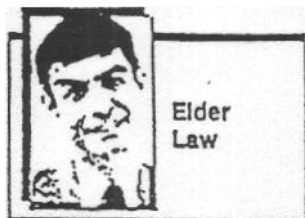


Lawyer's greed blamed for living trust rejection

In a number of prior Elder Law columns, I have discussed the benefits of living trusts and potential problems or costs involved in alternative ways of passing your estate along to heirs. So many readers have written to me indicating that they have been interested in a living trust but, a typical letter goes on to say, "My lawyer told me that I didn't need one."

Since so many readers have apparently been told by their attorneys that Living Trusts are inappropriate for them, I feel a responsibility to comment.

While many attorneys are apparently giving no reasons for their immediate rejection of the approach, others say that a particular estate is not large enough, that the annual attorney fees are needlessly expensive, or that other ways of passing along



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an estate, such as joint tenancy, are preferred.

It is no surprise that few, if any, lawyers have explicitly stated that the probate process is preferred to its avoidance.

Why do so many lawyers give this advice? While there could be many reasons, I believe two are dominant. First, the preparation of a Living Trust requires es-

tate planning expertise, familiarity with numerous tax issues, and a working knowledge of the operation of a living trust. Most general practice lawyers simply lack the expertise that is required. If they prepare a trust, it is likely to be a simple form document that is not properly personalized to the individual client. Ignorance, then, is the first factor.

Secondly, attorney fees can be the paramount motivation. Consider the 80-year-old widow with a \$600,000 estate. A simple will can be prepared for this person — a person who will probably heap praise on the attorney for charging her very little for the will — who is probably not told about the expenses of the probate process. Upon her death, that lawyer will receive a minimum of \$13,000 for doing very little work in a simple probate process.

A living trust, which requires more time and expertise to cre-

ate, will result in attorney fees in the area of \$800-1,500 without the time, cost, and hassle of probate. The cruel irony is that the unsophisticated or economically motivated attorneys urge clients to do wills and ultimately take very large fees out of the estate. These fees may be 10-times larger than the fees that would be charged by the sophisticated, ethical attorney who helps his client develop a cost-saving, effective estate plan that relies on a living trust.

The purpose of this column is not to indicate that everyone should do a living trust. The purpose is to convey the fact that many receive incomplete and incorrect advice from attorneys who should know better.

If you would like readable, accurate information about the benefits of living trusts, write to me at the address that follows.

Gilfix welcomes questions and suggestions for future columns

Please address them to: Michael Gilfix, ElderLaw Column, 4151 Middlefield Road, Suite 212, Palo Alto, CA 94303.

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