
living trust issue

Posted by Miami LS - 2008/03/03 15:31

Trust reads that it is a joint trust but at the death of one spouse, half the property is to be put into a credit shelter trust. Estate is very small and no need to shelter assets. No language in the trust to terminate early. So looks like we need to reform. Suggestions?

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Re:living trust issue

Posted by steve - 2008/03/04 00:29

Does the trust have a trust protector? Does the trust control all of the decedent's property?

Reforming the trust to allow outright distributions may be a good idea if it becomes uneconomical, inefficient or necessary to hold assets in the credit shelter trust. Reformation of the trust may or may not be allowed by the court. It depends on the controlling law and the governing instrument.

Its likely that we will see this issue arise more often as there are many A - B type estate plans out there and many estates have lost considerable value as real estate and financial markets have continued to recessess lately, thus, potentially forcing an overfunding of the credit shelter trust. So, many trusts without certain operative language, may require probate court reformation.

Good Luck.

Post edited by: steve, at: 2008/03/04 00:34

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