

JOSEPH D. WELCH

ATTORNEY AT LAW

Partner: Cary (1940-2005), Welch♦ & Hickman♦ LLP

♦LICENSED IN MISSOURI & ILLINOIS

♦LICENSED IN MISSOURI

Telephone: (573)221-0080 Toll Free: 1-866-566-0088 Facsimile: (573)221-3856

www.josephdwelch.com

Please address all correspondence to the Hannibal office.

ESTATE PLANNING--- HOW TO BEGIN

By: Joseph D. Welch, Attorney at Law

Why do I need an estate plan?

Most people spend a considerable amount of time and energy accumulating wealth. Many people would like to preserve their hard-earned wealth for their families or other beneficiaries. A solid, effective estate plan ensures that your hard-earned wealth will remain intact as it passes to your beneficiaries, instead of being siphoned off to government processes and bureaucrats.

What is the difference between a will and a Living Trust?

A will is a legal document that describes how your assets should be distributed in the event of death. The actual distribution, however, is controlled by a legal process called probate, which is Latin for "prove the will." Upon your death, the will becomes a public document available for inspection by all comers. And, once your will enters the probate process, it will no longer be controlled by your family, but by the probate court and probate attorneys.

Probate can be cumbersome, time-consuming, expensive, and emotionally traumatic during a family's time of grief and vulnerability. In addition, probate is a public process. This means that all of your assets will be appraised and valued and these appraisals and evaluations will be available to any member of the public who requests the information from the Probate Clerk or obtains it via the internet. Also, a settlement document will disclose to the general public the exact dollar amount and identity of each asset which you pass on to your loved ones, including account numbers, account balances, and depository locations. Con artists and others with less-than-pure financial motives are able to obtain information about the contents of your probate estate to prey on survivors.

A Living Trust avoids probate -- if your property is owned by your trust, there is nothing for the probate court to administer. Whomever you name as your "successor trustee" simply distributes your assets according to your instructions.

There is one other crucial difference: A will doesn't take effect until your death, and is therefore no help to you during lifetime planning. A Living Trust can help you preserve and increase your estate while you are alive, and offers protection should you become mentally disabled.

Hannibal Office*

Cary, Welch, & Hickman, L.L.P.
1000 Center St. / P.O. Box 710
Hannibal, MO 63401
Local: 573-221-0080

Lake of the Ozarks Office*

Cliffside Centre
2140 Bagnell Dam Blvd., Ste 302-B
Lake Ozark, MO 65049
Toll Free: 866-566-0088

Columbia Office*

Buttonwood Business Center
3610 Buttonwood Drive, Ste. 200
Columbia, MO 65201
Toll Free: 866-566-0088

Quincy Office*

Joseph D. Welch, Attorney
3835 East Lake Centre
Quincy, IL 62305
Toll Free: 866-566-0088

The possibility of a disabling injury or illness scares me. What would happen if I were mentally disabled and had no estate plan or if I just had a will?

Unfortunately, you would be subject to "living probate," also known as a conservatorship or guardianship proceeding. If you become mentally disabled before you die, the probate court will appoint someone to take control of your assets and financial affairs. These "court-appointed agents" must file a strict accounting of your finances with the court. The process can be expensive, time-consuming and humiliating. A "living probate" has the same public records drawbacks as the death probate, meaning that all of your assets (including account numbers and values) will be open to public inspection.

As part of an estate planning checklist, it helps to evaluate your financial status and organize related paperwork. Here are some points to consider:

Figure out how much you are worth. Include any life insurance proceeds and retirement plan proceeds that will be payable upon your death. Contact a lawyer with special expertise in estate planning to determine what can be done to minimize the impact of federal and state death taxes.

Please feel free to call my office for a complimentary worksheet which will help you to itemize all of your assets in an orderly fashion.

Consider establishing a Living Trust

In estate planning, property placed in a Living Trust during your lifetime can pass to your loved ones immediately upon your death - without incurring the additional costs normally associated with the probate process. Furthermore, using a trust will give you much greater flexibility in planning for how and when your beneficiaries will enjoy your property. For example, you could establish a trust that would provide you (and your spouse) with income for the rest of your lives, with the trust property passing to your children (or to any other persons you choose) after the death of both of you.

Trusts are especially useful if you have minor children - you can design the trust to continue after your death until all of your children complete their formal educations or until they reach an age you specify, or you may choose to keep the trust in effect for the lifetime of your children or descendants to provide them with valuable protections against losing their inheritance in a divorce or other lawsuit.

Trusts also permit people to plan for the possibility that they might become incapable of dealing with their property some day, either through age, disease, or accident (such as a vehicle accident, head injury, or stroke). Without a trust, it might be necessary to incur the expense and embarrassment of having a "conservator" appointed by the courts to manage your property.

If I set up a Living Trust, can I be my own trustee?

Yes. Most people who create Living Trusts act as their own trustees. If you are married, you and your spouse can act as co-trustees. And you will have absolute and complete control over

all of the assets in your trust. In the event of a mentally disabling condition, your hand-picked successor trustee assumes control over your affairs instead of the court's appointee.

Will a Living Trust avoid income taxes?

No. The purpose of creating a Living Trust is to avoid living probate, and death probate, and to reduce or even eliminate state and federal estate taxes. It is not primarily a vehicle for reducing income taxes, although some income tax savings can be designed into the trust. If you are the trustee of your Living Trust, you will file your income tax returns exactly as you filed them before the trust existed. There are no new returns to file and no new tax liabilities are created.

Can I transfer real estate into a Living Trust?

Yes. In fact, you should consider transferring all real estate into your Living Trust. Otherwise, upon your death, depending on how you hold the title, there will be a death probate in every state in which you hold real property. When your real property is owned by your Living Trust, there is no probate anywhere, even if you own property in another state.

Is the Living Trust some kind of loophole the government will eventually close down?

No. The Living Trust has been authorized by the law for decades. The government really has no interest in making you or your family suffer a probate that will only further clog up the legal system. A properly designed Living Trust avoids probate so that your estate is settled exactly according to your wishes.

Is a Living Trust only for the rich?

No. A Living Trust can help anyone protect his or her family from unnecessary probate fees, attorney's fees, court costs and federal estate taxes. Generally speaking, if your estate is greater than \$200,000, you will find that a Living Trust offers substantial benefits for you and your family.

Can any attorney create a Living Trust?

May? Yes. Can? Probably not. You should choose an attorney whose practice is focused exclusively on estate planning and who has made a substantial commitment to continuing education on the latest changes in any law affecting estate planning to enable him or her to provide you with the highest quality estate planning services.

Pursuant to U.S. Treasury Department Regulations, I am now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

Specialist Designations: the States of Missouri and Illinois do not recognize the existence of legal specialties. Neither the Missouri Bar Association nor the Supreme Court of Missouri, nor the Illinois Bar Association nor the Supreme Court of Illinois reviews or approves certifying organizations or specialist

designations. Advertising materials: commercial solicitations are permitted by the Missouri and Illinois Rules of Professional Conduct but are neither submitted to nor approved by the Missouri or Illinois Bar or the Supreme Courts of Missouri or Illinois. The choice of a lawyer is an important decision and should not be based solely upon advertisements.

The Canons of Ethics prohibit attorneys from soliciting clients. You will need to contact me if you would like to speak to me regarding estate planning or asset protection issues.

©2007 Joseph D. Welch