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Are Revocable Trusts Still Relevant?

For many years, people thinking about estate plans, after they got over the notion that all they needed was a will, considered revocable, or “living” trusts. In many cases, people were advised to use revocable trusts because they would enable the avoidance of probate of an estate, if fully funded prior to death, and could maximize tax savings through the use of “Credit Shelter Trusts” and “Marital Trusts” which took maximum advantage of the personal tax credit and marital deduction available under Federal tax law.

Today, New Hampshire has passed a number of laws that make avoiding probate possible, and the amounts exempt from tax under federal law exceeds the wealth of almost all of us. In addition, New Hampshire still has no estate tax. So, are revocable trusts still a good idea?

What is a Revocable Trust?

A revocable trust—also known as a “living” trust or *inter vivos* trust—is created during a person’s lifetime. Then, the grantor transfers property to the trustee who manages the property for the benefit of trust beneficiaries. Like a will, it can be amended and revoked during the Grantor’s lifetime. Upon your death, it becomes irrevocable, and the property is managed or distributed pursuant to trust terms.

Asset Management During Grantor’s Lifetime

Typically, the grantor will also be the trustee and beneficiary during his or her lifetime, allowing for control, use, and enjoyment of trust assets. A will, on the other hand, only provides for asset distribution upon death. Married couples will often together be grantors, co-trustees,

and beneficiaries for joint use and enjoyment of trust assets, with the surviving spouse becoming sole trustee and beneficiary upon the other's death.

Upon the death of the Grantor or the death of the surviving spouse, a named successor trustee will assume the role and distribute and manage the assets as directed in the trust. Co-trustees and successor trustees provide a safety net in the event the Grantor becomes incapacitated or disabled and is unable to manage his or her financial affairs. Provisions for co-trustees or successor trustees avoid the need for court-appointed guardianships and associated costs.

More importantly, the trust allows for management of assets for a Grantor who loses the will or confidence to manage assets in old age, or becomes unable to do so. Also, for those with minor children, or those under the age in which parents generally think their children are able to handle significant assets, the trust can provide management, oversight, and provide for real as opposed to imagined needs of the beneficiaries.

Probate Avoidance

Even with the new laws mentioned above, there is still the potential advantage to a revocable trust that, if executed properly and funded during the grantor's lifetime, it avoids probate administration, which can be time consuming, costly, and frustrating in complex asset or family circumstances.

Privacy

Another reason why probate avoidance may be important is if the Grantors value privacy in their personal and financial affairs. A revocable trust, unlike a will, is not required to be filed with the Probate Court. In the normal course, trusts, unlike wills, do not become public record.

This means a complete list of assets, heirs' identity, and any related family disputes will not be readily available to nosey neighbors.

Taxes

For the lucky few families who have more assets than are protected from federal tax, revocable trusts also provide the means to maximize the savings available, in addition to the advantages listed above, although the addition of the concept of "portability" to the federal tax code allows maximizing such asset protection without fancy formulae in trusts.

Conclusion

So, notwithstanding the changes in tax law and the simplification of probate processes, , a revocable trust still can be advantageous to those who wish to distribute their estates in a confidential manner, avoid probate, ensure continuity in management of their assets before and after death or incapacity, and/or exert control over asset distribution and management upon death. Every estate is unique, however, so "one size" does not "fit all." It is important to consult estate planning specialists in conjunction with other insurance and investment professionals to see what plan is best, and those plans still often involve trusts.