Funding a Revocable Trust: An Estate Planning Opportunity

FIDUCIARY™ TRUST

Trust and Estates Insights

When many people think of trusts, they think of wealth. In today's world, having a trust may be more about privacy and personalization than about prestige. The revocable trust is an estate planning tool that, when used in conjunction with a will, can personalize your estate plan, keep it out of the public eye, and avoid certain expenses.

What is a revocable trust?

Also referred to as a living trust, a revocable trust is a document that defines an individual's desires and plans for assets during one's lifetime, through any possible incapacity, and ultimately at death. It is "revocable" because it can be changed or terminated by the donor at any time, as long as she is mentally competent.

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The donor, or grantor, is the individual who creates the trust and transfers her personal assets into it. The trustee manages the trust and its assets as directed by the trust document. Often the donor will name herself as trustee to maintain control of the assets during her lifetime. It is also important to select a co-trustee or successor trustee to serve when the donor becomes incompetent or dies. The co-trustee or successor trustee could be a spouse, another individual, or a corporate trustee, like Fiduciary Trust. During a donor's lifetime, the trust can provide for her benefit or for the benefit of others, as she determines. Remainder beneficiaries are typically named to inherit assets after the donor's death and can include family members and charities.

The terms of a revocable trust specifically direct the trustee how to manage and distribute assets when the grantor can no longer make decisions, because of either death or mental incapacity. The trust language can be as flexible as necessary to provide guidance regarding the management and distribution of both financial and physical assets. In addition, the trust can provide specific timelines regarding the distribution of assets to beneficiaries and can dictate whether those distributions are to be made outright or in future trust.

Funding the trust

Funding a revocable trust is as important as creating one and involves transferring assets from the donor's individual name to the name of the trust. There are several benefits to funding the trust during the donor's lifetime. Such funding allows a donor to establish a relationship with the trustees and to understand their approach and capabilities in the event of her incapacity. When needed, the trustees are also able to manage the trust's assets without interruption or delay. Unlike a conservatorship, a court-supervised procedure, the trustee will retain complete control of the trust assets during any period of the donor's incapacity, without any interference from the court. If the trust is funded during the donor's lifetime, the assets will not require any further movement on the donor's death, and the property can continue to be managed or distributed without the involvement of the probate court.

Funding a revocable trust during one's life does not cause complicated tax consequences. The assets in the revocable trust are reported to the IRS as the donor's personal assets, and any gains or losses are recorded using the donor's tax identification number. Additionally, there is no tax liability on any payments made from the trust to the donor. However, funding a revocable trust does not eliminate the possibility of paying estate taxes. The assets held in trust may still be subject to an estate tax, if one would otherwise have been due. The donor can also control the taxable disposition of assets by utilizing appropriate federal and state estate tax credits, as well as beneficial charitable deductions.

Privacy and Avoiding Probate

A primary benefit of creating and funding a revocable trust is maintaining the privacy of the donor, her assets, and her beneficiaries. When a revocable trust is in place, a donor's will generally states that her assets will be distributed in accordance with the terms of her trust. However, the will is a public document, and the probate process requires the disclosure of accounts, assets, and beneficiaries that would not be disclosed using a funded revocable trust. With a revocable trust, the amount and type of assets in the trust, as well as the beneficiaries, are not disclosed to the probate court or to the public. This protects the donor's privacy, and typically only the trustee has knowledge of her complete plans and wealth.

A revocable trust also avoids the expenses and delays of the probate court. Depending on the donor's domicile, the probate process can include administrative issues and expenses, and can cause considerable delays in the distribution of assets to beneficiaries. A funded revocable trust shields its assets from the scrutiny of probate and gives beneficiaries faster, more direct access to their distributions.

Estate planning flexibility

Finally, using a revocable trust provides a great amount of flexibility in an estate plan. Creating the trust is usually as simple as meeting with an estate planning attorney and drafting the document. As individuals go through life, their needs and family circumstances change. Sometimes health issues or marital situations require a greater degree of flexibility.The revocable trust can be easily amended to address these changes rather than revising the entire trust instrument or re-executing one's will.

Conclusion

Although having a revocable trust is not uncommon, some remain unfunded during the donor's lifetime. Executing and, as important, funding a revocable trust can mean the difference between maintaining your privacy and having your assets go through a public, more expensive, and often delayed probate process. If you have not discussed the advantages of a funded revocable trust with your Fiduciary Trust Investment Officer or with your attorney, we encourage you to do so in the near future.

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