

One Size Does Not Fit All

By: James N. Voeller, Esq.

When doing estate planning, it is important to work with someone who can prepare a plan that meets your unique situation, rather than trying the “one size fits all” approach. What follows is the text of an email that someone sent to us, along with our response.

Dear Mr. Voeller:

I hope you can help my sister and me. Our Dad died a couple of months ago and now we think that all of his estate is going to be given to his wife's children.

A few years ago Dad married a woman who had three children of her own. Those children are all about our age, in their early-mid 40's. Dad had accumulated property and cash so that he was worth about \$700,000.00. When he died, he was still worth about that much. We have never really gotten along with his wife and she recently told us that we would get nothing when she died since she planned to change the trust now that our Dad is gone. She said that she is going to leave it all to her kids and disinherit us!

Here is what happened. A couple of years ago, Dad went to a



seminar with a free dinner and decided to buy a Living Trust. He chose a very inexpensive attorney to prepare it. In fact, he never really met with an attorney. Instead, a representative from some company came to his house. This guy was a real salesman. He took down some information from our Dad as well as a check for \$725.00. The following week Dad received a packet in the mail with all the documents and instructions on how to sign everything. He went ahead and carefully followed the directions.

I read my copy of Dad's trust and found that at the top of the first page a box is checked stating “Joint Trust, Revocable for both Spouses lives.” Does this mean that his new wife can do whatever she wants with the assets and we get nothing? Dad always said that we were supposed to get everything when his wife died.

I always thought that Living Trusts became irrevocable after a spouse dies.

Child with Vanishing Inheritance

Dear Vanishing,

There are literally 100's of different types of Living Trusts. A living trust that is jointly created by a husband and wife can be either revocable (able to be changed) or irrevocable (not capable of being changed) after the first death.

It is rare to see the type of trust that you have described with check boxes on page one to determine the type of trust. It is important to remember that whatever is indicated on page one may be different from the actual language inside the document. I strongly suggest that you have an attorney review the actual document and not just assume that it says what you have described.

Trust Mill Operation

From your description, your father used the services of what is commonly called a “trust mill” operation. Whether an attorney was actually involved in the drafting or review of the document is anyone's guess. The fact that the entire interview was done by a salesman/representative is the first clue that things are not right.

The salesman probably assisted your father in selecting the type of trust that would be prepared. But salesmen from these operations usually have limited knowledge of what the documents will really do. Your Dad may well have selected a trust which was revocable after the first death rather than one that became irrevocable at that point.

Irrevocably Yours

Usually an attorney goes through an extensive list of questions about the family and whether there are children from prior marriages, in addition to finding out about the type of assets owned and the client's net worth. In your Dad's case, a competent estate planning attorney probably would have recommended a trust which would become irrevocable upon his death. At that time, his wife might have been able to receive the income from the trust for her life, and perhaps the ability to use some of the principal, if she needed

it. Upon her death, the remaining assets would have been directed to be distributed to you and your sister.

The proper person to be giving advice with respect to any trust is an attorney who is experienced in this area of the law. That attorney may be more expensive than the “one size fits all” alternative, but this is a very important matter. This is planning for an individual's lifetime savings—something near and dear to most people's hearts.

Please remember that no two sets of circumstances are identical and that the answer to any legal issue may change drastically based on even a slight change in the facts. Also, when you are ready to prepare an estate plan, don't trust a “fill-in-the-blank” form. Many lawyers are willing to sit down and provide a free initial consultation to explain what your options are and to suggest a plan that will fit your particular situation.

Respectfully,

Jim Voeller