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### **To Trust or Not to Trust?**

Revocable Living Trusts are often trumpeted as a cure-all in avoiding probate and taxes when transferring title of real property to heirs upon an owner's death. These trusts first became popular in California and have since grown in popularity throughout the United States.

The concept often sounds better than the reality. Probate is the court supervised administration of one's final affairs after death including the payment of debts and the distribution or transfer of property to one's heirs. Many seek to avoid probate by placing assets in a revocable living trust. It is important to note that while a revocable living trust is not controlled or supervised by the probate court, beneficiaries are still liable for state inheritance tax and federal estate tax.

Probate assets include everything one owns in his own name, excluding properties with survivorship or designated beneficiaries. Assets or properties with a named survivor or a designated beneficiary can pass to others without court action or approval.

### **What is a revocable living trust?**

A revocable living trust is a legal document that is set up while one is still alive to include the transfer the ownership of property to another individual or entity. The trust is often set up to retain self-management of property without a separate trustee. It acts as a substitute for a will, providing for distribution of property upon one's death. The trust is revocable because it can be modified or dissolved as long as the grantor remains competent. No permission is needed to modify or revoke the trust, as the grantor maintains full control while he is alive and competent.

A successor trustee, a second individual or corporate trustee, is often named by the grantor. This party will assume responsibility if the original trustee dies or is unable or unwilling to continue as trustee.

Upon death or becoming incompetent, the successor trustee - often the spouse - can assume the management of the trust without the need for court approval. The property can be transferred or distributed upon the grantor's death in accordance with his master plan, without court approval, while usually maintaining privacy for the grantor and his beneficiaries.

A living trust can incorporate the marital deduction to avoid taxes when assets are transferred to a surviving spouse and may minimize taxes for heirs by preserving the uniform tax credit available to the estate of the first spouse to die. For instance, some estate taxes may be avoided if the first spouse to die utilizes his tax credit by transferring some assets to heirs, with the remainder passing to the surviving spouse.

### **How does a revocable living trust differ from a will?**

Both wills and revocable living trusts have advantages and neither is necessarily all good or all bad for a given set of circumstances. There are arguments for each and possible warnings as well.

A will directs the division of one's assets in probate in accordance with his plans and wishes, and is subject to court supervision. Probate may be costly and time intensive, and will become a matter of public record. One may still decide to adopt a will if he has minor children and wants to plan for the appointment of a guardian while they are minors.

A revocable living trust costs more to draft than a will, and the expense occurs during one's lifetime as opposed to probate expenses, which are deducted from the estate. A trust does allow one to do some things a will cannot do. For instance, a trust can provide how the estate and assets are managed if one becomes disabled during his lifetime.

Transferring ownership of one's assets is a necessary step in setting up a trust and can be a lengthy process. A trust must be fully funded to function properly and may require additional effort by the trustee to manage and document the administration of the trust. No such transfer or funding is necessary for wills.

### **Should an attorney or other professional prepare the living trust?**

It is beneficial to review one's assets as part of an estate plan in order to reduce problems and possibly taxes for one's beneficiaries or family members. A financial advisor or experienced attorney is able to provide personalized services and recommendations.

An estate plan which includes a revocable trust will not work without property being transferred to the trust, and the assets being controlled and managed thereafter. Otherwise, beneficiaries or family members could still be required to probate assets if they are not transferred properly into the trust.

Many attorneys can recount extreme cases of property owned jointly with another which has gone to unintended beneficiaries. A typical example is when there is a second marriage, and assets unintentionally get transferred to the first spouse.

### **What about special offers that are advertised?**

You may have seen promotions or newspaper ads for free living trust seminars. Other notices may include do-it-yourself kits which make wills and probate seem like big mistakes. Watch out for unscrupulous businesses or scam artists.

While experimenting with low cost, do-it-yourself plans may seem appealing, it may result in greater costs being incurred later in order to correct mistakes or oversights.

A trust will cost more than a will to set up due to the documentation required in creating it. Additionally, costs will be incurred in implementing the trust. Accordingly, a trust may not be cost effective for small estates. Individuals with assets may greatly benefit from assessing their estate plans and determining whether they are still appropriate, as one size does not fit all.

### **Conclusion**

Trusts may not be for everyone. There are good reasons to consider trusts, including privacy and the avoidance of probate. Trusts may be an ideal arrangement for many; however, there may be significantly more costs and administration during one's lifetime. It is prudent for individuals to outline their financial objectives and personal values to determine the best plan. Should a revocable trust be included as part of the estate plan? No single guideline exists to the question due to differing circumstances and variations in wealth.

This column contains general information only and must not be construed as legal advice. Questions may be submitted directly to Maylie & Grayson by fax at (503) 775-1765, by email at [joelgrayson@mayliegrayson.com](mailto:joelgrayson@mayliegrayson.com) or by mail at 7959 SE Foster Road, Portland, Oregon 97206.