

ESTATE PLANNING

AND

ASSET PROTECTION

YOUR GUIDE TO

LIVING TRUSTS

POWER OF
ATTORNEY

TENANCY BY
THE ENTIRETY

TUOHY LAW OFFICES
ATTORNEYS AT LAW

COMMON ESTATE PLANS

WILL

- At one time, the most common estate plan was a *last will and testament*.
- Every *will*, however, must be filed in *probate* to be legally effective.
- *Wills* are subject to the expense and control of *probate*.
- Court matters are made public record.
- A *will* can be contested easily.
- Even a “simple” will can be tied up in the Probate Court for over eighteen months.

POWER OF ATTORNEY

- This is an important document while you are alive, but it is revoked at death and is not an *estate plan*.

JOINT TENANCY

Jointly owned property passes to the surviving joint tenants(s). However, there are many potentially serious problems:

- Marital joint accounts and jointly held property must be probated at the death of the surviving spouse or joint tenants.
- Adding a joint tenant at any time after initial purchase can cause as much as a 40% tax liability.
- You are unable to fully control inheritance. Your heirs may be disinherited.
- Surviving joint tenants have control and your *will* has no effect on jointly held property.
- The civil liability of any joint tenant(s) subjects the jointly held property to possible loss from judgment or attachment proceedings.

LIVING TRUST

- A *living trust* is the most common and effective *estate plan* today.
- This plan gives you complete control of your assets while you are *living* and after your death, and avoids the Probate Court.

PROBATE

Probate is the court procedure that controls your assets if you die or become incapacitated. This legal process, originally designed to protect you, has become costly and time consuming.

PROBLEMS WITH PROBATE

COST

- The average cost of probate is 10-15% of the gross value of your Estate. (*see chart.*) (*estimates based on total costs and potential asset depreciation.*)

TIME

- Currently, there are more than 120,000 pending *probate cases in Cook County* with 11 judges assigned to administer this caseload.
- The average estate takes 18 months to complete. A contested estate could spend years in the *probate* system.

INCONVENIENCE

- All matters controlled by the Probate Court are a public record and no assets are released without a court order.
- Minor's assets are held and controlled by the court until the minor reaches the age of 18.
- Assets held in other states are subject to *probate* proceedings in each state.
- All *estates* over \$100,000 are subject to *probate*.

CONSERVATORSHIP

- Anyone can petition the Probate Court to control assets held in your name.

AVERAGE PROBATE FEES IN THE UNITED STATES

ESTATE VALUE	ESTIMATED PROBATE COST
\$ 100,000	\$ 12,500
150,000	18,000
300,000	36,000
500,000	62,500
750,000	90,000
1,000,000	125,000

THE TRUTH ABOUT LIVING TRUSTS

myth “I will lose control over my assets with a living trust.”

FACT You maintain total control over your assets during your lifetime. You are the trustee. You conduct your financial affairs in the same manner.

myth “Living trusts are too costly and complicated.”

FACT A living trust is not expensive, especially when you consider the cost of *probate* which is required by your will. After an attorney drafts your documents, it is simple to maintain with no yearly fees or costs. You can change a living trust at anytime.

myth “I am not rich enough for a living trust.”

FACT Anyone with assets and insurance benefits totaling more than \$100,000 should have a *living trust*.”

myth “Living trusts are too good to last. They must be a gimmick.”

FACT *Living trusts* have been used reliably and effectively for hundreds of years, even longer than wills. Only recently have living trusts become affordable.

YOUR ESTATE PLAN

You can avoid probate, save on estate taxes, control your assets, avoid conservatorship, and protect minors' inheritances by establishing this important estate plan. Your estate plan contains the following documents:

THE LIVING TRUST

The most popular legal document today, which transfers assets from your name to the name of the *trust*. This document will allow you to completely avoid *probate* and provides complete control of all of your assets.

POWER OF ATTORNEY

This document allows you to appoint an agent to carry on your affairs if you become incapacitated. This person has the power to transfer any asset to your *trust*.

POWER OF ATTORNEY FOR HEALTHCARE

This document is approved by the *State of Illinois* and declares your wishes regarding life support decisions and other medical decisions.

POUR-OVER WILL

This document is designed to transfer, or *pour-over*, any assets left outside your trust at the time of your death so that all assets are distributed according to your *trust*.

TENANCY BY THE ENTIRETY

The deed of your marital home is changed to provide complete homestead protection. *Tenancy by the Entirety* protects the property from foreclosure due to civil judgments against one spouse.

ADVANTAGES OF PRIVATE FAMILY TRUST

- Inexpensive, simple to maintain.
- No attorney follow up required.
- You have control as *trustee*.
- You appoint a back-up trustee who controls the Trust at your disability or death.
- Can be distributed to your beneficiaries within weeks after your death.
- Avoids disadvantages of joint tenancy.
- Assets from other states can be included.
- Minor's assets are protected from *probate* and distributed at the age you choose (e.g. age 21, 25, etc.).
- Protects assets of children from a prior marriage.
- Secures the inheritance of your grandchildren.
- Can provide prenuptial protection.
- No contest clause.

SOLON TSAOUSSIS

Personnel Division, City of Chicago

“Our employees consistently take advantage of this important service from Tuohy Law Offices for over 18 years.”

MIKE CADDIGAN

Office Manager

“Tuohy Law Offices has served our I.B.E.W. Local #134 members for over 15 years.”

Tom Tuohy has received the prestigious A/V rating, the highest honor for legal skill and integrity by Martindale Hubbell, the leading worldwide source of information on the legal profession for over 140 years.

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TUOHY LAW OFFICES

Tuohy Law Offices is located in Chicago. The firm has extensive experience in estate planning and has conducted estate planning seminars for over 28 years. In addition, the firm has experience in injury litigation, real estate and family law.

Mr. Tuohy graduated with honors from DePaul University. While attending DePaul Law School, Tom studied International Law at Cambridge University in England and returned to DePaul to receive his Juris Doctorate. He is a Kellogg School of Northwestern University Executive Scholar and a Stanford University Fellow for Social Innovation.

Upon graduation, Mr. Tuohy served as Special Assistant Attorney General of Illinois, and later opened Tuohy Law Offices.

He is president and founder of the Illinois charitable organization, Dreams for Kids. In 2000, The Illinois Crime Commission selected him as its Citizen of the Year. His professional affiliations have included the Illinois State and Chicago Bar Associations and the American Trial Lawyers Association.

**FOR MORE INFORMATION
PLEASE CONTACT**

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