

## How is Review of a Living Trust Different from Estate Planning?

By Janet Brewer

September 13, 2011

***This is the second of two articles on reviewing a trust. In this one, discuss how we evaluate a living trust agreement, and how that differs from developing an estate plan.***

My team and I examine dozens of things when we evaluate a trust document. To give you an idea, a few of them are:

- Does the trust agreement confirm to third-parties that a married trustor/trustee has authority to act when his/her spouse cannot (if desired by client)?
- Does the trust agreement include provisions to alter distributions to a surviving spouse in the event of remarriage after the death of the first spouse?
- Does the trust agreement include a common trust provision when one or more of the primary beneficiaries has not yet graduated from college?
- Does the trust agreement give the trustee of a continuing trust an appropriate amount of flexibility to make disproportionate distributions based upon the relative needs of the beneficiaries?
- Does the trust agreement set up continuing trusts for the beneficiaries, which are tailored to the needs of each trust beneficiary?

Is there evidence that the trust is properly funded? An unfunded or partially funded revocable living trust does not avoid probate. Great care must be taken to ensure that all necessary assets held by the trustor individually are either retitled to the trust, or that the trust is considered as an appropriate “designated beneficiary.”



Learn more about our [asset protection legal services](#), [probate services](#), and [fiduciary counseling](#) »

## **The difference between evaluation of a trust and creating an estate plan**

In trust reviews, my intention is to provide you with an objective analysis of the document, and nothing more. Still, my review may be very beneficial to you because your estate plan will eventually be interpreted by attorneys and financial professionals that you do not know. So it is far better to identify ambiguities or omissions in your estate plan while you are alive and healthy than when you are not.

When I am hired for estate planning, I conduct an in-depth "discovery" process that includes:

### **Gathering personal and financial information**

First I need to review your personal data and your financial information, and discuss a potential plan to meet your goals and objectives. I need to learn about your family and how the various members handle money. I understand that this is sensitive information, something not always easy to talk about. I am not shocked by any characters lurking in your family tree – we all have our fair share of them!

### **Discussing goals and values**

You have built up a large estate, and you probably have very specific wishes that you want someone to carry out. Before I can recommend any course of action, we need to meet in person so that I can learn about you, your values, what you are trying to accomplish and, maybe most importantly, what you want to avoid. When I am creating a plan for both spouses, it is an absolute requirement that both spouses meet with me.

### **Focus areas in an estate planning engagement**

Here are a few of the many questions I ask the first time we get together to discuss your estate plan. The following is not a complete list - it is a sampling:

- Did you have any prior marriages?
- Have you signed any pre- or post-marriage contracts?
- Do you have an "umbrella" liability insurance policy?
- If any children are under 18, have you decided who would be their guardians?
- Do you have any business interests?
- Do you wish to leave money or assets to charitable or religious causes?
- Are you concerned about providing for your grandchildren's education?

- Do you wish to prevent anyone from receiving a portion of your estate?
- Do you wish to make any provisions in your estate plan for your pets?

The more I understand about your circumstances, the better I can educate you about your choices and guide you so that your family members won't need to make stressful decisions in trying times. You will have the peace of mind of knowing that you have "done right" by your family.