

Necessary Steps In Trust Administration

One of the reasons for creating a living trust is to avoid the expense and hassle of probate upon death. The administration of a trust is far easier and less expensive than a probate action; however, with any death, there is always some administrative burden.

There are tremendous benefits and protections afforded by a trust. For a married couple, these benefits and protections actually increase after the first death if the trust is properly administered at that time. Upon the creation and proper funding of the Survivor's and Family (decedent's) trusts, the survivor has a great deal of protection against creditors and against the requirement to spend down all assets in order to qualify for Medicaid. There is further protection against a dissipation of assets in the Family Trust.

Also, if the Survivor's Trust and the Family Trust are properly created upon the first death, the surviving spouse has ample access to and control over the entire estate.

The efficacy of the trust depends upon its proper creation, maintenance, and administration upon a death. The principle steps that must be covered include the following:

1. INVENTORY OF ASSETS

Each asset in the trust must be identified. This step includes determining the title and ownership of all assets of the trust and of any assets of the estate that were not included in the trust. All assets over which the decedent had ownership or control must be identified. Proper determination of assets ownership is important to insure that all assets are eventually included in the trust or are payable to the trust. If assets are not transferred to the trust before death, a probate action may be required.

2. VALUATION OF ASSETS

Proper valuation of assets can have important income tax, capital gains tax, property tax, estate tax, and inheritance tax implications. All assets must be valued upon a death. In most situations, a formal appraisal is not necessary, but for certain assets, a written appraisal by a specialist is needed. Our firm will recommend experts in property and asset valuation.

Arizona is one of eight community property states, and, for a married couple, great benefits arise from this status. Assets held as community property will get a full step-up in basis upon the first death, and the survivor can immediately sell the assets without paying capital gains taxes. Adequate valuations are necessary to secure the step-up in basis at date of death in the event of the subsequent sale.

3. ALLOCATION OF ASSETS

Married couples who have done proper estate planning through a living trust will have created what is known as either an A/B or A/B/C trust. Upon the first death, the assets of the trust must be properly allocated to the A, B, or C sub-trusts. If properly accomplished, this ensures that the

deceased spouse's assets remain available for use by the surviving spouse, but they are largely sheltered from future estate taxes, creditors, and the mandatory spend-down to qualify for Medicaid.

There are many technical considerations to be made in determining which of the sub-trusts will hold title to the various assets.

4. RETITLING OF ASSETS

To maintain protection against estate taxes, creditors' claims, required spend-down for Medicaid purposes, and other dissipation of trust assets, it is essential that each asset be titled to the proper trust. Our firm will assist in preparing the titles and getting the assets transferred in a timely manner.

5. DETERMINATION OF NECESSITY FOR QUALIFIED DISCLAIMERS

A qualified disclaimer is one of the most frequently used post-mortem estate planning techniques to take advantage of estate planning opportunities or to correct lifetime planning errors. A qualified disclaimer of the decedent's assets is only available if you do not exercise "dominion and control" over the decedent's assets. It is extremely important that you do not make any withdrawals or change title to any of the decedent's assets until the attorney in charge of the trust administration has had the opportunity to evaluate and discuss any disclaimer planning opportunities.

6. OBTAINING TAXPAYER IDENTIFICATION NUMBER

A taxpayer identification number must be secured for the Family Trust and the Marital Trust, if there is one. Form SS-4 must be filed with the Internal Revenue Service. Very special care must be taken to assure that the Internal Revenue Service will recognize and respond to inquiries from the trustee.

7. DETERMINATION OF THE NEED TO FILE FORM 706

For a married couple there is generally no estate tax payable upon the first death, owing to the unlimited marital deduction. However, there is frequently a need to file the Form 706 (Federal Estate Tax Return). Proper filings of these forms will establish a value for the assets and will preserve protections against unnecessary estate taxes, which can range from 41 percent to 49 percent.

With proper planning and administration, the assets can be discounted in value, which can result in a significant reduction of estate taxes.

8. FILING OF FORM 706

If there is a requirement for filing a Federal estate tax return form, it must be filed within 9 months of the date of death. Serious penalties result for failure to timely file the forms and pay the taxes. Very few accountants or other professionals have experience in preparing and filing these forms. The handling of the estate tax issues is significantly different from other accounting practices. Our firm has the expertise necessary in preparing these forms.

9. FILING OF OTHER TAX FORMS

A Form 1041 to report income taxes is often required and should be timely and properly filed. There are other filings that must be made in a timely manner, including Notice of Fiduciary Relationship, Request for Prompt Assessment, and Request for Discharge of Personal Liability. Our firm ensures that you are aware of all filings.

10. DISTRIBUTIONS OF ASSETS

The trustee is not authorized to simply make his or her own personal decisions regarding the distribution of assets. The trustee must carry out the Trustors' intentions as expressed in the terms of the living trust. Specific distributions and residuary distributions must be handled in a particular manner.

In addition to the specific steps mentioned above, trustees have certain responsibilities, which include the following:

- Collecting the assets of the estate
- Paying bills left by the decedent, bills incurred by reason of the decedent's death, and bills incurred during the administration of the trust
- Paying any death taxes owed
- Carrying out other directions of the Trustors

Trustees have the responsibility to carry out the living trust exactly as it was written. Unfortunately, in carrying out the terms of the trust, trustees can be exposed to legal penalties and even litigation. Trusts provide for investment standards, such as the Prudent Personal Rule or the Prudent Investor Rule. Especially during the period of administration, it is critical that the proper investment standard be applied and that the trustees comply with all the legal requirements. Our firm will assist in identifying the detailed requirements and complying with them.

11. CONCLUSION

Trust administration is highly preferable to probate. It must, however, be done as specified in the trust and in accordance with very detailed laws and procedures. Unfortunately, families are often required to do the most difficult tasks at the most difficult time. If the administration is supervised by those who have extensive experience, it is not a forbidding task understanding.

The attorneys and staff at our firm have helped hundreds of families through this difficult process, and we are available to assist you during this time of special need.

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At MHK, we focus on protecting families from the expense and delay of probate, providing long-term care planning options and minimizing tax consequences. We also implement the basic and advanced estate planning strategies for clients and assist in administering clients' estates upon death or disability. As we do no other law other than estate planning, our focused practice allows us to answer the complex questions and concerns consumers have about estate planning.

Morris, Hall, and Kinghorn is staffed with experienced attorneys and paralegals, trained in the complex areas of probate, trust, elder law, life care planning and tax law. The aim of our law firm is to help you, our client, understand the basic principles of estate planning, its importance and why each individual needs a plan. We have helped thousands of individuals secure their assets and eased the mind of them and the families left behind. By taking advantage of the services that MHK has to offer, you can be assured that your legacy and your family will be protected.

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