ALMGREN LAW

Attorneys & Counselors at Law

Understanding Revocable Trusts

How to protect your estate and heirs

A revocable trust is a document by which ownership of property and assets are transferred into a trust throughout the lifetime of the grantor. It can operate as a substitute for a will or in addition to a "pour-over" will, which provides for all assets not re-titled to the revocable trust.

Unlike a will, which takes effect only after death, a revocable trust is a "living" document. This means that it benefits the grantor while he or she is alive. The grantor can also be the trustee and/or married couples can be co-trustees of their revocable trusts. Because the trust is "revocable," changes can be made to the document by the grantor during his or her lifetime.

Who is Involved in a Revocable Trust?

Understanding the parties involved in a revocable trust is essential to understanding the document and how the grantor can maintain control of assets while alive.

Grantor – The creator of the trust. Since the trust is revocable, or changeable, in nature, the grantor can make changes to the trust as necessary.

Trustee – The person or company that distributes and manages the assets in the trust according to the document. Grantors can name themselves as trustees in order to have full control of their assets while alive. The grantor can also name trustees who can act if the trustee dies or is incapacitated. The grantor can also name any adult with capacity or a company, such as a bank or trust company, as trustee.

Beneficiaries – Those who receive the benefits of the trust, such as property and other assets. Grantors can name themselves as the first beneficiary in order to maintain control of assets while alive. In this case, grantors must name successive beneficiaries who will receive their assets after death. The grantor can also create sub-trusts for minor beneficiaries and supplemental needs trusts in the interest of disabled beneficiaries.

What are Benefits of a Revocable Trust?

Avoiding Probate

Probate is the legal process for transferring ownership of assets upon death. During probate, the will must be proven to be valid and all challenges and claims against the estate must be settled under court supervision. Because probate involves the court, heirs to the property must pay court costs and attorney fees. Furthermore, assets are "frozen" while proceedings take place and property distribution is delayed. The probate records are also open to the public, eliminating any confidentiality in distribution of the estate.

Because a revocable trust operates without court supervision, many of the disadvantages of probate can be avoided. First of all, heirs do not have the pay fees associated with courts and attorneys. Because assets re-titled to a trust are not probated, they pass directly to descendents without any waiting period after death. A revocable trust is much harder to challenge in court than a standard will. Unlike probate, the transfer of assets via a revocable trust is private.

Minimizing Estate Tax

Although a revocable trust does not directly shield heirs from estate tax, provisions can be made in the trust to transfer assets in order to avoid or reduce state and federal taxes. This is an especially useful tool for estates that have a net value above a certain tax-exempt amount. For the federal estate tax, that amount is $5.25 million in 2013. In Massachusetts, the estate tax amount is $1 million. Married couples with a trust can effectively double these exemption amounts.

Is a Revocable Trust Right For Me?

While a revocable trust may work for some, it will not be the perfect tool for everyone. It is important to have an estate strategy that reflects your unique financial objectives and personal values. We can help you create an estate plan tailored to your personal needs.