

## *Legally Speaking*

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I recently saw a lady whose husband is grievously ill. Understandably, she and her husband wanted to (a) simplify their estate planning process, (b) avoid death taxes and of course, (c) avoid probate. After listening to a free seminar on estate planning that pushed living trusts as the final solution, they bought one. Paid \$2500 for it too, plus about \$700 more to transfer most of their property to the trust. The simplified estate plan consisted of an imposing 2 \_ inch thick notebook containing 15 or 20 tabs into which their names and related information had been inserted in the blanks. It was accompanied by three or four thick manila envelopes containing form letters, supplemental material and various amendments to the trust. They had had only cursory contact with the attorney in whose name the documents were prepared, spending most of their time with administrative assistants who had them complete fill-in-the-blanks questionnaires.

At least, sighed the client, we'll not be paying any estate tax. Right-o. She was surprised to learn that a living trust does nothing to avoid estate taxes that can't be done (better, in my opinion) with a will. In any event, as of 2004 the estate tax unified exclusion amount goes up to \$1.5 million. Although comfortable, she and her husband had never been seriously in danger of having an estate tax liability. (Remember, there is no estate tax for spouse-to-spouse transfers anyway.)

Buried in the notebook was a pour-over will, the gist of which is to transfer any remaining assets into the trust upon the death of the first-to-die spouse. That will would have to be probated. So, the living trust had done nothing to avoid probate, either. To be sure, fewer assets passed through probate, but the cost of probate is no longer related to the value of assets passing through it, at least in Colorado.

This would be bad enough, but what I thought to be most tragic was that my client was confused and more than a little intimidated by the imposing mountain of papers and documents associated with the living trust. I couldn't blame her. So was I. Her husband's pending death, wrenching enough as it is, was greatly aggravated by her growing feeling of apprehension and helplessness over what to do with their property when he died. He'd always managed the finances, and although under the terms of the living trust she would become the successor trustee she had little idea what that meant. She told me her efforts to get quality time with the attorney to answer her increasingly urgent questions had resulted in unreturned telephone calls and short sessions which left her more perplexed than before. Simplified? To her the estate plan was nothing short of a legal La Brea tar pit.

My dislike of one-size-fits-all approach to estate planning in general, and living trusts in particular, is no secret. Living trusts can work for some people, and they do offer advantages in certain narrow situations. Still, for the vast majority of us they can be money pits that leave your family no better off, and in some cases (such as this one) worse off. The extent of the problem is in a way illustrated by the fact that the Colorado Attorney General publishes a warning about living trust on his web site.

Most distressing of all is the abbreviated time she and her husband got to spend with the attorney, and the difficulty getting personal attention. The best estate plan in the

world fails if the surviving family members are left in the dark as to how it's supposed to work. Simpler is nearly always better, and usually less expensive too..

Regular readers know I'm a car guy, yet when we (uncharacteristically) bought a new car recently, the salesman was scrupulous about going over every knob, dial and switch so that we were comfortable with all of its features and its operations. That's not just good business practice, but the mark of genuine professionalism. Good doctors know this and are careful to explain to you what they're doing—the diagnosis, alternatives, the procedures, the side effects, and the prognoses. You have a right to expect no less from your attorney.