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Revocable Living Trusts
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What is a Revocable Living Trust?

1. A trust is a formalized statement for the management and distribution or property contained in a written document. Every trust has three parties
    1. The creator, called the “Trustmaker”, “Grantor”, “Donor”, or “Settlor.”
    2. The property manager referred to as the “Trustee,” and
    3. The party who receives the benefits usually in the form of income or principal payments called “beneficiary.”
    4. A trust which has been created and has received assets during the lifetime of the Grantor is a living trust.
    5. A trust under which the Grantor has reserved the right to revoke, amend, or terminate the trust is a Revocable Trust.

Who can be the Trustee of a Revocable Living Trust?

1. Any person, including the Grantor, may be the Trustee of a Revocable Living Trust. Banks and trust companies with state granted trust powers can be Trustee.

What happens when a Grantor who has named himself Trustee becomes incompetent or dies?

1. A trust does not fail or terminate when the Trustee becomes incompetent or dies. The trust usually provides for a replacement “Successor Trustee.” When there is no replacement Trustee named in a trust, and no provision under which a replacement can be named, a replacement Trustee can be appointed through a court proceeding.

Does a Living Trust eliminate probate?

1. A living trust eliminates probate of the assets registered in the trust at the time of the Trustmaker’s death. Assets owned in the sole name of the Trustmaker not in the trust at the time of the Trustmaker’s death will end up going through probate. Assets registered in a survivorship form which pass by operation of law upon the owner’s death are not probate assets or trust assets. Likewise, assets naming beneficiaries will not pass through probate

Examples are:

1. Joint tenants with rights of survivorship. Ownership passes on the death of one joint owner to the surviving owner(s).
2. Assets which designate beneficiaries. These are life insurance, annuities, IRAs, profit sharing and pension plans which require a beneficiary designated.
3. Transfer on death, which pass on the death of the original owner to a named beneficiary
4. Payable on death, which pay to a named beneficiary upon the original owner’s death.

Does a Living Trust Eliminate Estate Tax?

- Where the Trustmaker retains the right to revoke or amend the Trust, it remains part of the Trustmaker's taxable estate. A Living Trust is a receptacle in which financial assets are registered and managed. If the assets exceed the tax threshold, presently$3.5 million, there may be tax to pay. Trust planning is more effective when both spouses are alive and each spouse has a funded living trust. In this way, each spouse can use his or her exemption equivalent amount, presently $3.5 Million boosting the total tax-free inheritance to $7 million.

Can a Living Trust avoid guardianship proceeding if the Trustmaker becomes incompetent?

- A Trustmaker acting as her own Trustee will name a Successor Trustee to serve if the Trustmaker dies or becomes incapacitated. This trust document will provide how a determination of incapacity is defined. Typically, the trust will provide that upon two doctor's certifications of the Trustee's incapacity to handle her business affairs, the named Successor Trustee will become the acting Trustee with all trust powers enumerated. The process may be revered by two doctors certifying that the Trustmaker is again able to serve as acting Trustee. Since Successor Trustee will manage the assets and pay the bills, there may be no need to appoint a guardian.

How do assets get into a Living Trust?

- Assets become owned by a living trust when they are registered in Trust ownership. For the Jane Brown Trust where Jane Brown is Trustee, assets will be registered Jane Brown, Trustee, Jane Brown Trust dated August 1, 2004. Jane Brown can purchase assets in trust registration or transfer her individually owned assets into trust registration.

What are the duties and responsibilities of a Trustee?

- A Trustee has a duty to manage trust assets to produce income for "income" beneficiaries while at the same time protecting, conserving, and growing the assets for the residuary beneficiaries.
- In the situation where the trust is used by an individual as a Will substitute to avoid probate, a Trustee has the responsibility (similar to the executor of a Will) to pay creditor claims, file tax returns, and pay taxes and correctly distribute the assets pursuant to the terms of the trust.