



# PLANNING FOR YOUR FAMILY'S FUTURE

## REVOCABLE LIVING TRUST



**LEGACY LAW FIRM, P.C.**  
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## Care for Your Loved Ones

### Protect Your Assets

### Take the Logical Step

#### **A Revocable Living Trust**

Most families could greatly benefit from a Legacy Law Firm, P.C. Living Trust Plan. Our planning is ideal for young families and those of us later on in years; providing many benefits during your lifetime and after.

#### **Don't be caught without a plan!**

Our law firm is dedicated to helping families and individuals create a strategy that will provide the greatest long-term protection for loved ones and the things that matter the most.

Speak with the lawyers at Legacy Law Firm, P.C. With our knowledge of the law and our proven legal methods, we can customize an approach that is best for you and your family.



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# Planning for the Future — An Overview

None of us likes to think about our own mortality, which is why so many of us, young and old, are caught unprepared. Plan now and protect the ones you love. For most, Revocable Living Trust Planning, prepared by Legacy Law Firm, P.C., will handle all of your needs, many of which you may not have even considered. After a free initial consultation, we will be able to provide you with advice on what would be best for you based on your particular circumstances.

Some of the many benefits of a Legacy Law Firm, P.C. Living Trust Plan are as follows:

- Avoiding probate.
- A living trust will pass your assets to your loved ones at your death, in the exact way you want them to be passed, and without significant delay.
- The planning allows you to set up trusts for your children, enabling you to predetermine how and when the assets are to be used.
- A living trust is extremely private and difficult to contest, unlike a will which goes through probate and is public record.
- For a married couple, a living trust can take advantage of a double exemption from Estate Tax.
- A living trust plan will eliminate or limit the amount of tax that would go to the government and greatly reduce or eliminate subsequent legal fees.

The end result is that your assets go to your family where they are deserved and needed, not to the government and lawyers.

## Living Advantages

- The Living Trust Plan will give your loved ones the legal power to take care of you if you are injured or ill.
- It will let you name the person you want as Successor Trustee, to manage your affairs and take care of you if you become incapacitated from injury, accident, or illness.
- It will provide for the care of your minor children if both parents die prematurely.
- It will assist with the organization and control of your personal assets and estate.



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## How a Revocable Living Trust Works

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The creation of a living trust is an interesting process. You will actually be setting up an independent entity that will continue on beyond your lifetime. When you pass on your living trust will keep moving along, carrying out your wishes.

Once the trust is created we will assist you with transferring your assets into the trust. The trust will actually hold the assets; however, because it is revocable you will retain control of your assets during your lifetime.

For the most part, it will be as if nothing had changed. You will file tax returns just like before and manage your assets just like before. You will be free to move assets in and out of the trust or modify them however you wish during your lifetime.

The only significant difference you will experience is that title to certain assets, such as your home, will be held in the name of the trust.

After a free initial consultation with Legacy Law Firm, P.C., we will be able to design a living trust plan specifically for you. Our customized approach, one client at a time, will maximize your benefits based on your particular circumstances.



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# What is Probate and Why Do I Want to Avoid it?

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Anyone who has been through the probate process will probably tell you what a headache or nightmare it was, and that you should avoid it. This is because the process moves at a snail's pace and digs into many personal matters.

Frankly, it is a hassle, and something most people do not want to deal with while they are grieving.

## Probate consists of the following:

- The court is notified that a person has passed away by someone who has an interest in the estate by opening a probate;
- The will, if any, is filed with the court;
- An inventory of assets is taken;
- The assets may need to be appraised;
- The deceased person's debts and taxes are paid;
- The validity of the deceased person's last will and Testament is proved to the supervising court and heirs determined;
- A waiting period commences whereby the remainder of the assets are distributed in accordance with the will, or under state intestacy laws if there is no will or the will is invalid. A probate must be open for at least four months in South Dakota.

## There are THREE significant drawbacks to probate:

- 1. It is costly.** Most people don't want to pay for an estate plan and then pay for a probate. Some attorneys charge a percentage to administer the estate.
- 2. It is public.** Even if everything runs smoothly, a great deal of private information regarding the estate, its contents, and its distribution will be a matter of public record and given interested parties, whereas living trusts are private;
- 3. It is lengthy.** It may seem never-ending. The last thing a family wants to deal with when a loved one has passed away is a costly, public process that last longer than folks want. A living trust avoids unnecessary delay.



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## Why a Will is not Enough

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Many people mistakenly believe that a will is enough. It is not, unless your assets are very minimal. In truth, a will usually makes things more difficult for the ones you love because your loved ones are left with more work to do, often including going through probate. Moreover, a simple will does not provide the multitude of benefits associated with a living trust.

A will does distribute your assets in accordance with your wishes; however, it generally takes a year or more to pass through probate, all the while eating up a good portion of your estate.

If your estate (including any real estate you own, life insurance policies, etc.) is worth a GROSS value of less than \$100,000, a simple will might be appropriate in the short run. However, even with a will it is still important to execute powers of attorney for finance and health care. Powers of attorney will be discussed in greater detail on page 9.

Hand written wills create even more problems because they are often contested or drafted in a manner which makes them invalid. If the will is deemed invalid the estate goes through probate and is administered as if the will did not exist. Overall, it is simply not a recommended planning device for most folks. With a small investment of time and expense, a complete Living Trust Plan can be executed and will handle all of these issues.



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## Passing Your Assets on to Loved Ones

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In your living trust you will be able to designate exactly how you want your assets to be distributed after you are gone. You can leave all of your assets to your spouse or share them among several people and charities. It is up to you! Legacy Law Firm, P.C. can customize a living trust that works best for you.

Often times, gifts are left for children. Where the child or children are under the age of eighteen, it is necessary to appoint a person to manage the assets until they reach eighteen. Moreover, it is often wise to have any assets that are earmarked for a child to be held in trust until the child reaches a responsible age. That age will depend on the child. In the meantime, specific directions can be left regarding how the trust assets should be distributed prior to that magic age. For example, you could place specific assets in trust, accompanied with directions that the proceeds are to be used only for educational purposes until the child reaches the age of twenty five. At that point, the remainder of assets would be turned over to the child. During your free consultation with Legacy Law Firm, P.C., we will be able to suggest many different options along these lines that may work for you.

Additionally, in your Living Trust Plan you will have the opportunity to **designate** whom you would like to become the **guardian** of your child in the event something were to happen to you or to you and your spouse. This is a critical step to making sure your children are taken care of in the event of your death.





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# Powers of Attorney & Other Trust Documents

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## Powers of Attorney

Powers of attorney are included in your Living Trust Plan for you and your spouse. Each person needs two powers of attorney; a power of attorney for finance and a power of attorney for healthcare. Everyone should have powers of attorney. They are an important tool in providing for who is to handle your affairs in the event you become temporarily or permanently incapacitated.

The fact is that almost one in every two people is incapacitated or incompetent prior to death. This means that someone needs to be designated to handle your affairs if this occurs. KEEP IN MIND that an auto accident, illness, or other catastrophe can render someone incapacitated even if only for a short time. Who will make your financial decisions? Who can fight with the insurance company for your recovery treatment if need be? It is a VERY GOOD IDEA to put powers of attorney in place REGARDLESS of your AGE.

A power of attorney for finance enables your agent to make financial decisions on your behalf and write checks if necessary. A power of attorney for health care gives the designated party the right to make health care decisions for you under the same circumstances.

## Living Will/Health Care Directive

A Living Will, often referred to as a Health Care Directive, instructs the health care provider about the conditions under which you do not want to be artificially sustained by life support. Many people determine that they do not want to be sustained on life support if it is determined that they suffer brain death, or that they suffer from an irreversible condition in which they are in an unconscious state. Others want to be sustained under any conditions. It is up to you. We will help you custom tailor your advance directives to address your concerns.

## Certificate of Trust

Legacy Law Firm, P.C. will provide you with a certificate of trust enabling you to move assets in an out of your trust without the need of relying on your attorney. The certificate will make it easy for you to manage your trust during your life time without having to incur additional legal fees.

## Quit Claim Deed/Transfer of Real Property

As part of your complete Living Trust Plan, Legacy Law Firm, P.C. will transfer your real property (real estate) into your living trust.



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# Estate Taxes and Joint Tenancy

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## Estate Taxes

These days estate tax is high on the political agenda. Under the 2018 Tax Act, the exemptions of estate property have been doubled from \$5,6 million to \$11.2 million. This is good news for you!

In 2025, the 2018 Tax Act expires. The exemption will increase with inflation. Unless new legislation is created the system reverts back to the tax laws effective prior to 2018. It is probable that new legislation will be implemented prior to 2025, but the question is what kind. We just don't know yet; however, in the meantime we will minimize the exposure of your estate as much as possible. Your living trust will be carefully drafted specifically for you, so as to minimize or eliminate any estate taxes.

## Joint Tenancy

Some people attempt to avoid probate by creating a joint tenancy with right of survivorship. These fancy words simply mean that the property is held jointly with another person or persons, and at death, the survivor(s) take whatever interest in the property the deceased person owned.

Joint tenancy does not avoid probate; it simply delays the probate process until

the survivor passes. However, the biggest problem with this scheme is that it creates some serious tax consequences that can cost thousands of dollars.

Additionally, by making your spouse, child, relative, or friend a joint tenant, you are legally giving up rights to the property during your lifetime. If you decide later to sell the property, refinance the property, or take the person's name off the title, you are STUCK! You cannot take any of these actions without the express consent and signature of the person you put onto the title.

Moreover, if the joint tenant gets into any kind of trouble, falls victim to a lawsuit, is subject to a divorce, etc. your asset maybe tied up in a long legal battle, costing you time and money. The lesson to be learned here is that joint tenancy may be a bad idea for estate planning purposes.



### CONGRATULATIONS!

You now know the basic tenants of revocable living trusts.

#### **Please Keep in Mind:**

Living trusts are sophisticated documents and it is highly advisable that you work with an experienced estate planning attorney in putting your trust together.

It is important that the trust is custom tailored for your personal circumstances, not a canned approach, and that the trust reflects your current and potential future financial position.

**DON'T DELAY! Many people put off these important planning strategies until its too late. Do not make this mistake. It is simply too important to wait.**

This overview has been prepared as that, an overview. It should not be relied on as an all inclusive treatise on the topic. Significant information has not been included for the sake of brevity and to keep the issues easily understandable.

For a more detailed explanation on living trusts please contact Legacy Law Firm, P.C. or attend one of our seminars.

For more information or to schedule a free consultation contact our office at 605-275-5665. We look forward to visiting with you!





PLAN WELL. LIVE WELL.  
CALL US TODAY.

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