

GOOD REASONS FOR CREATING AND FUNDING YOUR REVOCABLE TRUST

A revocable trust can go by many different names- a living trust, a grantor trust and inter vivos trust to name a few- but they are all different names for the same useful estate planning vehicle. They are easy to administer and are treated by the Federal and State taxing authorities as "disregarded entity" meaning that your income tax situation will not change as a result of using a properly drafted revocable trust. A revocable trust offers you great flexibility as it lets you control the assets while you are alive. You can add, remove, buy and/or sell assets as you wish and/or as circumstances change. You can freely amend or even revoke the trust while you are living. The revocable trust contains your instructions as to how, how much and to whom you want your assets distributed upon your death as well as your selection of a successor trustee responsible for administering the trust and distributing the assets after your death. Further, because the trust holds your assets outside of your probate estate, distributions are made directly to beneficiaries without the need for probate. As part of an overall estate plan, revocable trusts are often prepared along with a companion "pour-over will" that pours any probate assets you may have upon death into the trust for comprehensive and consolidated administration purposes .

Assets should be transferred to your trust, now during your life, for these reasons:

- A. Avoids probate guardianship on incapacity.
In the event of mental incapacity (whether as a result of old age, stroke, accident, or otherwise), a funded revocable trust avoids probate guardianship expense, notoriety, and red tape and, as compared with a durable power of attorney, avoids problems of possible unwillingness by others to recognize the power of attorney, permitting continuous, undisturbed management of the assets both before and after death.

- B. Avoids probate on death.
Funding a revocable trust avoids probate on death--which provides many advantages:
 - 1. Reduces legal expenses.
It somewhat reduces legal fees (and avoids the problems of getting them approved in court), although it does not usually reduce bank fees significantly.

 - 2. Avoids court appointed appraisers.
To the extent that properties do not pass through probate, it will not be necessary to have the value of those properties initially determined by probate court appointed appraisers (who can sometimes be both expensive and bungling).

 - 3. Eliminates court expenses, guardian ad litem fees, etc.
Avoidance of probate eliminates the probate court filing fees, and bond, notice, publication, and guardian ad litem expenses.

4. Affords privacy.
Avoidance of probate affords privacy, as to (i) your dispositive plan, (ii) your assets, and (iii) the details of the estate administration.
5. Permits expeditious administration after death.
Without probate court formalities there can be more expeditious administration of your affairs after death (especially where your businesses are concerned). For example, when assets are being sold to raise cash for the payment of death taxes and so on, if the sale is made by the estate, court approvals may be required and the entire nature of the situation is a matter of public record (which may influence the price and terms offered by prospective purchasers). With a revocable trust, no court involvement is necessary and all aspects of the sale can be kept private (without the appearance of any pressing need to sell).
6. Permits nonresident to act in place of executor.
A funded revocable trust also makes it possible, in ultimate effect if not in fact, to have a nonresident "executor" in those states (like Florida) which require executors to be either state residents or related to the decedent in some specified way.
7. Reduces risk of a will contest.
Having a funded revocable trust also reduces the risk of a will contest, at least in the sense that the would-be contestants must initiate their own court action (rather than merely file objections when invited to do so by a probate court).
8. Avoids ancillary probate in other states.*
Having the title to assets which are located in other states held in the trust name can avoid ancillary probate administration in the states where such properties are located.

C. Incidental benefits of funding.

1. Income tax deduction for some estate planning fees.
When the estate plan includes business tax planning matters, that portion of the fee relating exclusively to the business plan will be income tax deductible as an ordinary and necessary business expense under the Internal Revenue Code.
2. Investment Management.
Funding the revocable trust permits a person to obtain professional investment, tax planning, and record keeping assistance. This can be particularly important for your spouse, after your death, as well as for you in your later years.

* "Ancillary probate" means probate in a state other than and in addition to that of the decedent's primary residence.