What is a Revocable Living Trust?

A Revocable Living Trust is an arrangement by which an individual or a couple (the "Trustor(s)") transfer legal title of assets from their names to the Trustee or Trustees of the Trust. A Trustee is designated to manage the Trust property according to the terms outlined in the Trust document. In California, the Trustor(s) often act as the initial Trustee(s) of the Trust and maintain complete control of the Trust during their lifetime. The Trustor(s) can thus continue to buy, sell, borrow or transfer assets at any time. The terms of the Trust, including the disposition of assets at death and/or the persons named as Trustees, may be changed or revoked by the Trustor(s) as they see fit during their joint lifetimes, so long as they are competent.

Some of the advantages of a Revocable Living Trust are discussed below.

A Revocable Living Trust Eliminates Conservatorship During Lifetime

If you become disabled or are otherwise unable to manage your estate, a properly funded Living Trust typically allows you to avoid the need for a court-supervised conservatorship. This is because the successor Trustee named in the Trust can step in and manage your affairs without government interference and/or the expenses of a conservatorship.

A Revocable Living Trust Avoids Probate

With a Living Trust, upon your death your assets pass directly to the beneficiaries named in the trust, according to the terms set forth in the Trust instrument. There will be no court costs associated with assets held in trust, and there will be no court-ordered executor or attorney's fees. Although it is common for a family member acting as executor to waive his or her fees, the statutory fees for the attorney can be quite high. For example, an estate with a gross value of only $1,000,000 could incur probate fees of more than $46,000.

Furthermore, there will be fewer delays in distributing your assets following the payment of estate debts and expenses, and unlike a Will which is deposited with the Court and becomes public record, the terms of your estate plan will remain private among your family and other beneficiaries.

A Revocable Living Trust Can Reduce or Eliminate Federal Estate Taxes

For a married couple, in a typical arrangement where each spouse creates a Will leaving all of his or her property to the surviving spouse, no tax will be due at the death of the first spouse. However, when the second spouse dies, estate tax will be assessed on every dollar not covered by the Credit Exemption shown on the prior page. Using this type of plan results in the loss of the Applicable Credit of the first spouse to die, which can shelter from estate tax up to $1,000,000 of assets through 2003, and possibly even more thereafter. By contrast, with a Trust, the Applicable Credit of each spouse can be fully used while allowing the surviving spouse to enjoy the benefits of the property. If the Applicable Credit continues to be increased as scheduled, this could mean that a married couple using a Trust can shelter up to $7,000,000 (2 x $3,500,000) from estate taxes, or perhaps even more!

Additional Benefits of a Revocable Living Trust

Although not unique to a Living Trust, such a trust can provide for the care, support and education of your children or other young beneficiaries by providing management of the assets by the Trustee. The assets can be distributed to the children at an age or ages chosen by you. This also avoids the costs and burdens of a court-supervised guardianship for minor beneficiaries.

Alternatively, where long-term financial management and/or estate tax minimization is an issue, the trust can include Generation Skipping for up to $1,100,000 of assets ($2,200,000 for a couple). Such a Generation Skipping trust can provide income and security for the children (and in some cases further generations) without being diminished by transfer taxes at the beneficiaries' deaths. (See the booklet under Articles | Basic Estate Planning for more information on Generation Skipping.)

A continuing trust can be especially helpful if a beneficiary is disabled and/or receives government benefits by providing them with funds to enhance the quality of their lives, without jeopardizing their benefits. Even insurance proceeds can be paid to the Trust so your successor Trustee can manage the proceeds for the benefit of your survivors. For a married couple, Living Trusts can also be used to ensure that both the surviving spouse and any children from a prior marriage receive fair treatment and protection.

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