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PART 2 – LIVING TRUSTS **Estate Planning, Probate, And Living Trust** By Victor Sy, CPA, MBA

Estate planning is being able to give or leave what you want, to whom you want, when you want to - with as little time and expense as possible. This can be accomplished by setting a revocable trust.

A revocable living trust allows you to establish a simple trust to pass on your assets to your heirs. **You, not the court, decide who gets what.** You are the boss. You are the trustees of your own trust, so there is no need for costly attorneys or accountants and no administration costs. As trustees, you have all of the rights and powers to control your assets the same as you did individually, but now it can be passed to your heirs free of probate and may also save you thousands of dollars in estate taxes.

Each individual has a personal estate tax exemption of \$2 million from 2006 to 2008, \$3.5 million in 2009, **\$5 million in 2011, and \$5,120 in 2012** (there was no estate tax for decedents who died in 2010). This means that for 2011, if an estate is less than \$5 million, there is no estate tax. However, if the estate exceeds the exclusion amounts at the time of death, estate tax rates rise to a maximum of **35% for 2011 and 2012**. Estate taxes have to be paid in cash to the IRS nine months after death.

By the use of what is called an ABC revocable living trust, we can also preserve the personal exemption for both spouses, if the trust is created while both spouses are still living. By also including a Qualified Terminable Interest in Property Trust (**QTIP**) within the ABC revocable living trust, we can reduce taxes on the amount of the estate in excess of \$7 million. By using the **Unlimited Marital Deduction**, the trust can avoid estate taxes becoming due nine months after the death of the first spouse, instead delaying the estate taxes until nine months after the death of the second spouse.

For US citizens, the unlimited marital deduction is available, which allows a spouse to leave everything to their surviving spouse without paying estate taxes. However, if the surviving spouse is not a US citizen, they cannot have the unlimited marital deduction unless they have previously established a Qualified Domestic Trust (QDOT). This trust can be included in the family revocable living trust, and does not have to be a separate trust document.

The use of a living trust to avoid probate and save estate taxes is the minimum that should be done by everyone. Individuals with estates over the threshold amounts should also consider further estate tax savings with the use of a Qualified Personal Residence Trust, an Irrevocable Children's or Insurance Trust, and a Family Limited Partnership.