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Do I Need A Revocable Living Trust?

Q. What is a Living Trust?

A. A Revocable Living Trust provides for the management of your assets for your sole benefit in case of incapacity. Following your death, it allows your estate to be distributed without the need for a potentially costly and lengthy probate proceeding.

Q. Can't I accomplish this with joint accounts?

A. Joint accounts create a present property interest in the joint owner, who will be able to withdraw funds during your lifetime. With a joint account, you are making a gift now, and upon your death, the account is owned by the joint owner, which may result in the disinheritance of other family members. If the joint owner predeceases you, you will not avoid probate since you do not have an alternate distribution. The bottom line is that joint ownership may not be a good way to accomplish your goals.

Q. What if I hold my accounts "In Trust For" payable upon death?

A. This will avoid probate for those assets but will not give anyone access to the account during your lifetime, if needed. Furthermore, if the designated beneficiary predeceases you, you will not avoid probate.

Q. Can I provide for management of my finances with a Power of Attorney?

A. A Power of Attorney does provide for management of your assets in case you become incapacitated. However, it may be burdensome to use. Unlike a Trust, the agent, called the Attorney-in-Fact, is not listed on the account as an owner and there is often a problem having the Power of Attorney accepted. Every financial institution has its own form of Power of Attorney and while banks are compelled under New York State Law to accept a legal, statutory Power of Attorney, financial institutions raise objections to their use. Using a Trust is a more direct way of managing assets. Also, the Power of Attorney ends at death. A Trust continues, which may avoid the need for a Court proceeding. Finally, the legislature is contemplating changes to the law governing Powers of Attorney that will make them easier to use.

Q. Why do I want to avoid probate?

A. The probate process may delay the administration and settlement of your estate and can be costly. Depending upon the identity of your closest family members, their location and their health, probate, the process by which your Will is authenticated and your Executor is appointed, could take substantial time and dramatically increase legal fees. In addition, the probate process in New York State requires that your closest family members be notified and given the opportunity to contest your Will if they are unhappy about its terms, or wish to raise objections to the Will's validity.

Q. I have a very simple family situation and I want to have a very simple Will. Wouldn't probate be simple in that kind of situation?

A. Maybe, but not necessarily. The probate process may be delayed in a number of situations, including the following:

- a. If any of your immediate family members cannot be located.
- b. If any of your immediate family members are minors or legally incapable of consenting to the probate of the Will.
- c. If any of your closest family members are unhappy with the contents of the Will and wish to raise objections.

All of your "next-of-kin" must be located and given the opportunity to object to the Will even if they will inherit nothing under the Will. If any of them are minors or are disabled (such as an elderly spouse) the court will often appoint a legal guardian to represent their interest. This will greatly increase the cost of the proceeding and result in a substantial delay. These problems can be eliminated by the establishment of a Living Trust.

Q. What else will a Living Trust do for me?

A. A Revocable Living Trust will enable individuals selected by you to care for you during your lifetime, by managing your assets and paying your bills if you no longer wish to do so or are incapable of doing so. You have complete freedom to be Trustee of your own Trust and manage all matters on your own as long as you are capable of doing so. If the time comes when you are no longer able to or wish to handle your Trust finances, you allow a Co-Trustee or a Successor Trustee to handle them for you.

Q. Will the Revocable Living Trust avoid Probate in all cases?

A. A Revocable Living Trust will avoid probate for assets which are transferred to the Trust, i.e. those assets whose title has been changed to the Trustees. If there are assets which are not transferred to the Revocable Living Trust and do not have designated beneficiaries at the time of your death, then probate of your Will is required.

Q. What if I want a Trust to continue for the benefit of a disabled child, sibling or a spouse?

A. The Revocable Living Trust can be set up in such a way that the Trust will continue for the benefit of disabled relative or others (i.e. grandchildren, or nieces or nephews) after your death.

Q. What if I am afraid that someone may challenge my Will?

A. All the more reason for having a Trust. The procedure for probating a Will invites a challenge. Your closest relatives must be notified. If they disagree with the contents of the Will, they have a right to object. They can require testimony by the witnesses to the Will and make your Executor prove the validity of the Will at the expense of the estate. On the other hand, if they wish to challenge the Trust, they have to bring a proceeding in Court at substantial cost to themselves. Therefore, many people will be discouraged from attempting a challenge to a Trust. In addition, since notice is not required, a Trust remains private. Of course, anyone who truly wanted to challenge a Will or a Trust could do so if they are willing to invest the time and the money.

Q. Will a Revocable Living Trust save me money on gift or estate taxes?

A. No. A Revocable Living Trust is tax neutral. However, estate tax planning can be done just as easily in a Trust as in a Will.

Q. Will a Revocable Living Trust affect my income taxes?

A. The assets in a Revocable Living Trust are treated as your own for tax purposes. Depending on the identity of the Trustee, you may or may not have to file a separate tax return. If you are the Trustee of your own Trust, a separate return is not necessary.

Q. Do I need to appoint someone else as my Trustee?

A. No. You may serve as your own Trustee. You can do so for the remainder of your life unless you become incapacitated. It may be advisable to appoint a Co-Trustee, but it is not necessary.

Q. How much will this cost?

A. It will depend on your own individual family situation, your assets and the potential need for further Trusts for family members. However, the creation of a Trust will cost several thousand dollars. The fees will likely be lower than the total cost of a Will that must later be probated after your death.

Q. Will the Revocable Living Trust work for all assets?

A. A Trust works for most assets. However, many times, a cooperative apartment cannot be placed in a Revocable Living Trust because a co-op board may refuse to allow this type of ownership. If you have a co-op, you should determine whether or not the Board will allow you to transfer the cooperative apartment shares to a Revocable Living Trust before proceeding. It may be advisable for some assets to have one or more individuals named as beneficiaries and not be transferred to the Trustees.

Q. Who can be my Trustee?

A. You can be Trustee of your own Trust and name someone else to be a Co-Trustee with you or Successor Trustee when you can no longer serve. In some cases, if the assets are substantial or you cannot identify a suitable Co-Trustee or Successor Trustee, a corporate Trustee, such as a bank should be considered.

Q. What if I change my mind?

A. It is revocable and amendable. You can change a Revocable Living Trust at any time as long as you are alive and competent.

Q. How do my assets get into my Trust?

A. They must be transferred to the Trust. This task is essential. You can do this yourself or you can arrange for the transfers to be accomplished by another person for you. Our law firm can assist you in this process as needed.