

Revocable Living Trusts can streamline and simplify asset transfer at the end of life

How did trusts get such a negative reputation? We found the FTC Web site that our client talked about, and the FTC does warn consumers to take some reasonable precautions when finding someone to draft a trust. The FTC is concerned about a very common occurrence in which salespeople prey on seniors' fears that, after their deaths, their life savings and other assets will be stolen by the government, distribution will be delayed for years and their assets will be eaten up by costs and expenses of probate. These salespeople market trusts door-to-door, advertise do-it-yourself living trust kits, and then often use information about their customers to sell other products like annuities and insurance.

One thing we find surprising at Tuesley Hall Konopa is that some of the people we talk to who are most vocal about buying a trust aren't aware of what a trust is or what one is used for. Plainly put, a trust for estate planning is simply a way to title and transfer assets. Assets are usually titled in our individual names, like a bank account, or, in the case of married couples, in both names, like a joint bank account or family home. When assets are titled in an individual name and that person dies, those assets normally have to go through the probate process to be transferred.

When assets are titled in the name of a trust (instead of an individual) the assets can be transferred, bought, sold or anything else, by the trustee. If it's your personal trust, you can name yourself as the trustee so you have control over the assets in the trust as long as you live. And you can name someone else – someone you trust – to become trustee when you die. That means there is no need to go to court and go through the probate process to get authority from a judge to transfer assets when the original trustee dies. The successor trustee you named can transfer the assets in the trust according to your instructions set down before your death. This is known as avoiding probate. The probate process can be expensive and time consuming. If your estate is such that it's worthwhile to spend the money for a trust to avoid the expense of probate, then a trust is worthwhile. Avoiding the expense of probate becomes even more important if you own real estate in different states and face multiple probate proceedings.

Besides avoiding probate, what are other reasons to form a trust?

- Reduced delays in selling or distributing your property after you die. We have seen situations where trustees were able to sell a house much sooner than the probate process would have allowed. That may not seem important, but in today's real estate market the rapid sale of a home could be a very important thing.

- Avoidance of a potential future guardianship.

If you ever become disabled and unable to manage your financial affairs, the successor trustee whom you appoint can take care of those matters in your place, making it unnecessary to go to court to obtain guardianship.

- Control of timing and amount of distributions.

If you believe that it would be better for your children or your grandchildren to receive distributions from your estate over several years, rather than all at once, instructions in a trust can ensure that happens according to plan.

- Continuity of management.

After you die, management of your assets becomes the job of the successor trustee whom you appoint, ensuring continuity in the management of those assets.

- Distribution of assets remains private.

Probate is a public court proceeding and anyone can determine the beneficiaries and terms of a will. When assets are distributed through a trust it is not a public process, and only the trustee and the beneficiaries know the details of the distribution. This makes trusts more and more attractive in cases of blended families through multiple marriages.

Revocable living trusts are not for everyone. But they do play an important role in estate planning and they shouldn't be ignored, especially if you are not sure how or why they are used. There are disadvantages to having a trust, as well. For instance, drafting a trust adds expense to an estate plan, so the additional expense must be worthwhile. If you appoint a bank as trustee, there will be a fee to administer the trust. And, if you are considering a trust, be sure to have an estate planning attorney draft it for you.

If you are considering a trust, consult an attorney who can help you analyze and understand the pros and cons. The attorneys at Tuesley Hall Konopa offer a free initial consultation to discuss your estate planning needs.

To learn more about estate planning visit us online at <http://www.thklawfirm.com> or call Tuesley Hall Konopa at 574-232-3538.

Disclaimer

This article is for informational purposes only and should not be relied upon as legal advice. If you are considering the preparation of a Revocable Living Trust you should seek the advice of a legal professional.