

Restatement of a Living Trust

Written by Jane M. McNamara
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If changes are required for your living trust, a trust amendment is the proper way to make the changes. Handwritten marks and notes on the trust document are not considered legal changes. An amendment specifically states what section of your trust is changed, and sets forth the new trust language. The amendment may be short, or it may be so drastic that it actually changes the entire trust, from the first word to the last. Why are amendments needed? Some trusts are completely out-of-date, or irrelevant due to changes in the statutes, case law, or just poorly written. Some trusts may have provisions that are illegal, or contrary to the client's wishes. Some people need their trusts revised or updated because of changes in their wealth or family circumstances.

Lengthy or complicated trust amendments may be difficult. Preparing such amendments may take the attorney many hours to review the existing trust, create the amendment language, and integrate the new updated amendment provisions with the existing outdated trust. Amending trusts paragraph by paragraph can result in a very complicated amendment that is nearly impossible for future trustees to understand. Therefore, most attorneys will recommend a trust restatement. The purpose of a trust restatement is to revise or amend the entire trust, from beginning to end. Rather than spending excessive amounts of time reviewing and changing the majority of the old trust, the entire trust is amended and restated, and a new trust is created through the amendment and restatement.

Although a restatement is basically a new trust in the form of a trust amendment, the name of the old trust and the date that it was established remain the same. As a result, the prior funding remains intact. Financial institutions do not have to be notified. Deeds do not have to be changed if title to the assets has been properly placed in the trust.

With the many tax law changes in recent years, concerns about future ill health and incapacity, or with changes in your family situation, it is recommended to have your trust reviewed by an attorney. A simple amendment may be all that is required. But for others, a restatement may be a more cost effective and efficient way to amend an outdated trust.

For an appointment or more information, please call the Law Office of Jane M. McNamara at 661-287-3260, or visit www.JaneMcNamara.com.