

# 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](http://www.josephdwelch.com)

*Please address all correspondence to the Hannibal office.*

### LIVING TRUST INFORMATION

- By Joseph D. Welch, Attorney at Law

Living trust-based estate plans have many advantages. First, they avoid probate. This means that your assets can transfer quickly and efficiently at your death, without the delay, attorneys fees, and unnecessary expense of probate. In addition, living trusts ensure absolute privacy for your financial matters. Since trusts are not filed in the Probate Court, "inquiring minds" do not have an opportunity to see an inventory or valuation of your assets, or to find out how much you are leaving to your beneficiaries.

Living trusts are very flexible--they can be changed any time by the Trustmaker. They allow you to retain absolute control of the terms of the trust--you continue to buy, sell, spend, invest and make gifts of trust property any way you want. No gift is made when the Trustmaker transfers assets into the trust, and no tax returns are required to be filed by the trust during your lifetime.

Even people who have smaller estates can benefit by doing living trust planning. This is especially true for people who are either married or have children or have an estate in excess of two hundred thousand dollars. Re-marriage protection for a surviving spouse is typically a serious concern with most families. A trust which incorporates personal protections for the surviving spouse can keep him or her from being preyed upon financially by third parties or by a subsequent spouse. A trust with strong personal protections can insure that your money goes to your children and not to a new spouse or the family of a new spouse.

Similarly, personal protections in a trust can provide divorce-proofing strategies for children's inheritance. Trusts can be readily designed to protect children and beneficiaries from other types of creditors and predators as well, including the IRS.

Personal protections incorporated within trusts are also an excellent tool to preserve assets from "impulse spending." Research indicates that most inherited money is spent within 17 months of receipt. (Surprisingly, the figures are not radically different if the money is inherited by wealthier and more sophisticated beneficiaries.) It is generally undesirable to simply "dump" money on children at **any** age -- it is more important to pass "value" to one's family, not merely money. "Value" includes protecting the beneficiaries from our very human tendency to quickly dissipate "windfall" funds. This "value" can only be obtained through family-oriented trust planning.

#### **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

When properly designed, trusts can be a valuable adjunct to retirement planning. It is important to synchronize the estate plan with the retirement plan payout options. The advent of the stretch IRA makes qualified funds an extremely powerful investing tool. Qualified retirement plans have always been a superb investment while the account owner or spouse is alive. However, very little of those funds may survive to the next generation. (Retirement plan money is frequently decimated by taxes at the death of the roll-over spouse, often resulting in a loss of 80% percent of the entire account!) The stretch IRA has changed that. Now it is possible to not only pass the entire fund whole and untouched by taxes at death, but to pass it in the same type of **tax-deferred** vehicle which allowed the account owner to accelerate growth in those funds during his or her life. Because of the potential of these investments to produce huge amounts of asset growth and income over the life expectancy of the next generation and the tendency of most beneficiaries to “blow the stretch” by withdrawing the money before it has had a chance to compound in a tax-deferred manner, it is extremely unwise to attempt stretch IRA planning unaccompanied by trust protections.

A personally designed living trust is the only planning device which allows people to design their own disability plan. Anyone who is interested in receiving home health care (rather than being left in a nursing home) should design a disability plan inside a living trust. In addition, those who want to avoid having a guardian appointed for them, or who are concerned about making sure that their family members can access funds if the breadwinner should become disabled, need a well-designed living trust.

There are tax law changes scheduled every year between now and 2011. Clients need a reliable and inexpensive system in place to update the plan as necessary to comply with these many scheduled changes.

Conscientious planners are now recommending to clients that they implement a formal estate planning update system. This planning method makes great sense in light of the many tax law changes brought on by Congress' passage of EGTRRA in June 2001. A formal updating program can be designed at a very small cost to ensure that the estate plan will not become obsolete and that your investment in your plan will not be wasted.

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