

SHARON D. RAVENSCROFT

Attorney at Law

THE CAVANAGH LAW FIRM, P.A.

Do I Really Need A Trust to Avoid Probate?



Sharon Ravenscroft

Attorney at Law

THE CAVANAGH LAW FIRM, P.A.

13250 N. Del Webb Blvd.
Suite B
Sun City, AZ 85351
Phone: 623-815-7451

1850 N. Central Ave.
Suite 2400
Phoenix, Arizona 85004
Phone: 602-322-4136

Many people feel they do not need a Revocable Living Trust because they feel their assets are not large enough to warrant one. Actually, the decision to have a trust depends less on the value of assets. Instead, the decision to have a trust depends on (a) whether any assets are going to be left to a minor or an adult who will need governmental benefits, like disability benefits from social security; (b) whether one wants to avoid the probate court system; and (c) what type of assets one has.

If a minor child is ever going to be a recipient or beneficiary of assets, then a trust is always necessary. The assets for a minor need to be governed by a trustee so that your intentions can be properly carried out. If a minor receives more than \$10,000 in a year, then the court has to be involved in a conservatorship. Those funds are then held only until the child is 18 years old and can only be invested in no load mutual funds or insured CDs or savings accounts.

Trusts are necessary if you want to leave money to an adult who depends on governmental benefits. The governmental benefits will end if they are depending on need and if the inheritance is not in a special needs trust.

When assets are being left to adults who do not depend on government benefits, the probate court system can be avoided for most types of

assets even without a trust. For example, for real property held in Arizona, a beneficiary deed can be recorded. The beneficiary deed is effective only upon the death of the owner. The beneficiary needs only to record a death certificate and then title is transferred.

With a beneficiary deed, the owner never loses control of the property while alive as would occur if the property was titled in joint tenancy with right of survivorship. With a beneficiary deed, the owner can sell the property at any time. With joint tenancy, the other person listed as owner must approve of the sale.

No probate is needed for qualified retirement accounts, if the designated beneficiary forms list specific recipients. For bank or investment accounts, financial institutions normally have "pay on death" or "transfer on death" designation forms where you can list recipients. Like the beneficiary deeds and designated beneficiary forms, the listed recipients will receive the funds upon presentation of the owner's death certificate and no probate is needed. Again, a contingent "pay on death" designee can be the trust.

Care should be taken when using designation forms because the designated recipients still need to work together to pay any existing debts. If it seems that the recipients will have trouble working together, then a trust works better.

Sharon Ravenscroft, Esq., a shareholder of The Cavanagh Law Firm, PA, with offices in Phoenix and Sun City, can be reached at (623) 815-7451 or Sravenscroft@CavanaghLaw.com. For more information, visit her website, www.sharonravenscroft.com.