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## **By Kira S. Vincze, Attorney at Law**

Quality, Service and Caring

Estate Planning and Trust Administration

### **What is a Living Trust?**

A living trust is a way of holding title to your assets so they will not have to go through probate (a Court supervised estate administration) upon your death. The trust states what happens to your assets if you are incapacitated during your lifetime, as well as what happens to your assets when you die (as does a Will). You can amend (or change) your living trust while you are living and you keep control of the assets you place in the name of the trust. Further, if you are incapacitated, a Trustee of your choosing will manage and administer those assets for you and manage your care. An additional benefit of having a trust is that the document remains private (it is not recorded or filed with the Court), so the public cannot find out what happens to your assets when you die.

When you set up your living trust, you transfer the title of your assets (stocks, bonds, real estate, etc.) from your name to the name of the trust. You are the trustee and beneficiary. That gives you, and you alone, total and complete control of all your assets. You can buy, sell, trade, or do whatever you wish with your trust assets and you will continue to file an income tax return just as you do now.

When you die, the assets you previously transferred to your living trust will not undergo probate administration. Whoever you name as your successor trustee will gain control of your assets to distribute them according to your instructions, after payment of expenses and death taxes.

The major difference between trust administration and probate administration is that with a living trust, everything is handled privately, without court supervision, which in most cases makes for a faster, much less expensive administration process.

A living trust also allows you to do estate tax planning. Estate taxes (also known as death taxes) range from 37% to 46% of the value of your assets when you die. Your assets include real estate, business interests, money, investment accounts, retirement plans (such as IRAs and 401(k) plans) and, generally, life insurance on your life. If the value of these assets is more than \$2,000,000, there will be a death tax when you die unless you do some death tax planning.

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While leaving your assets to your spouse avoids the estate tax at your death, it compounds the estate tax at his or her death. Therefore, it is not always the best strategy to leave all your assets directly to your spouse in joint tenancy or payable upon death accounts. Instead, there are ways of allowing your spouse to have control over the assets, while still avoiding death taxes on those assets upon his or her death.

Estate planning is not as easy as most people claim. An estate plan needs to be tailored to each family's situation. Before making any decisions on estate planning matters, seek the advice of a qualified estate planning attorney. Your other professionals (for example, your accountant, financial planner and insurance agent) should be included in the process of completing your estate plan so that all of your assets are properly titled and planned for.