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The Key To Effective Estate Planning

Michael Senoff Interviews US Estate Planning Expert

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And along the way, I've created a successful home-based publishing business all from my two-car garage.

When my first child was born, he was very sick, and it was then that I knew I had to have a business that I could operate from home.

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Michael Senoff

Michael Senoff

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The Key To Effective Estate Planning

Most people don't like thinking about death. But without effective estate planning, your loved ones could be left guessing how to pay for expenses or how to divide your assets after you die.

Effective estate planning not only takes care of all that. It can also make sure you receive the long-term care you wanted if you become incapable of expressing those wishes later in life.

So in this audio, you'll hear how to get your affairs in order – and save money doing it.

What You'll Get From This Audio

- Examples of estate-planning nightmares and ways to avoid them
- How to find the right tools and attorney for the job – and how to make sure you don't get hooked up with an amateur
- What the difference is between a will and a living trust and which is better for settling affairs
- Why you'll want to "properly fund your living trust", what that means and how to do it
- What a bypass trust is and how people are using it to reduce estate taxes
- How to save hundreds of thousands in unnecessary taxes just by changing the way you hold your titles

According to JD, effective estate planning is not a do-it-yourself project, especially if you want to be sure the money will be there to take care of your husband or wife, whoever outlives the other, after your death. This 35-minute audio gives what you need to know to make informed choices about your future. If you like what you hear and would like a no cost consultation about your personal or business financial situation, call toll free in the US only 1-866-505-7272 Enjoy.

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Michael: All right. So, JD, today we're going to talk about effective estate planning. Give me a little summary of what we're going to be learning and what is important about effective estate planning. What is estate planning, for someone who may not even know?

JD: There's estate planning and there's effective estate planning and I choose to call things effective estate planning.

What that does is it protects what you want to have happen in the future.

It protects what you want to pass on to children or grandchildren, if that's what you want to do.

It also allows you to protect what you want to pass on to a charity or a cause or a church in the form of a financial legacy.

In order to make all this happen, I refer all my clients to qualified attorneys who specialize in trust and estate work. I do this to help my clients protect what they want to have happen.

This is why I call it "effective" estate planning.

I think when we get finished with this conversation today, the listeners will be able to appreciate the difference between estate planning, no planning and effective estate planning.

Let me give you some examples of why I refer my clients to these specialists.

Suppose you die. Very soon after your death, your surviving spouse is living his/her life as both of you wish he/she could in the event you died first. He/she is living without money worries just exactly the way you wanted. All the legal and technical things that must be done because of your death have been taken care of. All this was done with few, if any, problems at all. That's effective estate planning.

Let's suppose you died but you didn't have a surviving spouse. This could be that you were never married, never in a committed relationship, or your spouse has already died. In the event that you have children or grandchildren, they're now living the lives that you and your spouse hoped for after you both are gone. All the legal and technical things that had to be done because of your death are all taken care of. These things are taken care of with few, if any, problems.

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That's an example of effective estate planning.

Let me take it one step further. This is in the event of a death.

Let's suppose you became incapable of taking care of your personal affairs and, with the aging of the baby boomers and those who will follow, right now that's a very real concern for lots of reasons. If for no other reason, because when someone moves into their 80's, they have a one in two chance of suffering from Alzheimer. So, that's the kind of thing where you have to have somebody stepping in and helping with their personal affairs. In that case, they also need long term care.

Let's assume that you're being cared for in your home as you've always wanted to be. Again, all legal and technical things are being taken care of and they're being done with few, if any, problems at all.

So these are just a few of those examples of what you can do with effective estate planning.

Michael: Most people probably believe that estate planning is just in the case of a death.

JD: And that's why I keep emphasizing effective estate planning and emphasizing it's both for while you're alive and after you die. So that's a very good point, Michael.

Now, let's just go a little bit further. Perhaps you've observed how much easier it is for loved ones to handle death or incapacity when people don't have to worry about all the details. Effective estate planning allows that to happen.

If you've ever known someone who's gone through the death of a loved one and their affairs weren't in order; if you've ever known someone who's had to care for a loved one with either long term care and their affairs weren't in order, you've seen the consequences of no planning or planning that was ineffective. This is planning that's done by amateurs.

My clients understand that, when they die, when they become incapable of taking care of their personal affairs, their family is going to be under an awful lot of emotional stress. The family members don't need to deal with the stress of fixing legal documents that don't work the way they should at the time that they need to use them.

When estate planning is effective, your family doesn't have to stress about how to pay for things. You've already made sure that there's no money stress.

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This is one of the areas that you should not let amateurs help you with. It's far too important to you and to those you care about. This is not a place for do-it-yourselfers unless you are a competent and qualified trust or estate planning attorney. There's a saying in the legal community: the attorney that represents him/herself has a fool for a client. I would even recommend that, if I had a client who was a competent or qualified estate and trust planning attorney, that they hire another competent one to take care of it because they're probably too close to the matter.

Most attorneys can fill in the documents and there are even computer programs and books that show you how to fill the forms out for yourself. But only these qualified professionals understand what the documents make happen when they fill them in. So without that understanding, without this experience, what the documents will do is what you really want to have happen. The odds are very much against them doing what you want done without the help of a qualified and competent trust or estate planning attorney.

Without the assistance of a qualified or these qualified professionals, what happens when you become disabled or you die may not be what you want to have happen.

Now, while it's possible to sometimes fix those documents at that time, it's very expensive. It's probably going to be many times what it would have cost to do it right in the first place.

But, besides that, I can't tell you the emotional pain and stress that I've seen families go through to fix things when they could be fixed. Plus the pain was even greater when they couldn't fix those things.

I've seen people pay substantial legal costs to change what legal documents did because it wasn't what the surviving spouse wanted. You probably can't imagine the stress and unhappiness that the surviving spouse endured in that situation. I'll tell you, it was bad. She told me, in this particular situation, she was so upset that, if her husband was still alive, she would seriously have considered killing him.

I've seen unnecessary delays in settling the affairs of an estate because probate courts were back-logged.

Parenthetically, in California, the court with legal jurisdiction over settling is called probate court. Probate court steps in when a decedent has a will. And the probate courts step in when there's no will or any other legal document. The most common other legal document in California would be a living trust. So the probate court will step

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in in both of those situations. That's how the affairs of a decedent are handled in California.

Michael: So you've heard a lot of bad stories about this?

JD: I've heard stories about people going to court and suing because they didn't get what they wanted from the decedent.

And perhaps you've heard of elderly people being taken advantage of by those who were supposed to look after them and their affairs when they were no longer capable of taking care of themselves.

You may have also heard of elderly people being put into nursing homes because the cost of the nursing home care was less than the cost of care at home. Even though it was clear that the elderly person wanted to stay at home. And even though the elderly person had enough money to pay for the cost of the care at home. In those cases, it was often because the heirs wanted to keep the expenses down because they knew that if they spent more on care, their inheritance would be smaller.

Michael: You can plan this, even though it's in writing. If you plan this properly, it would have to go that way.

JD: That's right.

You may have also heard of elderly people being put into nursing homes because the benefit amount that they receive from their long term care insurance was enough to pay for nursing home care but not enough to pay for the care at home. Even though it was clear, again, that the elderly person wanted to stay at home, wanted to be cared for at home, and there was enough money to pay for the cost of care at home. In these cases, it's because heirs were focusing more on the size of their inheritance rather than what you would want in that case if you were that elderly person.

Sometimes there's planning. Sometimes there was no planning. But if things like this happen to you, it's because you did no effective estate planning.

Now paying for this competent and qualified planning is not cheap. But not paying for it is often very much more expensive.

Think about the price that you can put on your peace of mind, knowing that, if you receive long term care in your home, if you need long term care, that it will be done there and not in some impersonal care facility. That's effective estate planning.

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Effective estate planning could also save hundreds or thousands of dollars of unintended taxes.

And you can leave that to the people you care about, your children, and your grandchildren.

But that happens because your Will and Trust were effectively drawn because you did effective estate planning. Your properly drafted Will and Trust and other complimentary documents will make sure that, what you want to have happen will happen.

I explain to my clients that paying for one of these highly qualified professionals is like paying for insurance.

Now, if you'll recall what I told you when we talked about insurance is, I remind my clients that you can plan to pay for the amount that it costs for the premium. But you can't plan for the amount of the claim that's not covered by insurance.

Similarly, you can plan to pay the money that's required to pay these competent and qualified estate planning people. You can't plan for what you'd lose, for what your beneficiaries would not get, if the documents are not properly drafted.

You're in control throughout this whole process. You're the one that's in control. It's up to you to make sure that you do what you want to do to protect what you want to have happen.

Michael: So let's get into some of the details. What is involved in, as you say, "effective" estate planning?

JD: Effective estate planning, you do it in a way similar to everything else that I recommend in your financial planning.

You begin with the end in mind. In other words, decide what you want. Decide when you want it.

You find the trust or estate planning attorney you want to work with.

Find the tools that will ensure that what you want to happen will happen when you want it to happen.

And then you select the persons you believe will take on the necessary responsibilities in the event that you become incapable, or at your death.

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Michael: What are some challenges you learned from your experiences in handling effective estate planning?

JD: There are some things I think everybody has noticed if they've experienced any kind of death or disability. First of all, if you become incapable of taking care of your personal affairs while you're alive, it's not easy on you. And it's not easy on those who will care for you.

At the time of your death itself is not easy on those who must settle your affairs. And I'll point out the obvious. It wasn't easy on you because you're no longer around. You had to die to make this situation happen.

In both cases there are also emotional issues which you and those who care for you are dealing with, not to mention the technical issues that need to be dealt with.

There are things that you wish to happen. Effective estate planning is what you do when you want to choose to have the things well arranged so that those things will happen.

The people that you care about hope that you choose to have those things well arranged because they're going to have a hard enough time dealing with just the emotional part of it.

You can choose to have effective legal documents in place so that things happen as you want them to with relatively little stress.

Or you can choose to do nothing and let state law, your state law, take over. Every state has laws that take care of your affairs if you're incapable or if you die.

You choose.

Either have the documents in place or let your state take care of those things.

Michael: So, JD, what do you want to happen if something happens to you?

JD: Well, that's a question that I ask my clients.

And that's a question that they need to answer because you're beginning with the end in mind.

Obviously, what somebody wants at their death or at the time that they're incapable, they need to have their personal affairs taken care of. In either case, there are things

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that you particularly want to have happen and what you do is, you name the person who will take care of those things.

In California law, that's called naming the Successor Trustee with a Living Trust. If you have a Will, you're naming your Executor.

I don't recommend Wills. You'll see why as we go further along.

A Living Trust is far better for anybody. At your death, what happens is that there are things that need to be done. Expenses get paid. There are people that you want to have taken care of. Those people could be your surviving spouse, minor children, a special needs child, your parents perhaps.

There are the other special people in your life that you want taken care of.

There could also be a charity that you want to make a bequest to.

But you might want specific things to go to certain people. For example, that painting over your fireplace, your favorite daughter has always wanted it. You can put that in your document to make sure that happens. And you want certain people to step in and take care of things. Those are the people that you choose to be your Successor Trustees or your Executors in the case of the Will.

Michael: How do you arrange it so that these things happen, your wishes are acted upon, at the time of your death?

JD: There are a number of legal instruments that could make all of this happen. I'll give you some examples. You can see how you might benefit from using them.

I put my caveat here, though. My explanations are intended to be informational only. My comments will be colored by my past experience with documents that are drafted under California law. My comments are not intended to be legal advice. I'm not an attorney in California or any other state.

A reminder, this is not an area for amateurs. I strongly recommend you seek the advice and the assistance of a qualified estate or trust attorney in your state.

If you choose not to seek such advice and assistance, the consequences, financial and otherwise, could be substantial.

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Suppose you wanted it to be relatively easy to settle your affairs at your death. In California, your Living Trust is probably the best tool that you could have in place to settle your affairs.

If you don't have a Living Trust you could have a Will or you could have neither.

If you want it done right, you're going to have a Living Trust.

Your Will names who you want to be your personal representative, your Executor, at your death, and describes how you want your estate distributed and to whom. Your estate is settled and distributed using the probate process in California.

There's a similar probate process to settle your estate if you die without a Will and without a Living Trust.

Your Living Trust also names who you want to be your personal representative at your death and describes how you want your estate distributed and to whom.

But, as an additional bonus, it names who you want to be your personal representative if you become incapable of taking care of your personal affairs while you're still alive. These persons that you name are called Successor Trustees.

As an incidental benefit, your Living Trust saves probate fees and that could be very expensive if you have a large estate.

Your Successor Trustee doesn't have to go to court to settle your affairs. If you did not have a Living Trust, your estate has to be settled using the probate process.

Michael: Are any probate courts backed up these days?

JD: Interesting you bring that up. I was going to point that out a little bit further but, yes.

It's not always the case. It depends, because all the probate courts are located in different counties.

Some counties can move fairly rapidly. But I'm working with a client right now, the estate took them six months just to get in, get the will opened for probate, which complicates things even more because, without getting the probate started, none of the bills can be paid unless somebody takes it out of their pocket.

The estate, the Executor, has no authority until the probate process is opened.

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That's a problem you don't have with a Living Trust because your Successor Trustee immediately steps in. The attorney drafts a document in California called the Certification of Trust and that Successor Trustee can take that around to wherever you have money and it's something that allows them to just step in and take over for the decedent.

Or, if you're incapable, it performs the same function.

Just because you set up a Living Trust doesn't mean you lose control of your money or your assets. Generally what happens, again in California, is, if you're married, you and your spouse are named as the Trustees of the Living Trust. It's sometimes referred to as an alter ego. Just a different way of holding title to your assets.

But then you name your Successor Trustee, who will step in, but only if you're incapable of taking over or handling your personal affairs.

A Living Trust can also create a trust to do special things after you're death. A Will can do the same thing.

For example, if you're married at your death, your Living Trust could create and form a Bypass Trust.

A Bypass Trust is an estate planning tool that could save your beneficiaries hundreds of thousands of dollars of unnecessary taxes at the death of your surviving spouse. Taxes that don't have to be paid means that there's more money to go to the people you care about, your children, your grandchildren.

A Bypass Trust is also a tool that lets you pass some of your property to others at the death of your spouse if he/she survives you. Sometimes it's used when there are children from a prior marriage. It's a tool that can pass your property on to those children while still taking care of your surviving spouse because he/she gets to benefit from and spend the income during her lifetime from that property.

Michael: How is this Bypass Trust different than a regular trust?

JD: This is a very important thing. Your Living Trust only takes care of the things that you have in the name of the Trust. That means that you properly funded your Living Trust.

Michael: So what does the Bypass Trust do?

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JD: The Bypass Trust is something that only comes into existence at your death.

That's a separate trust that's set up where you funnel a portion of the family assets. This only works when you have a married couple. So, if you're the one that died, your portion of the assets goes into this Bypass Trust. The way it works is that the income is distributed to your surviving spouse and, at the death of the surviving spouse, the assets that are in that Bypass Trust go to whoever you named as the beneficiaries of that Bypass Trust.

Your surviving spouse's assets will go wherever (wives in this case, Michael), wherever our wives choose to have them go.

The beneficiaries of this Bypass Trust could be the same or they could be somebody totally different.

There might be this burning desire to fund some sort of a legacy, Michael, and there are no kids by a prior marriage, but you want this money to go to that legacy and that's always been a point of contention between you and your wife but you say, "Dammit, at my death, it's going to happen!"

Most often, though, it's just a matter to reduce a potential estate tax because, if all of the property can pass to your surviving spouse, that's what you want. But there's a much larger estate at the second death which could be subject to an estate tax.

Michael: Let me ask you this. Let's say my house is in a Living Trust. So the property is under a Trust and the Living Trust would take care of passing the house on without problems in probate. But what if there were other assets like bank accounts that were in my name or my wife's name but not in the Trust name. Does the Living Trust protect any of those assets?

JD: It won't.

When you hold title to assets other than in the name of your Living Trust, you should be doing it for specific reasons.

Generally, there is no good reason to do that because all you're doing is complicating things in two situations: if you become incapable of taking care of your affairs and at your death.

If you become incapable of taking care of your affairs, and we'll assume that, just for the sake of an example, Michael, you've already died, your wife is your surviving

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spouse, if those assets are not in the Living Trust, then your Successor Trustee, the person that you've hand picked to take care of your spouse, to look after her affairs, to see to it that she's going to be cared for in her home for the rest of her life and without any kind of worries, that person has no money because you had it in her personal name.

So what happens is, there is a creature that your state has created called a Conservatorship. But the Conservator is somebody that's court named. And it does not have to be the person that you would have chosen. There are professional Conservators out there that actually find out that people need them and they go out and file in court to be named Conservator.

So there could be a conflict there between the person you wanted to take care of everything and the person that actually has control of the money.

It's most common in California, and probably in many other states, for a married couple to hold titles to their bank accounts as Joint Tenants. Again, that defeats the purpose of a Living Trust because, at the death of the Joint Tenant, the property passes to the surviving Joint Tenant.

There are all sorts of issues in title. There are also consequences. So they need to be sure.

Michael: It doesn't mean I have access to the money.

JD: No. Actually, it's probably one of the simplest things, because you can just go in to the bank, show a certified death certificate and they will remove your wife's name and you now have control over the money. But if what you wanted to do is put a portion of that money into a Bypass Trust to pass on to somebody else, or to reduce the estate tax, you can't do that. Because the Will has no control over that and the Living Trust has no control over that. Because it passes to the surviving spouse because of the title. So there's lots of complications.

These are just illustrations of why it's not something that should be done by amateurs.

Michael: Give me some ideas of how I make sure that I don't get hooked up with an amateur. I know there's lots of people who claim to be estate attorneys. How would you recommend I find an expert who really knows what they're doing?

JD: Well, Michael, I've been doing a lot of thinking about that and actually I'm going to do some homework and when we do some later phone conversations, I'll have an answer to that particular question.

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The way I work is, there are certain specific estate planning attorneys that I know are competent and qualified. I give my clients their contact information. I recommend they choose one of the three of them in my geographic area. And so I give them those names and contact information and say go and interview them. If you're comfortable with them, that's fine. That's the person you should choose.

I don't recommend you go and interview all three of them because they're located differently and they're all equally competent. What you need to know is, I'm comfortable with this person right there knowing that, at the first death or in the event of incapacity, that's the person you'd have to go to and get their help in making things work the way you want.

So, first of all, it's somebody you can work with to get the documents properly drafted. And the second one is that you know, when you need help, at the moment of stress, that's the person that you're comfortable working with.

I name specific ones because there's got to be a mechanism.

Michael: What does it mean to properly fund your Living Trust?

JD: Properly funding your Living Trust means that you change the title on everything you own so that it's in the name of the Living Trust.

An example of what that title might look like would be "John and Mary Doe, Trustees, The Doe Family Trust". And then it's usually U/D (Under Document is what it's an abbreviation for) and then there's a date. It will be the date of the document, like January 10, 2007.

So the competent trust attorney, at the point in time that you sign all your trust documents, will have you sign other document to change titles.

For example, your home. Your home could be "John and Mary Doe as Joint Tenants", in California it could be "John and Mary Doe, Community Property with Survivorship Benefits". If you're not married, it could be "John Doe, as a single man". It could be something that you inherited. It could be "John Doe, a married man, as his separate property".

There are lots of different ways of holding title.

What you want to do is, if it's anything other than "John and Mary Doe, Trustees, The Doe Family Trust", you need to have it changed.

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A competent attorney will see to it that the documents that need to be drafted will be drafted and filed, like the deed on your home. That title will be changed.

And then you have to check with all the other accounts that you have. You go in and you'll change title on that. So, for example, your checking account could be "John and Mary Doe" and it's actually Joint Tenancy account if you read the fine print on the signature card that you signed.

What you do is you go in and say I want to change title to this account to "John and Mary Doe, Trustees, The Doe Family Trust, U/D, January 10, 2007". When you walk in there, that attorney will have given you a document, a letter that says this is how you want the title to read.

All it does is change the title. You have just as much access. There are no restrictions on the access. All you've done is made it possible for your Successor Trustee to step in and take over in the event that that Successor Trustee needs to step in.

You can still do all the things that you've always done with these accounts. You can write checks on the checking accounts. You can make withdrawals from your savings account. You can cash in your Certificates of Deposit. You can buy and sell investments in the brokerage account. You can mortgage your home. You can sell your home. You can give property to someone else while you're alive or at your death.

You can do all these things. Your Successor Trustee can also do that.

Michael: So you're recommending all the assets should be under title if you're married, or joint title under the Trust.

JD: What will happen if your married is the title will read "John and Mary Doe, Trustees of the Doe Family Trust". So there will no longer be any kind of joint title.

What happens with the property is what you put into the document. So, for example, when my wife and I got married, she already had a house. Our documents clearly say that the house belongs to her. In the event of her death, I get to continue to use it. But at my death, it goes to her two daughters. That's her property. It's going to be directed a specific way.

More commonly, though, people get married and then they buy something together. In California, that's community property. They probably took title as Joint Tenants when it should have been Community Property.

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When you have your Living Trust set up and it's properly funded, it no longer will read Community Property or Joint Tenancy. It will read "John and Mary Doe, Trustees of the Doe Family Trust" or whatever the name of your trust happens to be.

Michael: Can the way you have your property titled have any kind of unexpected income tax situations?

JD: It certainly can.

Let me give you an example. Suppose you gave property at your death to your daughter using joint tenancy. This was not a Living Trust. It wasn't a Will. Your daughter was your Joint Tenant. You put her on title as a Joint Tenant prior to your death.

You've held the property for years and it's increased in value substantially. If you had sold the property prior to your death, you would have paid \$100,000 in long term capital gains. So that's our fact situation.

Shortly after your death, your daughter, your surviving tenant, sells the property. Because it's now hers, she would pay \$100,000 in long term capital gain tax because the property came to her and she sold it.

Suppose instead, you change one thing about the situation I just gave you. All you change is title of your property and you put it in the name of your Living Trust. Your Living Trust says your daughter is going to inherit that particular property.

Again, shortly after your death, she sells it. So the only thing I did was change how the title was registered before you died. How much long term capital gain tax do you think that she'd have to pay when she sells that property, Michael?

Michael: I don't know.

JD: How about zero! Nada.

How you hold title, how you pass it on to those you care about, can save or cost those people that you care about potentially hundreds of thousands of dollars in unnecessary taxes.

Michael: Are there other benefits?

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JD: Michael, let's suppose that you want to live in your home until you die, even if you need long term care. These are probably the most important benefits to you of your Living Trust because you can put that request in your Living Trust.

This is not an option if you don't have a Living Trust. You have no options without the Living Trust. With a Living Trust, your Successor Trustee is instructed to take steps necessary so that you can continue to live in your home in the event that you become incapable and receive your long term care there. However, you still have a responsibility to make sure that there's money there to pay for those expenses. But your Successor Trustee is charged with seeing to doing the things that are necessary to make sure that you can continue to live and be cared for in your home in the event that you need long term care.

You can do that with a Living Trust. You can't do it without a Living Trust.

Michael: JD, how confidential are my affairs with a Living Trust? Is all this public record where anyone can find out?

JD: That's a great question. And that's probably another benefit to a Living Trust is that nobody can learn about your personal affairs if everything is titled in the form of a Living Trust.

If you hold property as separate property or as community property, the only way that things can be handled is either through the probate process or through what's called a Conservatorship. A Conservatorship comes into existence if you're still alive but are incapable of taking care of your personal affairs and you haven't set up a Living Trust to take care of those things.

The Living Trust is a private process.

Probating your estate and also a Conservatorship is a very public process.

What that means to you is that if you have properly set up your own Living Trust, you've put all your assets in the title of the Living Trust, when your Successor Trustee steps in there, he/she is responsible only to your beneficiaries as to how things are taken care of. It is very private.

If you don't do that, if you have a Will or no Will at your death, everybody can find out what your personal financial situation looks like.

If you're still alive, but you need somebody to take care of your financial affairs, that's a Conservatorship. That's a very public process. Anybody can have access to what your financial affairs are, what your financial situation is.

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Michael: Is it all public record in the probate?

JD: All public record.

Michael: That's an important advantage, the privacy, for sure.

JD: When I explain that to people, that's probably one of the major driving forces for them to have a Living Trust as opposed to having a Will, because it allows them to retain the privacy that so many of us really value.

There are benefits to you for a Living Trust compared to your Will.

Your Will provides absolutely no benefits during your life, other than peace of mind that you have assured legally that your property will go to those you wish at your death. So that's the only benefit you get.

While you're living, your Living Trust allows your heirs to avoid the inconvenience and the cost of probate and, at the same time, it allows your Successor Trustee to step in if you're still alive. So there's two benefits there.

Both a Will and a Living Trust assure that your property passes on the way that you want it to.

Again, just to review, the Will is a very public process. Everybody on God's green earth can find out what your financial situation looks like and who got your property.

With a Living Trust, there's absolutely no way that anybody can find out that information with the exception that if something has to be recorded like a deed, property transfer, they can always find that out no matter what.

So your Will must be probated. There's a cost and there is definitely an inconvenience as we talked about before. In some counties in the state of California and possibly in other states, it takes time to get your Will admitted to the probate court to start the process.

One case I'm working on right now, it took them six months to get the Will probated. That meant that they could do absolutely nothing with the property before that because the Executor had no authority at all.

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So with a Living Trust, there is no risk of that. Your Successor Trustee steps in and can immediately take over the responsibility of taking care of your home and anything else that you have.

Michael: Well, I'm sold on it and I've been sold on it. That's why we have a Trust. But I'm sure there are some things I can do to improve or maybe update it as well.

JD: Something else you want to be sure title to your property, all of your property, is in the name of your Living Trust. And that even includes cars.

If you had stock in General Electric, you had held that in a brokerage account that was in your name and your wife's name as Community Property, once you set up this Living Trust, you change the title on that account to "John and Mary Doe, Trustees of the Doe Family Trust".

Michael: Now, who would I go to to get the name of the stock changed?

JD: I would go to your corporate attorney.

Michael: What about my bank account for my corporation?

JD: That's corporate assets.

Michael: Okay, so leave that, but your stock needs to be.

JD: That's right. Everything flows through the title of the stock.

The corporation owns what it owns so the corporation owns the bank account.

This is probably a good time to point out there's one thing that you never want to do without real consideration and advice of your counsel. You don't want to make your retirement account beneficiaries or your IRA beneficiaries, you don't want to make them your Living Trust because that can have adverse income tax consequences. You want to name particular individuals as your beneficiaries for your IRAs and your retirement account. You also want to name contingent beneficiaries in the event that that beneficiary doesn't outlive you.

Michael: All right. Good advice.

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