THE REVOCABLE LIVING TRUST

Lifetime revocable trusts (often referred to as "living trusts") contain certain features that are attractive to many clients.

Lifetime Management of Assets

Living trusts are basically of two types: (i) revocable trusts where the person who establishes the trust becomes his or her own trustee or (ii) revocable trusts where another individual or a trust company serves as the trustee or as co-trustee with the person who establishes the trust.

In either case, the person who establishes the trust (the "grantor") retains ultimate control of the trust property, so long as he or she is able to act. This control results from the grantor's retention of the right to revoke or amend the trust at any time, including the grantor's right to change the trustee.

If the grantor suffers a disability and can no longer look after legal and investment matters, then the vehicle has already been established for managing his or her assets, without the need for a judicial proceeding or the confusion of family members not knowing what to do.

Assets that are placed in the trust are deemed owned by the grantor during his or her lifetime for income tax purposes. Typically, trust income is reported directly on the grantor's individual income tax return, rather than on a separate income tax return for the trust.

Probate Reduction

A popular reason to establish a living trust is to reduce or avoid probate. Assets that are in the trust when the grantor dies are disposed of according to the provisions in the trust agreement. If the trust agreement provides for a disposition of trust assets to family, friends, charity, etc. (that is, if the trust acts as a Will substitute), then the assets placed in the trust during lifetime will not be subject to the probate process.

Typically, it is not possible to avoid probate entirely with a living trust as invariably some assets of the decedent will not be in the trust when he or she dies. Still, there are a number of reasons to use a living trust to reduce the value of assets that will be subject to the probate process. Among these are: (i) avoidance of publicity as to the assets in the trust or their disposition, (ii) source of funds to pay estate bills if a delay is encountered in the probate process, (iii) potential for a reduction in court filing fees, executor's commissions and attorneys' fees and (iv) removal of specific assets from probate such as out-of-state real estate to avoid *ancillary* probate in another state.

Estate Taxes

Estate taxes are not reduced by a living trust, as such. However, all of the tax strategies that can be used to lower the estate tax in a will can be used in a living trust vehicle.

Does a Living Trust Fit You?

Whether a living trust fits you at this time will depend on a number of factors including your age, health, the size and complexity of your assets and anticipated delays in the probate of your Will. We look forward to working with you as you consider the best vehicle for your estate plan.

1600 BAUSCH & LOMB PLACE ROCHESTER, NY 14604-2711 PHONE: 585.232.6500 FAX: 585.232.2152
ROCHESTER, NEW YORK • BUFFALO, NEW YORK • ALBANY, NEW YORK • NAPLES, FLORIDA