

PROS AND CONS OF LIVING TRUSTS

Pros --

As you may know, a trust is a separate legal entity with 3 "persons" involved. One is the person that sets it up. S/he is known as the "Grantor." The second person is the one who is in charge of the assets in the Trust. S/he is known as the "Trustee." That would be you as long as you are competent to do so. The third person involved is the person for whose benefit is established. S/he is known as the "Beneficiary." That would be you, also. So one person, the person that sets it up, is really the only person involved at the outset. That is just like the situation where there is no trust, because we each individually do all those things for ourselves without a trust.

It works by transferring all the grantor's property into the trust. It is important that everything (with some exceptions) be transferred to the trust.

The primary advantage of a living revocable trust is that being a separate legal entity, it does not die with the passing of the person who set it up. If I die owning the property in my name, then certain things must happen to pass the title to the property on to my beneficiaries. For instance, someone must be appointed to make certain that everything gets where it is supposed to go. A court proceeding is involved. With a trust, the process is relatively seamless. The Grantor appoints a successor trustee at the time that the trust is created. If the Grantor acting as trustee herself, becomes disabled or dies, the document provides for the successor to step in without any delay or court supervision and continue immediately to serve and act as trustee and do everything that the trustee had been doing.

Since the trust owns the property, the death of the grantor or the trustee is not really a relevant consideration of whoever is charged with keeping ownership information, whether it be the County Recorder or the bank or the investment company or whoever. As far as it is concerned, the Trust is the owner. The fact that the trustee died just requires proof of who the successor trustee is.

In the case of the death of the Grantor, the Grantor is no longer the Beneficiary. The successor beneficiaries are the persons named by the Grantor just as if they were beneficiaries of a will. Again, the advantage is that probate and court involvement does not have to occur. The property passes to the Beneficiary just as it does through a will, except that the court is not involved. It passes because the Trust agreement says that it passes at the Grantor's death to the people named under the provisions of the trust instrument.

A living trust is also known as a revocable trust. That means that it can be changed or tossed out whenever the person setting it up wants to do so. That provides flexibility as well as the comfort of knowing that if the Grantor ever decides to do away with it, it can be revoked.

An advantage often mentioned is that you avoid the cost of probate. In Iowa, that is not necessarily as big of a consideration as it is in some other states. For instance, attorney fees in probate of estates in excess of \$100,000 are limited to 2% of the gross value of the estate as a statutory maximum. Some states are said to charge as much as 10% of the value. Regardless of the

August 23, 2010

Page 2

issue of attorney fees, you avoid most court costs with a trust. In Iowa, those fees can be substantial, depending on the value of your estate assets. In many instances, they will exceed the costs of creating the trust.

Another advantage that is not as important in Iowa as other states is that the revocable trust is often said to be private. In Iowa, you may still have to file a Report and Inventory with the Clerk of court showing the value of the assets. However, you often do not have to itemize the property and assets. So you can say, "Trust -- Value \$1,004,389" (or whatever) rather than itemizing the assets on the report. Ordinarily, there are not a lot of otherwise disinterested people that go out of their way to nose into the affairs of the average decedent. On the other hand, a truly interested person will still be able to obtain an accounting from the Trustee if he wants to do so.

Cons --

A primary negative aspect of a trust is that the Grantor pays the attorney a significant amount of money to set up the trust (compared to not setting up a trust) at the present time. A lot of people think that the probate expenses are just part of the cost of dying and that the Beneficiaries should pay later rather than the Grantor paying now.

Another consideration with a trust is that you must put all your property in the name of trust. That involves retitling the property . . . the checking account, the house, the brokerage account. A lot of people do not want the hassle of doing that (even though it is a one-time hassle) and want the "security" of knowing that they actually own those things as they always have. With the ownership change, goes the requirement to always deal with the assets in the name of the trust rather than the person's individual name . . . you write checks as Trustee . . . you issue buy-sell orders as Trustee. This really is somewhat of a technicality, because the person with whom you are dealing, (the payee on the check, for instance), does not care about that as long as the check is good.

In addition, there are no tax advantages to having a trust in place. The Grantor is taxed on the income as though it was his or her individual income. The estate and inheritance taxes are not affected by the property being in a living trust. The same returns must be filed. The waiting period is the same. The tax result is the same.

There are still some things that need to be done administratively after the Grantor's death, such as publication of notice in a newspaper in the county for a period of time. There is still a waiting period for creditors to file a claim or for heirs to challenge the trust.

We recommend trusts in four situations.

- 1) Where people own real estate in a state other than the state of residence. This avoids probate in at least one state, if not both states, the state of residence and the state where the property is located.

August 23, 2010

Page 3

2) Where a person has a disabled child or other beneficiary and wants (needs) to have a seamless administration of property at death so that the beneficiary's care and resources continue without interruption. It also may enable the beneficiary (other than a spouse) to continue on government services without interruption and re-application.

3) Where the person is in his or her or their late 60's or older or has one or two beneficiaries and believes that there will not likely be a situation where the court needs to be involved. Even if the assets are nominal, the person may want the comfort of knowing that the assets will not be consumed by administration expenses.

4) Where the person recognizes that it makes good business sense for his/her situation and just wants to do it this way. For instance, it is often more flexible in business continuation planning. We often believe that it does make good business sense and are always happy to talk to you about it.