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Resource Center

Advantages of a Revocable Trust

Practice Areas: Estates + Trusts

Tags:estate planning probate will revocable trust

You might find yourself asking whether using a Revocable Trust (in conjunction with a Pour-Over Will) as the primary vehicle for the disposition of your estate is appropriate. The answer depends upon each individual's circumstances. A Revocable Trust is a device used to manage property during a person's lifetime and dispose of assets upon death. It is created by a legal agreement between three parties:

- The creator of the trust, known as the Grantor;
- The Trustee, the person who holds the legal title to the trust's assets; and
- The beneficiary, the person who receives financial benefits from the trust assets

As an independent legal entity, a trust may own property, file tax returns, pay taxes, own bank accounts, earn income and make distributions to beneficiaries. In contrast, a Will only disposes of assets held in one's individual name upon death. There is no authority granted in a Will until the author of the Will (the Testator) dies. Under state law, assets held jointly (for example, as tenants by the entirety or jointly with rights of survivorship) typically pass outright to the surviving co-owner while assets such as retirement funds or life insurance will pass to a designated beneficiary.

Both a Will and a Revocable Trust may serve as the primary dispositive document of an estate plan. Moreover, each can be revoked, modified or terminated at any time. Among other things, both offer the ability to control the disposition of property by ensuring that your property passes to the beneficiaries of your choice in the amount and manner you desire and in a tax-efficient manner. From a tax perspective, both a Will and a Revocable Trust can accomplish the same tax-savings objectives, so there is no tax advantage of one over the other. However, a Revocable Trust can offer three primary advantages over a Will:

1. Avoidance of probate;
2. Ease of managing assets during incapacity; and
3. Privacy

Avoidance of Probate

The property placed in the Revocable Trust during life avoids probate administration at death. A Will, on the other hand, must be verified by the court before it can be enforced. This may be an important consideration because probate can be expensive. For example, fees and other costs must be paid before your assets can be fully distributed to your heirs. If you own real property in other states, your family could face multiple probates, each one according to the laws in the jurisdiction where the property is located. In addition, the probate process can often be lengthy, typically taking anywhere between nine months and two years to be formally completed depending upon the jurisdiction.

Management of Assets During Incapacity

A Revocable Trust also provides for the administration of the trust property if the Grantor becomes incapacitated. Generally you will serve as your own Trustee for as long as you are willing and able to serve. A Revocable Trust provides a way to care for you should you become disabled by allowing the Successor Trustee to manage the trust property. Since a Will becomes effective after you die, it provides no protection if you become physically or mentally incapacitated.

Privacy

A Revocable Trust offers privacy compared to Probate, which is a public process. A Will must be filed with the court and the Personal Representative must identify and collect any property of value owned by the decedent at death. Typically, reports must be filed which list and provide the value of assets held by the decedent. As a result, your financial affairs become public information and the public has the opportunity to learn the contents of your Will and the value of your estate. In contrast, a Revocable Trust is not filed for public record with the court.

Conclusion

Revocable Trusts are not for everyone, but they can fit the needs and desires of certain people. Once you create a Revocable Trust, you may wish to change the legal ownership of your assets so that the title reflects the trust as the owner. In cases where people fail to follow through by actually transferring ownership to the trust, they could eliminate the advantages a trust offers. In such cases, neither your Will nor your trust may deliver the expected advantages. In addition, it is important to coordinate your Will and Trust with your beneficiary designations (IRAs, other retirement accounts and life insurance policies). Keeping your designations current helps you ensure that your assets will pass in accordance with your intentions.