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## Revocable “Living” Trusts

The revocable “living” trust is the most commonly-used type of trust in modern estate planning. As its name implies, it is a trust established by the grantor during life, and it may be modified or revoked during the life of the grantor. It is normally intended to serve as a will substitute, given that the assets placed in the trust are directed to be distributed to the grantor’s heirs at death, just as in a last will and testament. Among the reasons for the popularity of revocable trusts are the privacy aspects and the avoidance of delay associated with the probate administration process.

Specifically, if the grantor becomes unable to handle his affairs, the successor trustee named in the trust will be able to step in, upon the written confirmation of incapacity by the treating physician, to handle the assets held in the trust. Upon death, property held in the revocable trust will not be included in the decedent’s probate estate because it is in the name of the trust, and thus will not be subject to the court-supervised estate administration process. This is a particularly efficient strategy where the grantor owns real property in other states, since “ancillary probate” can be quite expensive and time-consuming.

Finally, the terms of the trust may be crafted to achieve particular results desired by the grantor. For example, property in the trust at death may be directed to be held by the trustee for the benefit of beneficiaries who are minors or who are, for a variety of possible reasons, otherwise unable to manage property. Since the revocable trust is not recorded in the clerk’s offices as with a will, the provisions of the protective trust are private. Likewise, there is no inventory required to be filed for a living trust, so that the value of the assets in trust are also kept private (particularly beneficial in the case of an heir with creditor or spousal problems).

Since the revocable trust only governs assets which have been re-titled into it, a durable financial power of attorney and a so-called “pour-over” will are always prepared as supplemental documents for the living trust. The power of attorney enables the person who is serving as successor trustee to manage assets and income which are not in trust, such as an IRA, an automobile or an income tax refund check. The pour-over will states that any assets owned by the decedent which pass through probate are to be distributed by the executor to the trust as the sole residuary beneficiary of the will. Even where the grantor is diligent in keeping accounts, real property and other assets in the name of the trust, there are occasions when the will is necessary to ensure that the stray or surprise asset is transferred into trust in order to follow the decedent’s intentions for the estate.

There are many beneficial aspects of the revocable “living” trust, and it is critical to ensure that the lawyer planning and preparing the necessary documents is an experienced estate planning attorney if one is to receive the best and most thorough advice and guidance. A revocable trust which is not properly drafted or ineffectively funded will serve little purpose and may cause more expense in the end than was intended to be saved for the family.

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