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Revocable Living Trust

There has been a lot of information floating around these days about the use and misuse of Revocable Living Trusts. The purpose of this article is to separate fact from fiction about the use of this estate-planning tool.

A Revocable Living Trust is a popular estate planning tool, because in the right situation, it will enable a person to (1) Avoid probate; (2) Reduce the chances of a guardianship upon incapacity; and (3) Reduce or eliminate estate taxes; (4) Maintain control of assets; (5) State a plan of distribution of assets at the death of the second spouse.

We will talk about these obvious advantages of a Revocable Living Trust in a minute, but for now, lets look at the three parties to a trust:

1. Trustor – Sometimes also referred to as *settlor* or *trust-maker*. This is the person who owns the assets and contributed or re-titled all assets to the revocable living trust ("put them in the box"). If Husband and Wife joint own all assets, they would both be Co-Trustors of their joint trust.

2. Trustee – This is the person who manages the assets contained in a trust. Typically the initial trustee is the person who sets up the trust. If Husband and Wife established a Revocable Living Trust, both Husband and Wife would be co-trustees of the Husband and Wife Living Trust. Upon the death of either spouse the other would be the remaining initial trustee.

   Upon the death of Husband and Wife, a *successor trustee* would be named. The successor trustee could be a person, such as the child or children of the Trustor. You can name more than one child as successor trustee. The question of whether this is a good idea has to be decided by you!

   Finally, the successor trustee could also be a *corporate or institutional trustee*, such as a bank trust department. Since corporate trustees are not emotionally tied to any family member, they can be relied on to carry out your wishes contained in the trust. Most banks charge a small fee for this service (usually around 1%) but the fee is not normally charged until they start work, which is after your death or incapacity.

3. Beneficiary – These are the persons that are designated to receive your money and other property at your death. Normally no assets are distributed until after the death of the second spouse. At that time, assets can be immediately distributed to any beneficiary that you have named in the trust. However, if you wish, your assets can be held in trust and can be distributed according to your plan. For example you can state that the money is to be used for a child's college expenses or held for their retirement.

O.K. Now let's discuss those advantages:

1. **Probate Avoidance** - For illustration purposes, assume a trust is a box that holds title to all of the assets that you put in to the trust. The goal is to get all assets in that box so that it (and not you) holds title to everything. When this is done properly, you own nothing individually, so when you die, you have nothing to probate. All of your assets are owned by your trust, which didn't die, so there is no need for a probate. The key to this whole process is funding. Assets do not magically "jump into the box" – you have to put them in there. The way we do this is to re-title each asset from our individual name to the trust name. This is called "funding the trust".

2. **Incapacity Trustee** – One big advantage to a revocable living trust it the ability to appoint an Incapacity Trustee. This person (usually your spouse or child) will step in your shoes if and when you become incapacitated, and will be empowered to use any and all assets in the trust for your benefit. They can also manage and care for the assets during your incapacity. If you get better, you simply start taking care of your own business again, without the necessity of Court approval.
3. **Estate Taxes** – This is the government's "last bite at the apple". When you die, Uncle Sam wants to know the date of death value of all of your assets. If they are over a certain amount, you will most likely owe federal state tax. The amount of money that you can leave to your kids without paying federal estate tax continues to change and will continue to do so in the future. In 2011 the amount that you can pass without paying federal estate tax is $1 million dollars. This seems like a lot, but by the time you add up the full, fair market value of all assets, you may be surprised. The amount that you can pass without paying tax is the exemption amount. If you are married and set up a trust with appropriate tax planning, each spouse can exempt the full allowable amount at their death and can pass this to their kids, estate tax free.

4. **Control** – Some people may feel a bit squeamish about putting everything in a trust. They have worked hard for what they have and they want to control it. Well, the good new is that they can! With a Revocable Living Trust, you are the Trustor (you <u>own</u> it); you are normally the initial trustee (you <u>control</u> it); and you are the initial beneficiary (use have the right to <u>use and spend</u> it). If you are married, both spouses normally fulfill these positions jointly – at the death of the first spouse, the surviving spouse normally becomes the sole surviving Trustee and Beneficiary.

5. **Distribution** – otherwise referred to as "who gets my stuff when I die?" Most people think that they need a will to distribute assets at their death. Actually, if you have a trust and it is fully funded, you do not need a will. For safety's sake, we always prepare a "pour-over" will, which "pours over" any assets to the trust that a person forgot to put in the trust while they were living. However, rarely use it because if a person has put everything in the box, there is no need for a probate - everything is distributed directly from the trust to the persons named therein as beneficiaries. You can state <u>who</u> you want to get assets and <u>when</u> they get their share – for example money is held for college expenses, then they get the balance at age 25. You can also state <u>how</u> they receive assets: Beneficiaries can get assets immediately upon your death, at some set time in the future, or incrementally, such as so many dollars per month. Finally, you can state what they get. For example of you had two children, you could state that they shall receive a 50% - 50% distribution of all remaining estate assets at my death. Practically speaking, your children would then decide who gets what – the only stipulation would be that it is equal. You could also specify what they get. For example, "Bob gets the North 40 acres of the farm plus my brokerage account. Sally gets the South 40 acres plus my CD at the bank. All other assets are to be equally divided 50% - 50%, per stirpes. Per stirpes means that, if a child predeceases you, then their share would be distributed equally to their children, by right of representation.

Summary: Obviously, there is a lot to estate planning, but a well qualified estate planning attorney can easily walk you through the process. This article contains many of the major issues that you need to consider. Sit down with your family, discuss this, then call your estate planning attorney TODAY! Procrastination or the fear of acting can cause your family a lot of time, trouble and grief down the road.

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