths & Realities

ESTATE PLANNING

Why use Living Trust?

- Only if it's the best means to achieve *your* objectives after you have evaluated other options
- Not because of fear that what may have happened to someone else will happen to you, or that because someone else has a living trust you should have one as well

Beware of the Unscrupulous

LIVING TRUST SCAMS

HOW PEOPLE BECOME VICTIMS OF LIVING TRUST SCAMS

Con artists make false and misleading statements to older people through:

1. telemarketing and mail solicitations;
2. door-to-door sales;
3. “free” seminars and workshops, and;
4. advertisements.



FEAR

False

Evidence

Appearing

Real

Conclusions



- Living trusts can be a valuable estate planning tool
- Everyone's situation is different
- Discuss your situation with a qualified estate planning attorney
- Avoid those who propagate fear of the probate process in order to “sell” prepackaged “one size fits all” living trusts

Questions



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