

# **PREPARING YOUR OWN LIVING TRUST**

**A Seminar Presented by Charles Johnson**

**May 2008**

## **What is a Trust?**

A Trust is an entity which owns assets for the benefit of a third person (beneficiary). A Living Trust is an effective way to provide lifetime and after-death property management and estate planning. When you set up a Living Trust, you are the Grantor; anyone you name within the Trust who will benefit from the assets in the Trust is a Beneficiary. In addition to being the Grantor, you can also serve as your own Trustee (Original Trustee). As the Original Trustee, you can transfer legal ownership of your property to the Trust. This can save your estate from estate taxes when you die. Just remember that it does not alleviate your current income tax obligations.

## **What is an Irrevocable Trust?**

A trust created during the maker's lifetime that does not allow the maker to change it.

## **What is a Revocable Trust?**

A trust that can be amended and revoked, usually by the person who established the trust. This trust may become irrevocable and unamendable when the only person who can amend or revoke the trust dies or becomes incompetent.

## **What is a Living Trust?**

A living trust is a trust established during a person's lifetime in which a person's assets and property are placed within the trust, usually for the purpose of estate planning. The trust then owns and manages the property held by the trust through a trustee for the benefit of named beneficiary, usually the creator of the trust (Settlor). The settlor, trustee and beneficiary may all be the same person. In this way, a person may set up a trust with his or her own assets and maintain complete control and management of the assets by acting as his or her own trustee. Upon the death of the person who created the trust, the property of the trust does not go through probate proceedings, but rather passes according to provisions of the trust as set up by the creator of the trust.

### **What is a Testamentary Trust?**

A testamentary trust is a trust established in a person's will and does not become effective until the will is probated. Hence, it does not avoid probate. One of its purposes is to provide for minor or handicapped children.

### **Does a Living Trust avoid probate?**

In addition to all of the advantages of a testamentary trust and a will, a living trust does not have to go through probate. There are other estate planning devices which avoid probate, such as a joint tenancy, a life insurance policy, and others.

### **Can a Living Trust be Contested?**

Yes. Like a will a trust can be contested in a special proceeding. There is no blanket rule that a living trust cannot be contested.

## **Nevada Law**

**NRS 163.002 Creation: Methods.** Except as otherwise provided by specific statute, a trust may be created by any of the following methods:

*1. A declaration by the owner of property that he holds the property as trustee.*

2. A transfer of property by the owner during his lifetime to another person as trustee.

3. A testamentary transfer of property by the owner to another person as trustee.

4. An exercise of a power of appointment to another person as trustee.

5. An enforceable promise to create a trust.

(Added to NRS by 1991, 1704)

## **Living Trust...Nevada Form**

<http://subscriptions.uslegalforms.com/gale/form.php?cn=NV-E0178>

**[You will need your library card and PIN to access this form]**

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**DECLARATION OF TRUST**

**ARTICLE 1: BASIC FACTS AND PROVISIONS**

The following are the basic facts and provisions relating to this trust. Any reference to these items in this instrument shall be deemed to incorporate the specific facts or provisions shown below:

**1.1 NAME OF TRUST**

**DOE 2008 TRUST**

**1.2 DATE ESTABLISHED**

**MAY 14, 2008**

**1.3 TRUSTORS**

**JOHN DOE and JANE DOE**

**1.4 TRUSTOR' CHILDREN**

**ROBERT DOE**

**1.5 INITIAL TRUSTEES**

**JOHN DOE and JANE DOE**

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**1.6 SUCCESSOR TRUSTEE[S]**

**MARY WHITE** shall be the first successor trustee. If she shall for any reason fail or cease to act, **RICHARD WHITE** shall be substituted in her place.

**1.7 SITUS OF TRUST**

Clark County, Nevada

ARTICLE I  
NAME OF TRUST

**1. NAME OF TRUST:** This trust may be referred to as THE DOE 2008 TRUST.

ARTICLE II  
**IDENTIFICATION**

**2. TRUSTOR AND BENEFICIARIES:** The Trustors or Settlers of this trust are John Doe and Jane Doe, Husband and Wife, residing at 12 Main Street, Madison, Nevada 12345. As used herein, the term “Trustor” shall mean all trustors of this trust, whether one or more. The Trustors are married and parents of the following living children:

Robert Doe

The Beneficiaries of the Trust during the lifetime of the Trustors are the Trustors. Except as otherwise provided herein, upon the death of the Trustor, the Beneficiaries are the Children of the Trustor. This document is a living trust as authorized by the provisions of NRS 163.002.

ARTICLE III  
TRUSTEE APPOINTMENT

**3. TRUSTEE APPOINTMENTS:** The Trustors, hereby appoint themselves as Trustees of this Trust. If either of them is unable to serve as Trustee for any reason, the remaining Trustor shall serve as trustee. If both Trustors are unable to serve, then Mary White is hereby appointed as Successor Trustee. If Mary White is unable able to serve as Trustee for any reason, then the Trustor hereby appoints Richard White as Successor Trustee. The Trustee shall have all powers as provided in this agreement and the laws of the State of Nevada. The principal place of administration of this trust is the Trustors place of residence, regardless of the residence of the Trustee. If multiple or Co-Trustees are appointed their exercise of powers shall be governed by NRS 163.110. In the event a vacancy in the office of Trustee occurs and there is no successor trustee, the existing Trustee, if one, and the beneficiaries, or the beneficiaries, if there is no trustee, may agree to a non-judicial change in the trustee by amendment to this Trust agreement.

ARTICLE IV  
ASSETS OF TRUST

4. **ASSETS OF TRUST:** The Trustees hereby declare that the Trustors have transferred and delivered to the Trustees, without consideration, ten dollars.
5. **ADDITIONS TO TRUST PROPERTY:** [same]
6. **RIGHTS TO TRUST ASSETS:** [same]
7. **HOMESTEAD EXEMPTION:** [same]

ARTICLE V  
TRUSTEE POWERS AND OTHER PROVISIONS

8. **POWERS:** The Trustor does hereby grant to the Trustee all powers necessary to deal with any and all property of the Trust as freely as the Trustor could do individually. The Trustee shall at all times and in all actions act as a fiduciary in good faith. Trustee is hereby granted all powers contained herein and all powers conferred upon Trustee under the applicable statutes and laws of the State of Nevada, to the broadest extent possible, including, but **not** limited to, all of the powers or any portion thereof enumerated in NRS 163.265 to 163.410, inclusive. All powers granted to the Trustee by this Trust Agreement are ministerial in nature and are not intended to create or alter substantial rights. Without limiting the foregoing general statement of powers, the Trustee powers include, but shall not be limited to the following:

- (A) **TRUST ASSETS:** [same]
- (B) **NONPRODUCTIVE ASSETS:** [same]
- (C) **INVESTMENT POWERS:** [same]
- (D) **SECURITIES:** [same]
- (E) **ADDITIONAL PROPERTY:**[same]
- (F) **SELL AND LEASE:** [same]
- (G) **INSURANCE:** [same]
- (H) **BORROWING AND LENDING:** [same]
- (I) **MODIFICATION OF TERMS:** [same]
- (J) **CLAIMS:** [same]

- (K) DISTRIBUTIONS: [same]
- (L) NOMINEE: [same]
- (M) FORECLOSURE: [same]
- (N) ENCUMBRANCES: [same]
- (O) VOTING: [same]
- (P) REORGANIZATION: [same]
- (Q) PURCHASE FROM ESTATE OR TRUST: [same]
- (R) ASSISTANTS AND AGENTS: [same]
- (S) RESERVES: [same]
- (T) MANAGEMENT OF REALTY: [same]
- (U) BUSINESS: [same]

**9. AUTHORITY TO ACT: [same]**

**ARTICLE VI  
TRUST ADMINISTRATION DURING LIFE OF TRUSTOR**

**10.MANAGEMENT OF TRUST PROPERTY: [same]**

**11.INCAPACITY OF TRUSTOR: [same]**

**12.RESERVATION OF RIGHTS: [same]**

**ARTICLE VII  
DISTRIBUTIONS DURING LIFETIME OF TRUSTORS**

**13.GENERAL DISTRIBUTIONS: [same]**

**14.RESIDENCE: [same]**

**15.OTHER PAYMENTS: [same]**

**ARTICLE VIII  
TRUST ADMINISTRATION AFTER TRUSTOR'S DEATH**

[SAME]

**ARTICLE IX  
TRUSTOR'S DEATH**

[SAME]

**ARTICLE X  
TRUSTEE PROVISIONS**

[SAME]

**ARTICLE XI  
TRUST ADMINISTRATION**

[SAME]

**41.REGISTRATION OF TRUST ASSETS:** Assets of this Trust during the Trustor's lifetime shall be registered as follows: JOHN DOE and JANE DOE, Trustees, or his or her successors in trust, under the DOE 2008 TRUST, dated the 14 May 2008, and any amendments thereto.

**ARTICLE XII  
TERMS AND DEFINITIONS**

[same]

IN WITNESS WHEREOF, on this the \_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_,  
Trustor, and Trustee have signed this Instrument.

\_\_\_\_\_  
TRUSTOR

\_\_\_\_\_  
TRUSTOR

\_\_\_\_\_  
TRUSTEE

\_\_\_\_\_  
TRUSTEE

**State of NEVADA, County of CLARK, ss:**

**I CERTIFY that on \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_ and  
\_\_\_\_\_ personally came before me and  
acknowledged under oath to my satisfaction, that this person (or if more  
than one, each person):**

- a) is named in and personally signed the attached document; and
- b) signed and delivered this document as his/her/their act and deed; and

\_\_\_\_\_  
Notary Public

Print Name:

\_\_\_\_\_  
My commission expires: