Licensed:
Florida
Connecticut
Rhode Island

Marc J. Soss, JD, LL.M
mjs@fl-estateplanning.com
www.fl-estateplanning.com

ESTATE PLANNING: PART II

Revocable Trusts:

A written declaration in which an individual (the "settlor") transfers his or her property (real estate, brokerage and bank accounts, art, etc.) into a trust, for the benefit of his or her self, during their lifetime. During the settlors lifetime, the document will reserve unto them complete control over the trust and its assets, including the right to amend or revoke the trust at any time. Most important, no income taxes are due on the transfer of assets into the trust.

Trustee: Typically, the settlor will be the initial "trustee" (individual with complete control over the assets) of the trust. The trust instrument will name a successor ("successor trustee") to take control of the trust assets in case of the settlor's incapacity (physician or Probate Court determined). This will allow for continued administration of the trust and avoid Probate Court involvement in the management of their assets.

Death of Settlor*:* Upon the settlor's death, the trust will become irrevocable. The successor trustee will then be entrusted to distribute the decedent's remaining assets for the benefit of their heirs (the "remainder beneficiaries"). The distributed assets will receive a stepped up tax basis at the settlor's death.

Advantages: A trust has the following important advantages: (i) provide for management of assets in the settlor's declining years when they may not be able to physically or mentally able to manage their property; (ii) ability to distribute trust assets to heirs and beneficiaries, after the settlor's death, without going through the probate process; (iii) privacy (not a public document); and (iv) the ability to control the amount and time for distribution of trust assets to heirs and beneficiaries, after the settlor's death.

Disposition of Trust Assets: Trust assets can be divided into separate shares for each beneficiary or one for the benefit of all the beneficiaries, until specified ages or events occur. At which time a total or partial distribution of assets can occur.

Pour-Over Will: In conjunction with the establishment of a Revocable Trust, every individual should also have a Will. The Will, commonly known as a "Pour-Over Will", will pour-over into the Trust any assets that have not already been formally transferred to it, or have been acquired in an individual name after the Revocable Trust was created.

Irrevocable Trust:

A type of trust that effectively removes all of the grantor's rights of control and ownership over the trust and the assets used to fund it. A modification to the assets or the trust instrument requires the consent of the trustee and beneficiary. The trust cannot be changed or amended by the grantor. Any property placed into the trust may only be distributed by the trustee as provided for in the trust document itself. For instance, the donor may set up a trust under which he or she will receive income earned on the trust property, but that bars access to the trust principal.

Benefits: Irrevocable trusts provide both asset protection and estate and tax benefits. The benefits include the removal of all incidents of ownership, which can effectively remove the assets from the grantor's taxable estate and reach of creditors. The assets held in the trust can include a business, investment assets, cash and life insurance policies.

Types of Trusts:

Minors' Trusts: A trust established for young beneficiaries to provide for education and/or other needs of life. They can be created to terminate once the beneficiary reaches a certain age (18, 21, etc.), or be designed to continue for the beneficiary's entire lifetime.

Spendthrift Trusts: A trust that benefits one or more beneficiaries without being considered assets of the beneficiary for estate and gift tax purposes. When properly established it cannot be attacked by a beneficiary's creditors.

Supplemental Needs Trusts: If an intended beneficiary is a recipient of Medicaid, SSI, or other governmental assistance programs, an outright gift or a gift in trust may disqualify the beneficiary from continuing to receive such assistance. This type of Trust is designed so that distributions are made only to "supplement" the benefits already being received and will not be counted as the beneficiary's assets for purposes of determining eligibility for benefits under assistance programs. So long as distributions made by the trustee are discretionary and not mandatory, the trust assets and trust distributions are not considered disqualifying resources.

Life Insurance Trusts (ILITs): The proceeds of life insurance policies are included in the insured's estate at his or her death if the insured had "an incident of ownership" in the policy within three years of death. This type of trust can be the owner and beneficiary of all life insurance policies. The policy premiums can be funded by annual cash gifts covered by the annual gift-tax exclusion. Upon the insured’s death, the insurance proceeds will be collected and distributed in accordance with the terms of the trust.

Charitable Trusts (CRTs and CLTs): Trusts established to benefit a charitable organization today (lead) or in the future (remainder). The present value of the charitable gift provides the grantor with a charitable tax deduction.

Dynasty Trusts: A trust that allows assets to be managed for the benefit of the settlor's family for multiple generations. The trust will usually discourage the expenditure of principal, but will allow beneficiaries to use trust assets (shared family mountain cabin, or other vacation property) for several generations. The trust assets will be exempt from the claims of the beneficiaries' creditors.

Gifts:

There is no actual limit on how much an individual may gift during his or her lifetime. Under current tax law (2009), a gift to any individual of more than $13,000 in one year will be required to file a Federal Gift Tax Return with the IRS. There is no limit on the number of individuals (children, spouses, grandchildren, etc.) to whom an individual may make an annual gift. The best part is that the gift will not count as taxable income to the recipient (although the earnings on the gifts if they are invested will be taxed).

Gift Tax Exclusion: All amounts gifted in excess of $13,000 in any one year, to any individual, will be counted against the donor's $1 million lifetime gift tax exclusion. Each dollar of gift above $1 million will reduce the amount that the donor can transfer tax-free at death.

Asset Protection:

The method of protecting and preserving an individual's assets, allowing them maintain a current and future lifestyle, discourage litigation while promoting settlements, and keep ownership of assets confidential and hard to locate. Asset protections two main goals are: (i) to make the enforcement of judgments against protected assets virtually impossible, and (ii) to allow the "owner" of protected assets to retain engineered "control" over his or her assets.