Larson & Brown, PA

Estate Planning and Trust Administration Attorneys

TIM J. LARSON

LOGAN M. BROWN

KELSEY K. MOORE

7570 W. 21st Street North
Building 1026, Suite A
Wichita, KS 67205

316.729.0100
800.388.8529

www.larsonbrown.law

THE INFORMATION CONTAINED IN THIS BOOKLET IS INTENDED FOR GENERAL INFORMATION PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL ADVICE. FOR LEGAL ADVICE PERTAINING TO YOUR OWN SPECIFIC SITUATION AND ESTATE PLANNING NEEDS, GOALS, AND DESIRES, CONSULT AN ATTORNEY WHO IS KNOWLEDGEABLE AND EXPERIENCED IN THE AREA OF ESTATE PLANNING.

What is a Trust?

A trust is a legal arrangement in which one person holds title to property with an obligation to keep, use, or sell the property for the benefit of another or for himself or herself. When the Trustmaker is also the Trustee and beneficiary and retains complete control over the Trust property while he or she is alive, a revocable living trust is created. Some important words to know and understand are:

Trustmaker a/k/a Settlor/Grantor/ Trustor)	--	The person who intentionally causes the trust to come into existence by executing the trust document and funding the trust, or providing for it to be funded in the future upon a stated event.
Trustee	--	The person or institution who holds title of trust property for the benefit of the Trust beneficiary or beneficiaries.
Trust Property (Also called Trust Corpus or Trust Principal)	--	The property interest which the trustee holds and for which the trustee is obligated to keep, use, or sell for the beneficiary or beneficiaries of the trust.
Beneficiary	--	The person for whose benefit the trust property is to be held or used by the trustee. The Trustmaker may also be a beneficiary.
Trust Instrument Document	--	The document by which property interests are vested in the trustee and beneficiary and the rights and duties of the parties are set forth.
Transfer Documents	--	For property which is titled through or by a document, the document which shows transfer of title to the trust is the transfer document. (Deed, car title, bank signature card, stock certificate, certificate of deposit, bonds, bill of sale, etc.)

Are there different types of Trusts?

Trusts are either:

Living (Inter Vivos)	or	**Testamentary**
Comes into existence during your life		By will; comes into existence after your death and must go through probate
Revocable	or	**Irrevocable**
Can be changed or terminated by person creating it; allows for continued complete control over property		Cannot be changed or terminated once it is created
Funded	or	**Unfunded**
Assets are titled, conveyed to, and held by trust (We help you do this.)		Trust is in place; however, assets are not yet transferred to the trust

The **Revocable Living Trust** is the most accepted and versatile estate planning document available under the law. It is created while you are alive and can be amended or revoked during your life. It will allow you to retain control over your property to the extent you desire, and after your death, your estate can avoid probate court and the related costs, attorney fees, and inconvenience. The inclusion of federal estate tax planning within a revocable living trust, in conjunction with the inherent probate avoidance, means optimal savings of unnecessary costs.

What does a Revocable Living Trust have to offer?

* It allows you complete control over all of your property while you are alive and provides your directions for distribution upon your death.

* The trust and related documents can be used to plan for the event of your own disability, allowing you to plan and direct what you want done with your property in the event you do become disabled or incapacitated.

* It avoids the need for a court proceeding to create a guardianship or conservatorship (living probate).

* It keeps your affairs private rather than public. A revocable living trust is not filed with a court upon death; in contrast, a will must be filed with a court in order to have any effect.

* It provides that your loved ones will not lose control and have to endure an estate (probate court) proceeding in the event of your death; thus, no attorney's fees, no administrator's fees, no probate bond, publication or filing costs, no time delays, and no public proceedings or invitation for will contests.

* We can address capital gain and other income tax issues.

* Anything that can be provided for in a will can be provided for in a living trust with benefits listed above.

Will I need other documents in addition to the Revocable Living Trust?

Yes. The Revocable Living Trust works best when combined with other documents. At LARSON & BROWN, PA, we will see that you get a comprehensive and personalized set of documents. We don't sell documents, but we do provide counseling to make sure that all of your important goals and needs are met. A complete Estate Planning Portfolio allows you to be thorough in your treatment of loved ones and distribution of your property. The following important documents are used to create a comprehensive and thorough estate plan:

ESTATE PLANNING PORTFOLIO

Revocable Living Trust:	Avoids Probate and Conservatorship proceedings, reduces estate taxes and after death administrative fees, and provides for distribution of assets
Certificate of Trust:	Provides necessary information to third parties dealing with the Trustee, shows that the trust is in effect, lists name(s) of acting Trustee(s), identifies the powers of the Trustee(s), and assists in funding the trust
Pour Over Will:	Transfers any assets remaining outside the trust at the time of your death into the trust for distribution. Like a spare tire, we don't want to take it out of the trunk and use it unless we have no choice.
Nominee Declaration:	Recites the intent of the Trustmaker(s) to place all property into the trust, gives immediate effect to the trust upon execution of the document. "Everything I hold in my own name I am holding on behalf of my trust as a nominee for the trust."
Funding Instructions:	Provides guidelines for transferring assets to the trust now and in the future.
Living Will (End of Life Directive):	Authorizes termination of life support systems if there is a terminal illness and no hope for survival.

Durable Power of Attorney for Funding:	Authorizes the Trustmaker's designee to transfer property to the trust if the Trustmaker becomes legally incapacitated to manage his or her own financial affairs (avoids conservatorship).
Durable Power of Attorney for Health Care Decisions:	Authorizes the Trustmaker's designee to make health care decisions if the Trustmaker becomes legally incapacitated (avoids guardianship).
Authorization for Release of Protected Health Information (HIPAA)	Allows persons named in document to have medical information released to them regarding the patient.
Memorandum for Distribution of Personal Effects:	Provides for the distribution of personal property, such as specific household items or antiques.

RECORD KEEPING:

Trust Transfer Documents:	Provides convenient record keeping information about assets, such as deeds to land and assignments, which have been transferred to the trust
Life Insurance Summary:	Provides a convenient record of life insurance policies held by the Trustmaker(s)
Location List for Important Documents & Family Information:	Provides a convenient format to record the location of important documents and names of people to be notified in the event of incapacity or death
Computer Program and Password Information	Provides a format for saving key information and passwords that will assist your personal representative.

If I do not create a Revocable Living Trust and my estate is probated with or without a will, what costs and fees should be expected?

Generally, the following:

- Filing Fee
- Probate Bond for Executor or Administrator
- Publication Costs
- Executor or Administrator's Fees
- Attorney's Fees
- Tax Return Preparation Costs (Inheritance, Estate, Fiduciary)

In Kansas, there is no set fee schedule for attorneys or other estate representatives. The Judge has the discretion to establish or approve such fees as he or she feels are "just and reasonable" compensation.

Generally, these substantial costs and fees may amount from 6% to 40% of the gross value of the estate being probated. Smaller estates tend to have higher percentages of their gross values lost in the probate process. These costs can be minimized or avoided by proper estate planning with a revocable living trust.

Why shouldn't I simply place my assets in joint tenancy or make pay on death designations with my spouse or other loved ones?

- Joint tenancy with someone other than your spouse may create gift tax, estate tax, or inheritance tax concerns.

- Property may go to unintended heirs.

- You cannot have instructions either by will or in a trust document directing what you want done with your interest in the joint tenancy or pay on death property. On your death it simply belongs to the surviving joint tenant or tenants, or the designated payee.

- All joint tenants must cooperate before property can be sold, mortgaged, or transferred.

- The premature death of one of the joint tenants will remove not only that joint tenant, but also his or her children or heirs from participating in distribution of the property on the death of that original joint owner.

- In the event of disability or incapacity of a joint tenant, property may not be available for that joint tenant's care. On the flip side, holding property in joint tenancy may put the "healthy" joint tenant's interest in the property in jeopardy if the disabled joint tenant is required to spend down the value of his or her interest prior to qualifying for federal or state aid.

- Transferring assets now to someone other than a spouse may unnecessarily cause later income tax and capital gains problems as well as gift tax concerns.

- Problems with joint tenancy generally arise at a time when they cannot be corrected.

Why shouldn't I simply make out a deed to my children for transfer of my real estate which they could record after my death?

- The deed may become lost or destroyed.

- Your child or children may predecease you.

- The presumption under Kansas law is that the transfer is made when the deed is executed, thus your child or children will not get a step-up in basis for income tax purposes at the time the deed is recorded. This may create a considerable capital gain at the time your children transfer or sell the property.

- We now have the ability, under Kansas law, to do a Transfer on Death Deed, which does not vest any interest until death in the named beneficiary or beneficiaries. This deed should be recorded in the office of the Register of Deeds in the county where the real estate is located.

What Federal Estate Taxes can be avoided or minimized with proper planning?

In some instances your family may be liable for Federal Estate Taxes. When someone dies, the Federal Government levies a tax on his or her right to transfer assets to others. Under current law, an estate that exceeds $11,180,000 is taxable. The Federal Estate Tax is a substantial 40% tax.

Do All Estates Pay Federal Estate Taxes?

No. The federal government currently allows each person in the United States a credit which allows for an exemption equivalent of up to $11,180,000 and to increase as set forth above. That means if your estate at the time of your death is less than the current exemption level of $11,180,000 (and you've made no taxable gifts during your life), there will be no federal estate taxes due. In deciding the size of your estate, the federal government includes everything you own, even the face value of your life insurance policies.

Is there an Estate Tax Deduction for Married People?

Yes. In addition to the $11,180,000 personal exemption currently allowed by law, the federal government has exempted all transfers of wealth between husbands and wives. This is called an unlimited marital deduction, and it means that regardless of the size of the estate, there will be no federal estate taxes levied when a husband or wife dies and leaves his or her Estate to the surviving spouse.

Keep in mind, however, that these deductions are merely postponing the payment of tax until the death of the second spouse. There may be a tax on the estate of the surviving spouse when it passes to the children or other beneficiaries. And because the estate will likely appreciate in value, the taxes owed upon the death of the second spouse may be at a higher rate.

If my Estate is less than $11,180,000, do I need to worry about Estate Planning?

Yes. While transfers after death for an estate under $11,180,000 is free, under current law, from estate tax, it will probably not avoid probate. Remember, probate and estate taxes have nothing to do with each other. Estate taxes are paid to the IRS. Probate fees are paid to attorneys and executors for supervising the administration of your estate and transferring assets to your beneficiaries.

An estate plan utilizing a revocable living trust is essential if you want to minimize death taxes and avoid probate costs.

How much does it cost to have a Revocable Living Trust created?

Fees to complete a comprehensive living trust estate planning portfolio, which includes various supplemental documents, generally range from $3,200 to $6,000 and depend on the type and complexity of the planning that is appropriate and necessary to achieve your personal estate planning goals. It is not possible to tell you what the exact fee will be until we determine together exactly what you want and need to accomplish in your estate plan. We will tell you what our fee will be before you tell us to go ahead with the work. There is absolutely no obligation incurred unless and until we determine what is necessary to achieve your estate planning goals, what the cost will be, and you authorize us to proceed. Our "no obligation" policy includes estate planning consultation that we offer at no cost.

Isn't it less expensive to have a will created?

In most cases, yes. However, comparing an estate plan that consists of a will and one that consists of a revocable living trust and supplemental documents is like comparing a horse and buggy to the latest model, option-packed Buick Park Avenue. Both are forms of transportation; the key to consider is the comfort and control with which you prefer to travel. A simple will may be a sufficient estate planning vehicle for you if your primary goal is to have control over the distribution of your property upon your death (assuming that all of your property is titled in your name alone upon your death). However, if you want to plan for your present and future financial needs, your disability (i.e. an incapacity to manage your financial affairs), avoid costly and time-consuming probate, keep maximum control over your estate (despite whatever contingencies may arise), and address other specific concerns you have, you will likely need the added benefits and comforts a comprehensive revocable living trust estate plan has to offer.

It's important to compare total estate plan related costs instead of merely comparing the initial costs of document preparation. While you may find a simple will costs about $1100 to $1600, you must consider the after death costs which may be from 6% to 40% of your total estate which passes through the probate process. On the other hand, although the preparation of a revocable living trust and all the supplemental documents is more expensive, the after death administration of a living trust estate is typically less than 1% of the total estate!

When are the fees due?

Our policy is to ask for one-half of the total fee for creating your living trust estate planning portfolio before we begin working on the preparation of your documents. The balance of the fee is due when you sign your final documents.

More Questions and Answers About

Revocable Living Trusts

Q: If I transfer Real Estate into the Trust, will my property taxes go up?

A: No. Transfers into a Revocable Living Trust have no effect on your property taxes.

Q: If I am only a part owner of property, can I transfer my share into a Trust?

A: Yes. Your share can go into the Trust without affecting the shares owned by others.

Q: Can I name Trustees and Beneficiaries that live out of state?

A: Yes. There is no limitation on where your Trustees or Beneficiaries reside.

Q: Will I have to consult an attorney every time I buy new assets?

A: No. Once your current assets are transferred to your Trust, you take title to all new assets in the name of the Trust and they will automatically be owned by your Trust.

Q: Does the Trust need to be registered or recorded anywhere?

A: No. The Revocable Living Trust is a private document which is not recorded. However, if you own any interest in real estate, the new deeds showing Trust ownership will be recorded.

Q: Can I sell assets owned by the Trust without complications?

A: Yes. You sell assets in the same way you currently do. You will, however, add the word "Trustee" after your signature. Transferring assets should be done in your capacity as trustee. Evidence of the validity of the trust may need to be shown through or by an affidavit which we'll provide to you.

Q: Can I change the terms of the Trust?

A: Yes. While you are alive and competent, you can alter the Trust or even revoke it without penalty at any time.

Q: Can I transfer real estate into the Trust?

A: Yes. In fact all real estate should be transferred into your Trust. Otherwise there will be a probate in every state where you own real property.

Q: Is the Revocable Living Trust something new?

A: No. The Revocable Living Trust has been authorized by law for centuries. The government has no interest in making you go through probate or conservatorship. Those proceedings only clog up the court system. In addition, there is no movement in Congress to reduce the estate tax benefits available to a revocable living trust.

Q: Is it difficult to transfer assets to my Trust?

A: No. All your assets except IRAs and pension benefits can actually be owned by your Revocable Living Trust. We transfer your real estate and all your personal property which has no documentary evidence of title for you. The other types of assets you need to transfer are your bank accounts, automobiles, CDs, mutual funds, life insurance, and any other property for which there is a document indicating either ownership or a beneficiary designation. In most cases there is little or no fee for changing title to these assets.

Q: Can any attorney create a Revocable Living Trust?

A: No. The drafting of your Revocable Living Trust should only be done by an attorney trained in the area of Tax and Trust Law. It is important that you seek out a law firm which is knowledgeable and experienced in the creation of Revocable Living Trusts. After all, your Trust will be the document which manages and disposes of all your hard earned property. Make certain you choose a law firm which is both qualified and experienced.

Q: What if I move to another state, is the Trust still valid?

A: Yes. The Revocable Living Trust is valid in all 50 states, regardless of the state where it is created.

Q: Is a Living Trust only for the rich?

A: No. A Living Trust can help anyone who wants to protect his or her family from unnecessary probate fees and death taxes. In fact, probate fees and costs tend to consume a higher percentage of the value of smaller estates.

Q: Is a Living Trust a good idea for a single person?

A: Yes. If you are widowed, divorced, or unmarried, a revocable living trust protects your estate. It completely eliminates the need for probate, either while you are living (guardianship and conservatorship) or after your death, and you can pass $5,340,000 federal estate tax free.

Q: Are there any major disadvantages in planning my Estate with a Revocable Living Trust?

A: No. Because you have complete control of all assets in your trust, you are free to manage your Trust in any way. Also, because your Trust is amendable and revocable, you have the right to make any changes in it or to revoke it during your life.

Q: Who should be named as Trustee?

A: While you are living, you will probably want to name yourself and your spouse as your primary Trustees. This means that all your trust property will be under your direct control. There will be absolutely no constraints on your management of your financial affairs. You will continue **just as you always have** paying your bills, collecting your income, buying and selling, and filing your tax returns.

Q: If the operation of the trust is not subject to court supervision, who will make sure the Trustee or Trustees act properly?

A: Your successor Trustees should be selected carefully. If you are not comfortable with any one individual, name co-trustees or a bank trust department to oversee the trust. Make your family and beneficiaries aware you have established a trust because they are essentially the "watch dogs" of your trust. Let them know your attorney has a fully executed copy of your trust in his office.

Additionally, there is a vast body of law relating to trusts, and the duties, responsibilities and liabilities of your Trustee.

Q: Won't it be a problem to place my property in the trust or remove it from the trust once it has been transferred?

A: No. This process is called trust funding. Although it will be necessary for you to change title to property for which there is documentary evidence of title, this is not difficult and usually can be done on your own. We will provide you with instructions for this purpose.

Q: What types of property are generally transferred to the trust?

A: All of your property, with the exception of IRAs and certain other "Qualified" retirement plans, should be transferred. Generally this involves changing signature cards for bank accounts (the face of your checks do not need to appear any differently), titles to vehicles, certificates of deposit, deeds to real estate, stock certificates, and bonds. The cost of transferring should be minimal.

Q: Will I have to have a new tax number for my trust?

A: Not as long as you, as Trustmaker, are the one who is entitled to principal and income and are acting as Trustee. You simply report income under your social security number as you do now.

Once your successor trustee takes control of the trust, a fiduciary relationship is created, and a new tax number (employer identification number obtained from the IRS) will be necessary before the successor Trustee can file necessary income tax returns.

Q: Will I lose my right to not recognize capital gain if I sell my principal residence?

A: No. To the extent you have lived in the residence for at least 2 of the last 5 years, each spouse has a $250,000 exemption to offset capital gain, even if the house is owned in the name of the Revocable Living Trust.

Q: What should I know about Qualified Retirement Plans, such as IRA's?

A: Beneficiary designations are important, and should be coordinated with your estate plan documents. There is no easy answer as to how beneficiary designations should be made or what the best option is for calculation of the distributions at the required beginning date. Making the wrong decision can be costly. We have the expertise to assist you in making the decisions which fit your needs and goals.
