WILLS VS. REVOCABLE LIVING TRUSTS – WHAT DO YOU NEED?

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REVOCABLE TRUSTS AVOID GUARDIANSHIP AND PROBATE

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A question that I'm often asked as an estate planning attorney is "How do I know if I need a trust instead of a will?" Many people assume that Revocable Living Trusts are just for the wealthy, but the benefits that they can offer to the average person are significant. Here are some factors to consider when assessing your need for a will versus a Revocable Living Trust.

WILLS VS. TRUSTS – PLANNING FOR MENTAL DISABILITY

Regardless of your net worth, and particularly if any of your assets are titled in your sole name, then you should consider a Revocable Living Trust for mental disability planning. But beware, because not all Revocable Living Trusts are created the same. A well drafted Revocable Living Trust should contain provisions for determining your mental capacity outside of a court proceeding as well as how to take care of you and your finances if you do become mentally incapacitated. This will literally save you and your family thousands of dollars by keeping you and your assets outside of a court-supervised guardianship or conservatorship.

Often when I meet with young parents their largest asset is either a life insurance policy or retirement plan. This becomes a problem if the parents later divorce or if one parent dies and the children are still minors when the other parent dies. What will happen to the life insurance or retirement account? These funds will be placed in a court-supervised guardianship or conservatorhip for the benefit of the minor until age 18 or 21. Thus, in these situations, I recommend that the parents establish a Revocable Living Trust to be the primary or contingent beneficiary of the life insurance or retirement account. That way the successor Trustee will have the legal authority to accept the funds instead of a court-supervised guardian. In addition, the parent can dictate in the trust agreement the age at which the child will receive their inheritance.

WILLS VS. TRUSTS – ESTATE PLANNING FOR SINGLES

Anyone who is single and has assets titled in their sole name should consider a Revocable Living Trust. The two main reasons are to keep you and your assets out of a court-supervised guardianship and to allow your beneficiaries to avoid the costs and hassles of probate. The minimum net worth necessary for a single person to consider using a Revocable Living Trust will vary from state to state. For instance, in Tennessee, estates valued at $25,000 or less are considered small enough to be administered through a simple probate procedure, while in Florida the amount is $75,000 or less. If the value of your assets is over the minimum threshold in your state, then a formal, time-consuming and costly probate administration will be required.

WILLS VS. TRUSTS – ESTATE TAX PLANNING FOR MARRIED COUPLES

If you're married and the estates of you and your spouse exceed $5.25 million or your state's estate tax exemption, then you should consider establishing Revocable Living Trusts to take advantage of both spouses' exemptions from estate taxes. This is accomplished by setting up**AB Trusts** or **ABC Trusts** and then dividing your assets roughly in equal shares between the two trusts. You will also need to do this type of planning to maximize the use of both spouses' generation-skipping transfer tax exemptions. Note that while this type of tax planning can be done in your wills, you and your spouse will need to divide your assets into separate names, in which case the assets will need to be probated after each spouse dies. The use of Revocable Living Trusts insures that probate can be avoided after each spouse's death.

WILLS VS. TRUSTS – ESTATE PLANNING FOR COUPLES IN SECOND OR LATER MARRIAGES

If you are in a second or later marriage and you and your spouse will have different beneficiaries such as your own children or grandchildren, then you should consider establishing Revocable Living Trusts in order to insure that each spouse's estate will go where he or she wants it to go outside of the probate process.

WILLS VS. TRUSTS – KEEPING YOUR ESTATE PLAN PRIVATE

A last will and testament that is filed with the probate court becomes a public court record that anyone can read. Contrast this with a Revocable Living Trust, which is a

private contract between you as the Trustmaker and you as the Trustee. Unless your beneficiaries have to go to court over something written in your Revocable Living Trust agreement, then the document should remain a private document that only the trustees and beneficiaries will be able to read after your incapacity or death.

WILLS VS. TRUSTS – ESTATE PLANNING FOR REAL ESTATE LOCATED OUTSIDE OF YOUR STATE

If you own real estate in more than one state or outside of your home state, then you'll need to establish a Revocable Living Trust and deed the out of state property into the trust. Otherwise, your family may be faced with two separate probate estates – one in the state where you live, and a second in the state where your real estate is located.

Of course, if you find yourself in need of a Revocable Living Trust, then be sure to fund your assets into your trust and update your beneficiary designations, otherwise your trust won't be worth anywhere near the money you spent on it.