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HOW TO SAVE YOUR HEIRS UNNECESSARY COSTS AND DELAY BY USING A REVOCABLE LIVING TRUST

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"Put not your trust in money, but put your money in trust."

-- Oliver Wendell Holmes

Interest remains high in a very old, but less frequently used, estate planning tool: the Revocable Living Trust. In recent years, articles regarding Revocable Living Trusts have appeared in the Wall Street Journal and other financial publications.

We will explain below what a Revocable Living Trust is and how it helps to avoid probate, enabling your family to save money, delay and red tape.

What Is A Revocable Living Trust? How Does It Differ From A Will?

A Revocable Living Trust is an extremely flexible estate planning tool. In a sense, it is a Will substitute, in that it can do everything that a Will can do. However, it can do much more than a Will. A Will contains a person's written instructions for transferring that person's assets to his or her heirs at their death. A Trust contains the same type of instructions. A Will names an executor to distribute those assets. A Trust names a trustee to do the same thing. But the similarities end there.

A trust is a separate legal entity which is created by an agreement among three parties: the Settlor (sometimes referred to as a Trustor or Grantor), who creates the Trust and funds it; the Trustee, who manages and controls the Trust and distributes its assets; and the Beneficiary, who is entitled to benefit from the Trust. A Revocable Living Trust's flexibility stems from the fact that the same person (or persons) can be all three parties to the Trust. Thus, you, or you and your spouse, can be the Settlor, Trustee and Beneficiary of your own Trust. As a result of this, you do not need to worry about losing control of the assets placed in your Trust.

Because it is revocable, the Revocable Living Trust can be changed or amended at any time. It is a “living” trust because it is created during your lifetime, while you are alive, rather than being created under a Will, after your decease.

Because of these features, after you have set up your Trust, and have funded it with most or all of your assets which would otherwise be subject to probate, you may at any time take money or property out of the Trust, put more money or property into it, change the Trust, or completely revoke the Trust. However, perhaps the greatest benefit of the Revocable Living Trust is that it can avoid probate. That leads us to the next question.

What Is Probate?

Probate is a court supervised system for passing the estate of a deceased person to his or her beneficiaries. The process includes proving the validity of the Will ("probate" is derived from the Latin word meaning "to prove") and appointing a personal representative by the court to administer and distribute the estate. Over the years, the probate system has become very complex. This is partly because it is designed to protect the interests of all potential parties to an estate: the testator, the heirs, creditors, taxing authorities, and those who might desire to make a claim or otherwise dispute the Will or the distribution that it contemplates.

What Is Wrong With Probate?

The probate system has a number of problems which people should understand before they plan their estate using a Will, which guarantees probate. Those problems include the following:

1. **Cost.** In Pennsylvania, probate fees and costs usually consume approximately six (6%) percent of the gross probate estate. The largest component of these fees and costs include attorney's fees and executor's commissions, which may be calculated using a sliding scale based on the gross estate without deducting debts or mortgages. Thus, if you own a home worth \$200,000, which is subject to a \$100,000 mortgage, executor's and attorney's commissions totaling six percent of the home would result in probate fees of \$12,000 (based on the \$200,000 value of the property), not \$6,000 (based on your \$100,000 equity in the property). Other necessary expenses involved in the probate system include court costs, advertising costs, and appraisal fees.

It is important to note that these fees and costs are directly related to the "privilege" of taking an estate through the probate system. These are fees and costs that would not be paid by the estate if probate were not required. Thus, the 6% figure quoted above does not include costs and expenses that would have to be paid anyway, such as taxes, and the last debts of the decedent.

2. **Delay.** On average, an estate in Pennsylvania takes approximately one year to

settle. Some take much longer, but few take less than nine (9) months. Why so long? The process requires certain procedures to be taken in a certain order, and typically involves voluminous paperwork that often seems like a lot of "bureaucratic red tape."

3. **Publicity.** Every aspect of estate administration is a matter of public record. Documents are required to be prepared and filed with the court which detail every asset owned by the decedent, every debt owed at the date of death, every transfer made within one year of the date of death, and every beneficiary. The documents disclose each beneficiary's name, address, and percent or amount received from the estate. Most people believe this is an unwarranted intrusion into their privacy.

4. **Contests.** The probate system facilitates the contests of Wills. In fact, in Pennsylvania the initial contest may be made verbally by any party in interest, whether or not named in the Will. It has been our experience that the probate system seems to foster contests, disputes, and resulting hard feelings among family members.

5. **Multiple Probates.** A probate proceeding is required in each state where the decedent held real estate. Thus, if you hold real estate at the Jersey shore, in Florida, or in some other state your estate will require a probate proceeding not only in Pennsylvania, but also in that other state.

By now you may be saying to yourself: "Probate seems pretty bad. How can I avoid it?"

How Does A Living Trust Avoid Probate?

A Revocable Living Trust avoids probate by essentially bypassing the probate system. Because a person setting up a Revocable Living Trust transfers all, or virtually all of his or her assets into that Trust while the person is still alive, at death there is no estate to be probated. In other words, instead of transferring assets from the decedent to the decedent's beneficiaries after death through the probate system, the person makes the necessary transfers (to the Trust) while he or she is still alive. The beauty is that, although the transfers have been made to a separate legal entity known as the Revocable Living Trust, the creator of the Trust has not given up any essential control or other rights to the assets placed in Trust.

Who Should Have A Revocable Living Trust?

We believe that virtually anyone who has an estate large enough to require probate should consider a Revocable Living Trust. Married or single, old or young--just about everyone can benefit from a Revocable Living Trust. If you want to make sure that your loved ones will not have to deal with probate if something happens to you, you should have a Revocable Living Trust.

People frequently ask us whether their estates are large enough to have a Revocable

Living Trust. Some people have been advised, even by attorneys, that unless their estate is over the federal estate tax threshold (currently \$3,500,000 as of 2009) they do not qualify for a Revocable Living Trust. That brings us to our next question.

How Large An Estate Must I Have To Consider A Living Trust?

We believe this question is best answered in terms of a cost/benefit analysis. In other words, the costs of a Will and a Trust must be compared to their respective benefits. From a purely economic standpoint, it must be asked “Does the increased cost of setting up a Revocable Living Trust estate plan outweigh the benefits of a Revocable Living Trust (in contrast to a Will estate plan)?” We believe that anyone with a total estate (including real estate, life insurance, and other death benefit assets) exceeding \$250,000 will experience substantial overall savings in his or her estate by using a Revocable Living Trust rather than a Will.

If Something Happens To Me, Who Has Control?

In setting up your Revocable Living Trust, you appoint successor trustees to take over in the event something happens to you. In the case of a husband and wife, normally the other spouse can continue in control of the Trust. In addition, whether you are single or married, you will appoint one or more backup successor trustees to take over the control and management of the Trust in the event of your disability or death. These backup successor trustees may be family members, such as children or siblings, or may be some other individual such as a friend or advisor. In some cases, particularly where no individual seems qualified, a corporate trustee (such as a bank or trust company) may be considered, either as sole successor trustee, or as a co-trustee.

By now you may be thinking to yourself, “Revocable Living Trusts sound too good to be true. What's the catch?” That leads us to the next question.

Are There Any Disadvantages To A Revocable Living Trust?

After all of our research and working with people setting up Revocable Living Trusts, we have found only three disadvantages to Living Trusts:

1. **Education.** Since many people are not familiar with Revocable Living Trusts, it requires some effort on their part to become educated about Revocable Living Trusts. Wills are in such common use that they are understood in a general way by almost everyone. However, it will only require attending a seminar, reading a book, or spending some time with your attorney to learn what you need to know about Revocable Living Trusts.

2. **Time And Effort To Fund The Trust.** After your Revocable Living Trust has been set up, you will need to transfer your titled assets from your own name, into your name as Trustee of your Revocable Living Trust. This requires some time and effort. However,

normally it takes only a few weeks to complete this task, and usually involves only a few hours of your actual time. The question boils down to this: would you rather spend a few hours of your time now transferring your own assets to your own Trust, or require your loved ones to spend months after your death to transfer those same assets using the probate system? We assist our clients in the process of retitling their asset to their Revocable Living Trust.

3. **Cost To Set Up A Trust.** Simple Wills can be prepared by your attorney for a relatively modest fee. Since Living Trusts have a lot more time, planning and value built in, they cost more than simple Wills. (Our Firm charges based on a fixed fee schedule for an entire Living Trust Estate Plan, including the Revocable Trust Agreement and related valuable documents. The fixed fees for all necessary documents and meetings currently range between about \$900 and about \$2,000.) However, you need to ask whether you would rather save a few hundred dollars now to have a simple Will prepared, or subject your family and heirs to fees of many thousands of dollars later. Especially if your total estate exceeds \$3,500,000 (the current federal estate tax threshold as of 2009), the savings in federal estate tax may be dramatic.

What Are The Advantages Of Living Trusts?

We have discussed the disadvantages of the probate system. The advantages of a Living Trust are essentially the flip side of those disadvantages. They include the following:

1. Avoidance of probate;
2. Saving probate fees and costs;
3. Speeding up distribution of your estate;
4. Providing for disability and incapacity;
5. Avoiding multiple probates; and
6. Virtually eliminating Will contests.

How Do I Set Up A Revocable Living Trust?

You set up a Revocable Living Trust by preparing and signing a Revocable Living Trust Agreement. This Agreement will contain all of your specific instructions about your estate, how it is to be administered and distributed, and who is to be in charge of it at any given point in time. Working with your attorney, you will take the required steps and make the necessary decisions. For example, you will need to: determine the size and composition of your estate; decide who your beneficiaries (heirs) will be; when and how they will receive their distributions; select your backup trustees; and, if you have minor children, name guardians for them. Your attorney will

then take this information and your planning decisions, and prepare a Revocable Living Trust Agreement in a legally enforceable format. You will then sign the Trust Agreement and have it witnessed and notarized. Finally, you will retitle your assets which would otherwise be subject to probate to your Trust. You should also change most beneficiary designations on death benefit assets (such as insurance policies, IRA's, Keoghs, annuities, and the like) to include your Trust as primary or secondary beneficiary. Your attorney will guide you as to the specifics of beneficiary changes.

Do I Need An Attorney?

Many people have seen "do it yourself" Living Trust kits and wonder whether they need an attorney. We may be somewhat biased, but we believe it is very important to have an attorney set up your Revocable Living Trust and related estate plan. The "do it yourself kits" are generic forms, which are not tailored to the laws of Pennsylvania or to your family's particular situation. There are many legal and tax pitfalls in this area, and these can be a trap for the unwary. Only an experienced Living Trust attorney, knowledgeable about Pennsylvania estate and trust law and tax law, can successfully guide you through these issues and help you develop the best possible plan for your needs.

Please contact us by phone or email if you have further questions about your estate plan or are interested in setting up a Revocable Living Trust. We offer an introductory complementary consultation to evaluate your estate planning needs.