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Key Benefits of Revocable Trusts and Other Will Substitutes

A revocable trust, also known as a living trust, is a blueprint for the administration and disposition of assets transferred to a trust. A revocable trust has three key players: (1) the grantor (also known as the trustor, settlor, or donor), the person who sets up the trust; (2) the trustee, the person who manages the trust; and (3) the beneficiary, the person who benefits financially from the trust. Typically, with a revocable trust these three roles are initially filled by the same person. The grantor then names a successor trustee to manage the trust assets should the grantor become incapacitated. While the grantor is alive and well, they are free to manage, revise, or revoke the trust as they wish. To obtain the full benefits of a revocable trust, certain assets should be retitled in the name of the trust prior to the grantor's death and beneficiary designations should be properly coordinated. Revocable trusts simplify the estate administration process by designating how trust property will be managed and by whom in the event the grantor becomes incapacitated or dies.

What are Other Will Substitutes?

In addition to revocable trusts, will substitutes include but are not limited to: beneficiary designations in life insurance contracts, IRAs, and retirement plans;

survivorship rights when property is owned jointly (e.g., “joint tenancy with right of survivorship” or “tenancy by the entirety”);

payable-on-death (“POD”) or transfer-on-death (“TOD”) designations on financial accounts, savings bonds and, in some states, real estate; and

statutory instruments allowed under certain state law.

Avoiding or Limiting Probate

Revocable trusts and will substitutes can be used to avoid or limit probate. Probate is the court process of administering the estate of a deceased person regardless of whether the person died with a will. If a person dies having owned assets solely in their name, probate is necessary to change the title of assets from the decedent's name to a beneficiary. If a person dies with a will, the probate court will first determine if the will is valid and will then open the probate proceeding. If the deceased person owned real estate in more than one state, it may be necessary to open separate probate proceedings in each state.

Probate is typically costly, lengthy, and complex. Probate court procedures vary from state to state and sometimes even from county to county. Using a revocable trust and transferring assets to the trust before death can save the surviving family members thousands of dollars in administration and legal expenses. Additionally, oftentimes, surviving family members will have access to the deceased person's assets in a more efficient manner.

In addition to cost and time savings, revocable trusts preserve privacy. Documents filed in probate court become part of the public record and may be viewed by any interested party, including creditors or relatives who may wish to challenge the will.

Simplifying the Estate Administration Process

Revocable trusts are frequently used to provide comprehensive intergenerational wealth planning and are efficient mechanisms for the creation of further trusts for the benefit of the grantor's beneficiaries at the grantor's death. Such trusts are oftentimes created in order to provide asset protection and estate tax planning for such beneficiaries. Assets owned by such trusts are created so that they are protected from a beneficiary's creditors and from division in the event of divorce.

Additionally, such trusts allow the grantor to designate who will have the authority to manage the trusts for the grantor's beneficiaries, including the ability to designate a beneficiary child as his or her own co-trustee and/or, ultimately as his or her own trustee at a certain age. This provides protection for children or other descendants who may lack the maturity or financial responsibility to manage an inheritance on their own.

While a will is necessary to appoint guardians of minor children and may be used to ensure assets that were not retitled in a revocable trust prior to death are "poured over" into the trust at death through probate, having a fully funded revocable trust and utilizing other will substitutes can help a family avoid a costly, lengthy, and public probate proceeding and free up emotional and financial resources during what is often a difficult time.

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