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Revocable Living Trust Handout

Overview

A common question asked when creating an estate plan is whether a Revocable Living Trust should be part of the plan, or more specifically, should a Revocable Living Trust be used. There are many factors to consider when determining whether to include a Revocable Living Trust as part of an estate plan.
For example, one valuable use of a Revocable Living Trust is to provide a management vehicle for property of older individuals at a time when they may not be capable of actively managing their property.

Below we outline what a Revocable Living Trust is, how it works, and what the pros can cons of utilizing it as part of an estate plan are.

In General

The passage of property to one's beneficiaries at death requires careful and detailed planning. For some individuals, a Revocable Living Trust can be valuable as an estate planning instrument particularly where management of assets is needed; however, as will all estate planning tools available, the use of a Revocable Living Trust should be done only after a complete analysis of the individual's assets, stated desires, and overall family goals.

A Revocable Living Trust is created when the grantor executes a trust agreement and funds the trust by transferring property to the trust during life. Furthermore, asset titles must be changed into the name of the trustee of the Revocable Living Trust. The grantor retains the power to amend, modify, or revoke the Revocable Living Trust, as well as frequently retaining the right to receive the income during the grantor's life.

Because transfers to a revocable living trust rarely include all of the individual's assets, the plan often includes a "pour over will." This ensures that property not needed in estate settlement for payment of debts and taxes would be transferred to the trust after the estate has been settled.

Income Tax Aspects

A Revocable Living Trust is not regarded as a taxable entity because it is treated as a "grantor trust" with all trust income taxable to the grantor. Generally, the Revocable Living Trust would obtain a taxpayer identification number; however, if the grantor is also the trustee and is treated as the owner of all assets held by the Revocable Living Trust, there is no requirement to obtain a taxpayer identification number.

Transferring the principal residence to a Revocable Living Trust does not make the residence ineligible for exclusion gain on sale. The principal residence is eligible for the exclusion to the extent that the owner is treated as the owner of the trust, but the residence may still be ineligible for preferential credit or exemption from property tax under state law.

Pros and Cons of Revocable Living Trusts

Probate Avoidance – This is often stated as a pro for use of Revocable Living Trusts. Going through Probate can be more complex, and costly than creating a Revocable Living Trust. Additionally, Probate is a public process while trust administration is private, and privacy can be an important aspect for some. However, in probate a judge is put in place to administer the process, deal with creditor claims, and handle any disputes that may arise. That type of supervision is not there to the same degree with trust administration.

Estate Tax Savings – A common misconception is that a revocable living trust is the only way to avoid estate taxes, but a Revocable Living Trust does not avoid those taxes any more than a properly drafted will does.

Distribution of Assets – Any delay in the distribution of assets to the beneficiaries should not drastically greater in probate administration than when a Revocable Living Trust is used.

Fees and Costs – The cost of preparing and funding a Revocable Living Trust is greater than the cost of having a will prepared, but the costs are saved if probate is avoided. Fees for settling an estate through a trust, whether legal or administrative are not eliminated but generally less for trust administration.

Privacy – A Revocable Living Trust does maintain family privacy to some degree. This is a desirable feature for many people; although, some limited disclosure must be made for inheritance tax purposes in states that have an inheritance tax.

Creditor's Rights – Present and future creditors of the grantor can still reach trust assets, and transfers to a Revocable Living Trust to avoid creditors will not, typically, be allowed. On the other hand, the probate process, however, does provide an ability to terminate creditors' rights to the probate assets.

Challenges – Both Revocable Living Trusts and wills are susceptible to challenge by unhappy heirs, and a Revocable Living Trust may create greater suspicion on the part of the heirs, but also provide protection by avoiding the need to notice all parties as is typically required in a probate administration.

Conclusion

A Revocable Living Trust is not for everyone; each person has unique goals and needs that must be considered in light of the benefits and burdens inherent in any type of estate planning arrangement. There is no legal device which will make the personal decisions which must be faced for you and there is no substitute for good counseling in the preparation and implementation of one’s estate plan.