WHAT IS A REVOCABLE TRUST?

Frequently, clients will come to my office wanting to know what is a Revocable Trust, which are also commonly known as a living Trust, and do they need one? While Revocable Trusts have existed for centuries, today, Revocable Trusts are heavily marketed as a way to avoid probate, which is the process that settles a Decedent's affairs when an individual passes away owning assets in his/her name alone.

A Revocable Trust refers to an arrangement whereby an individual, known as the Settlor or Grantor, transfers ownership of assets to a Trustee during the individual's lifetime with written instructions on how, when, and to whom the assets will be distributed. In a Revocable Trust, the Settlor retains the right to amend or revoke the Trust.

In the Revocable Trust, the Settlor sets forth the terms and conditions for when and how the assets contained in the Trust can be distributed to the Settlor, as well as who are the Beneficiaries of these funds after the Settlor passes away and the distribution scheme for these assets.

The Trustee manages the assets within the Trust according to the terms and conditions set forth in the Trust. A Settlor can act as one's own Trustee or he/she can name a financial institution or another individual to act in this capacity. It is important to emphasize that the Trustee is bound by various duties and can only distribute the Trust in accordance to the instructions and distribution scheme set forth in the Trust.

On November 6, 2006, the Pennsylvania Uniform Trust Act became effective. Since the Pennsylvania Uniform Trust Act was passed, there are no longer as many differences between administering a Will versus a Trust Estate. Under the Pennsylvania Uniform Trust Act, notices must be forwarded to heirs upon the Decedent's death and an accounting needs to be provided to the heirs of the Trust. This procedure is similar to Estate Administration.

While a Revocable Trust is a way to avoid probate, it does not eliminate Inheritance Tax. A Revocable Trust is a useful Estate-Planning tool for the following reasons:

1) It avoids the expenses and delays of probate.

2) Upon death, the Settlor's assets can be immediately distributed to Beneficiaries in accordance with the terms and conditions set forth in the Trust. Alternatively, probate assets, in most cases, are to remain in the Estate until a court order is obtained, which approves the proposed schedule of distribution to the heirs.

3) Ease of removing and transferring assets in the Trust. Since the Trust is revocable, the Settlor is free to withdraw, sell, or engage in other acts of ownership in the Revocable Trust, practically speaking, until the Settlor's death as if there was no Trust.

4) In many instances, Revocable Trusts are less vulnerable to attack on the grounds of the Settlor's capacity, fraud, and duress than a Will.

5) With a Revocable Trust, the assets are usually transferred into the Trust during the Settlor's lifetime so that upon his/her death, the Trustee will be able to carry on the Trust's affairs. By doing this, the Settlor makes handling his/her affairs upon his/her death simpler for his/her family, who will be in the process of grieving.

6) If an individual owns real estate in another state, by placing this real estate in the Trust, he avoids having to probate an Estate where said real estate is located.

While there are advantages to a Revocable Trust, it is not necessary for everyone to have a Revocable Trust. If you wonder whether it would be beneficial for you to create a Revocable Trust, then you should consult an Elder Law Attorney to discuss your situation.

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