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Revocable trusts provide control and protection

This article is Part 1 in a series that explores the various types of trusts that may benefit your clients. Today's topic is revocable, or living, trusts.

When it comes to control, protection and privacy, there is nothing better than a living trust as the centerpiece of your client's estate plan. While there are some amazing advanced strategies available to plan with, there is nothing more versatile or easy to use.

Hence, the Revocable Living Trust (RLT) is the workhorse that most experienced attorneys recommend.

Benefit 1: Your Client Can Drive It Today

The RLT is flexible and designed to adjust to changes in your client's family, his/her finances, or the law. It gives your client the advantage of creating it today, so it is legally in existence during your client's lifetime. This is a contrasting strategy versus a testamentary (or after-death) trust that is created out of a probate estate and approved by a probate judge. Your clients can customize the RLT to meet their needs today.

While many laypeople think "a trust is a trust is a trust," that is not so. It is like saying a Ferrari is just a car. A customized RLT provides an extreme amount of protections that typically cannot be found in other after-death planning tools born out of probate proceedings (which are expensive and time consuming).

The ability to use it during their lifetime, as well as understand how to fund, maintain and change it, makes the RLT a powerful advantage for many families.

Benefit 2: Control

Because the RLT is revocable, your clients can change anything in it at any time. This gives them the first layer of control.

The second layer comes from the structure of the trust. This is the secret sauce and why it is so popular. The RLT becomes the legal alter ego for your client. The client creates the trust and thus becomes the Trustmaker.

Once established, clients transfer assets into it (we are simplifying the description of this

process, as there are some assets like qualified accounts you do not transfer into the RLT but can integrate, but that's way too much of a deep dive for this article).

Thus, the RLT trust legally owns the assets transferred into it. This is the key. Since the client is the Trustmaker, he or she will also name themselves as the Trustee. Yes, that's right. They are the creator and the Trustee in control of their trust. This puts them in a position where they create the "instructions" in the trust that must be followed.

A third layer of control is that an RLT can be written to stipulate how and when assets are disbursed, to protect heirs from being burdened with too much financial responsibility too soon. With an RLT, clients can state how much each beneficiary should receive and when. There can even be milestones required, such as a percentage of assets being disbursed upon graduating college or when heirs turn a certain age.

Benefit 3: Picking Out Who Is in Charge in Case of Death or Disability

In the document, your client names who the Successor Trustee will be when he or she passes away or becomes mentally incapacitated. While alive and well, your client as Trustee manages assets in the trust. But, in preparation for death or incapacity, they need to name a successor (and usually at least one additional backup) in the RLT.

Upon the Trustmaker's death or incapacity, the trust converts from revocable to irrevocable. This is a major benefit from a control perspective. When your client dies or becomes incapacitated, they wouldn't want where they decided their assets should go to be changed or for their instructions to be amended by others. This is a key element to the RLT's popularity from a planning perspective.

Benefit 4: No Trust Tax Rates

The RLT is recognized by the IRS as a "Grantor" trust for tax purposes. This means that the trust is ignored for income tax purposes and the Trustmaker is taxed as if the trust doesn't exist. This is an important advantage for the RLT versus an irrevocable trust.

Most irrevocable trusts pay taxes at higher rates than individuals. So, the RLT allows the benefit of trust law without high income tax rates of other trusts. This is also why you will hear lawyers commonly call this type of trust a "Grantor" trust or see this term around this type of planning.

Benefit 5: No Probate

Probate is expensive and time consuming in most states. The RLT (if properly funded and updated) is a private document that avoids probate court. In contrast, a will must be filed with a probate court as a public document.

The trust can pass to your client's beneficiaries more quickly and cost effectively. This is a major benefit for parents of young children. It gives them the ability to keep assets in the trust longer for the children and avoids the cost and complexity of a court supervised process.

Benefit 6: Creditor and Divorce Protection

Keeping assets away from creditors and legal judgments against the Trustmaker and beneficiaries is another way the RLT can protect assets; a will can't do this. Including language in the trust that minimizes or eliminates federal or state estate taxes helps beneficiaries legally receive as much as they can.

In general, when your client dies, assets inside the trust are not considered marital property, meaning they aren't subject to division in a divorce settlement if your client's surviving spouse remarries and later divorces or if another beneficiary, such as a child or grandchild, gets divorced. (This varies by state, however.)

If your client's surviving spouse remarries, or if your client remarries after a divorce, a revocable trust can help ensure that heirs from the first marriage are treated fairly. When set up properly, the trust can disburse some assets to the second spouse while he or she is alive and then distribute the remaining assets to children from your client's first marriage.

A Few Caveats

As a trusted advisor, it's important to help clients understand why they must be diligent in transferring ownership of assets to the trust. Any accounts, property, shares of interest in a business, stocks or bonds not included in the trust are subject to probate.

Probate is far more expensive, complicated and time-consuming than most clients can comprehend. While creating a will is generally less expensive than hiring an estate planning law firm to create a trust, it often results in more expenses and stress for heirs.

By implementing a trust strategy, your clients are protecting beneficiaries from an overly long court process, expensive attorney and court fees, and having their private matters exposed in open court.

Many Americans mistakenly believe that trusts are only for the ultra-wealthy and that a simple will is all they need to protect their final wishes and pass on their belongings.

We disagree. Often, a will isn't nearly enough planning for anyone - even for those who remained single and childless. If your client owns property, has a business, or stands to inherit assets from someone else, we strongly encourage you to talk to them about the protections that a trust provides now and for the future.

We hope this information is useful to you and helps your clients and their families. If you have a specific case or question, please don't hesitate to call our office.

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