

## FARALLON LAW GROUP NEWSLETTER (OCTOBER, 2010)

### Living Trusts for Small Business Owners

➤ **What is a “Living Trust?”**

A Living Trust, also known as a “revocable trust,” is a legal instrument that allows you to maintain control over your assets during your lifetime then directs the distribution of these assets after you pass away.

➤ **Avoiding Probate**

The primary advantage of using a Living Trust instead of a will is that placing your assets in a Living Trust allows your estate to avoid probate.

Probate is the court-supervised procedure by which an individual’s assets are distributed to the individual’s heirs and beneficiaries after death.

Probate has several disadvantages:

- First, the administrative fees of probate, which are typically set by statute and based on a percentage of the gross value of estate, can be substantial and reduce the distributed amount of your estate. For example, an estate worth \$200,000 would be subject to fees of \$7,000 and an estate worth \$500,000 would be subject to fees of \$13,000.
- Second, probate administrations can be time-consuming and cumbersome, often taking one to two years (or more) to complete.
- Third, probate administrations are public court proceedings, where details about your assets and beneficiaries are open to the general public.

➤ **Who is a Good Candidate For a Living Trust?**

Under current California law, an estate with an aggregate value greater than \$100,000 is subject to probate proceedings. In calculating aggregate value, certain assets are exempt, including assets held in a Living Trust, life insurance, retirement accounts and any asset held in joint tenancy (unless all joint tenants pass away at or about the same time). Real estate is valued at fair market value without consideration of mortgages or liens.

Thus, any person with real estate in California or a net worth of \$100,000 or greater should consider establishing a Living Trust in order to keep the value of the estate less than \$100,000 and thus avoid probate.

➤ **The Small Business Owner**

The equity interests of small business owners (corporate shares, partnership interests or LLC/membership interests) are difficult to value. The value can also swing significantly in a very short period of time. For this reason, small business owners wishing to avoid the probate of their estate are also good candidates for a Living Trust.

➤ **Funding the Trust**

Once your Living Trust has been established, it is important to fund the trust by changing title of your assets from your name to you as the trustee of your trust. An attorney or title company typically assists with changing title to real estate. Financial institutions have signature cards that may be completed to designate a trust as the account holder. Most small business owners, however, typically hold their equity interests outside of a financial institution account and the assets are transferred therefore via an “assignment,” as well as assuring the business records reflect ownership in the name of the trust.

➤ **Buy-Sell Agreements**

In the case of multiple owners of a small business, a Buy-Sell Agreement is useful for assuring continuity of the business in the event of the death or other separation of one of the owners (see ***Farallon Law Group Newsletter, August 2010***). If you have a Buy-Sell Agreement in place, it is important to assure consistency with the terms of your Living Trust.

*Please feel free to contact Mario Kashou, one of the partners at Farallon Law Group, if you have questions about Living Trusts. Mario may be reached at 415-255-2450 or [mkashou@farallonlaw.com](mailto:mkashou@farallonlaw.com).*