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# Georgia Estate Planning News

Fall 2009

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## Top Five Reasons Not to Create a Living Trust By Sarah White

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I frequently see clients who say things like “I want to create a trust so I don’t have to go through probate” or “I want to create a trust so Uncle Sam won’t get any more of my money”.

I want to explain living trusts and clear up some common misperceptions about them in Georgia. A living trust is a vehicle that can be used to own property. At death, the living trust is triggered to distribute the property it owns to the people named in the trust, similar to a will. For a will to distribute property, the will must go through a probate process, under which the will is presented to the court, an executor is appointed, and the property is distributed to the people named in the will. Sounds like the living trust is easier, right? Wrong! For the majority of my clients, I do not recommend living trusts because:

1. For a living trust to work, everything the person creating it owns must be titled to the trust. This means retitling all assets to the name of the

Please see *Why Not to Create a Living Trust* on page 2

## An Overview of Special Needs Trusts

By Sarah White

As parents with special needs children get older, they are often faced with the question of who will care for their special needs children after they are gone. They typically want to leave a large portion of their estate to the child to ensure their child will be well cared for.

However, in order for the special needs individual to be able to continue to receive Medicaid and SSI (Supplement Security Income), he or she is allowed to own only \$2,000 in assets.

Therefore, a parent who wishes to provide financially for his or her special needs child has four options:

- (1) Disinherit the child so he or she will not own any assets and can qualify for federal programs. This will allow the child to continue to receive Medicaid and SSI, but will have no money for any extra

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*“In order for a special needs individual to qualify for Medicaid and SSI, he or she is allowed to own only \$2,000 in assets.”*

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## Very Unique Will Bequests

By Sarah White

A recent article from CNN.com noted that Walter Cronkite left his girlfriend of four years out of his will, and then goes on to list some extremely strange bequests that have appeared in wills over the years, such as:

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*“A California oil heiress requested her body be clothed in her lace nightgown and buried in her Ferrari.”*

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- Jeremy Bentham, a social philosopher (whose name appears frequently on one of my favorite shows, *Lost*) left the world his clothed, preserved body. His clothed skeleton (with a wax head) now lives at University College London and occasionally is wheeled around to meetings!

- a California oil heiress requested her body be clothed in her lace nightgown and buried in her Ferrari with the seat slanted comfortably.

- a Portugese aristocrat picked 70 names out of the phone book to share in his estate.

- a Canadian attorney left over \$500,000 to the mother to the mother who gave birth to the most children in Toronto in the 10 years following his death. Four winners split the prize with nine babies each!

- a German poet left his entire estate to his wife as long as she remarried, since then there would be “at least one man to regret [his] death”.

- an Iowa lawyer who died in 1930 left nothing to his wife or daughter but left \$100,000 to create a “womanless library”. The library could have no

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*My daughters at the beach in July.*

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trust. When new assets are acquired, they also must be titled in the name of the trust.

2. The probate process in Georgia is one of the simplest in the nation. In some states, probate is something to be avoided like the plague. Not so in Georgia. The laws are structured to make probate move quickly.

3. You will need a will anyway. Everyone who creates a living trust also needs to have a will, which will cover assets that aren't in the name of the trust and names guardians for minors.

4. Living trusts are expensive to create.

5. Living trusts can NOT help you save federal estate taxes any more than a will can. A properly structured will can provide the same tax savings as a living trust.

## Requests for Indigent Funerals on the Rise

By Sarah White

In tough times, increasing numbers of people aren't able to pay \$5,000 or more for a private funeral and burial. Increasing numbers of people are seeking government funded burials, cremations and funerals. Among the counties mentioned in a recent article on the topic that appeared in USA Today are Los Angeles County, Clark County, Nevada (Las Vegas), and Kenton County, Kentucky, whose number of indigent burials is expected to have more than doubled this year over last year.

Have you given much thought to how to pay for your funeral? If you don't think your estate will have the money and you don't want to place a financial burden on your loved ones, consider obtaining a very small life insurance policy for the amount you think the funeral will cost. You may want to consider cremation instead of burial, or you may not want a funeral at all. Whatever you decide, it's important to let your heirs know in advance.



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or supplemental activities, such as education, customized vehicles, or assisted living facilities.

- (2) Leave the assets to another sibling or a caregiver with the understanding that they be used for the care of the special needs individual. This can be a problem if the caregiver runs into financial or personal difficulties, because the assets could potentially be subject to claims by creditors or former spouses.
- (3) Leave the child a large sum of money. This can a problem because although the money will provide for the child in the short term, unless it is a very large sum of money, it will not likely be enough to care for a special needs individual for a significant amount of time.
- (4) Create a special needs trust. A properly drafted special needs trust allows a special needs individual access to money for supplemental activities, but at the same time allows the individual to qualify for SSI and Medicaid.

There are rules about where the assets in the trust can come from and how the assets can be used. If you or someone you know is interested in learning more about special needs trusts and special needs planning, contact me or another estate planning attorney who specializes in special needs trusts for assistance.

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*“A properly drafted special needs trust allows . . . access to money for supplemental activities, but . . . allows the individual to qualify for SSI and Medicaid.”*

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*Unique Will Bequests* from page 2

books or magazines authored by women, no feminine decorations, and no women were allowed to be admitted.

## FAQ: Do I Have to Pay Georgia Estate Taxes?

No. There are 18 states (CT, DE, Washington D.C., IL, KS, ME, MD, MA, NJ, NY, NC, OH, OK, OR, RI, TN, VT, and WA) which collect a state income tax. Each of those states has an exemption amount which ranges from a low of \$338,333 in Ohio in 2009 to a high of \$3.5 million for NC and DE. Georgia has no state estate tax.

## Estate Planning Seminar Wed., October 21

If you (or someone you know) wants to learn more about the process of estate planning, some do's and don'ts, what's needed and what's not, etc., attend my free seminar on Wednesday, October 21 at 10 a.m. at the Coffee Park, located at 3101 Roswell Road in Marietta. Child care is available. Attendees will leave with a free completed Georgia Advance Directive for Healthcare. Please RSVP if you are coming to [sarah@lawyersarah.com](mailto:sarah@lawyersarah.com) or 404-431-3170.

## Sarah's Recipe Corner

I get rave reviews on these every time I make them.

### Cranberry Cheese Bars

2 cups unsifted all-purpose flour;  
3/4 cup firmly packed brown sugar;  
1 1/2 c. oats  
1 cup butter or margarine softened;  
8 oz cream cheese;  
1 can condensed milk (not evaporated milk);  
1/4 cup lemon juice;  
1 16 oz can whole berry cranberry sauce;  
2 tbsp corn starch;  
1 tbsp brown sugar

Heat oven to 350. Combine flour, 3/4 cup brown sugar, oats and butter. Mix till crumbly. Set aside 1 1/2 cups of mixture. Firmly press remaining mixture in a greased 13 x 9 pan. Bake for 15 minutes.

While crust is baking, beat cream cheese till fluffy, gradually add condensed milk and beat till smooth. Stir in lemon juice. Pour evenly over baked crust. Stir together cranberry sauce, corn starch and remaining brown sugar. Drop spoonfuls evenly over cream cheese layer. Top with remaining crumbly mixture. Bake for 35-40 minutes.

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