

A Living Trust Can Provide Divorce Protection to Your Kids

During a recent estate planning consultation, a concerned parent posed this question : "My son is in a bad marriage. What happens if, after we die, he gets divorced? Will his ex-wife gets some of our estate?"

This is not an uncommon question; fortunately, it has a simple answer. The concerns expressed by our client can be solved by sharing one of the major (and often overlooked) benefits of using a living trust: asset protection for the beneficiaries.

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"Traditional" Living Trust Planning.. As we discuss in greater detail in this month's companion article, the most common benefit of the living trust is to avoid the time delay and reduce the legal fees of after-death probate proceedings. The time and dollar savings are significant - enough to justify, for most people with even modest assets, the creation of a trust.

Unfortunately for many well-intentioned people, this is where most of the "off the shelf" estate plans (i.e., canned products that you can download from the Internet or buy at an office supply store) come to a premature halt. A generic estate plan may effectively avoid probate (assuming that ownership of one's assets are properly conveyed into the trust), but because those on-screen documents can't properly assess what is going on in your family and in your life, they deprive you of the kind of personalized planning and problem avoidance that can only be achieved in a meeting with a flesh-and-blood estate planning attorney.

Protection from a Bad Marriage. Ensuring that your assets won't end up being owned by an adult child's ex-spouse is an often overlooked benefit of a living trust. If drafted properly, a living trust can provide divorce protection to the after-death beneficiaries.

In our case, Mom and Dad were worried that their child is in a bad marriage, and they don't want assets that took a lifetime to build to go to his future ex-wife. Their son is trying to make it work, but it looks rocky. Mom and Dad are losing sleep. What can they do?

We recommended structuring their living trust so that, when they die, their assets stay in their trust, and, as both the trustee and the beneficiary, their son will have control of the assets. Thus, he enjoys the benefit of his inheritance without actually taking ownership of it. He can receive the income and, if necessary, the principal, but if he gets divorced, his ex-wife can't put a claim on his inheritance.

The "After-Death Pre-Nuptial." This concept is pretty powerful. The ability to not only transfer wealth but do so in a manner that protects assets for the next generation is a strategy that most families should strongly explore in their planning.

The use of the living trust in this example allows Mom and Dad to sleep better at night. They can provide their son with his inheritance and know that their living trust is providing the legal effectiveness of a pre-nuptial in that rocky marriage.

You might be asking, "All of our kids have great marriages. Is this strategy still relevant?" Yes: Relationships change; they can quickly go from good to bad, and you can feel secure in knowing that you have helped protect your children and your assets.

A Living Trust Can Spare Your Kids Money, Time and Stress

One of the misconceptions about a trust is that its main purpose is to reduce one's federal estate tax burden. In fact, it can do much more than lessen estate taxes, and its simple yet powerful advantages are often overlooked. That's why, every year, tens of thousands of people whose estates are unlikely to be taxed set up trusts in order to provide important non-tax benefits to their heirs.

It is very likely that, in your situation, you are more focused on having control over who gets what, in what amount, and under what circumstances, as you are on minimizing your estate tax obligation. Further, you probably want to be assured that your loved ones will be well provided for and protected from outside predators - e.g., creditors, ex-spouses or parties filing lawsuits - who seek a piece of your estate.

Probate Avoidance. Another excellent motivation for setting up a trust is to spare your loved ones and other heirs the expense and aggravation of probate. ("Probate" is the legal process of administering the estate of a deceased person by resolving all claims and distributing the deceased person's property as instructed by the deceased person in his or her will.)

Unless you establish a trust to hold the assets upon your death or utilize certain other asset ownership alternatives (such as joint tenancy), when you die your assets can generally be transferred to your beneficiaries only through probate court proceedings. Depending on the complexity of your estate and the number (and greediness) of your heirs, the amount of time that your estate is tied up in probate court can extend to months or years - time that your heirs are not benefitting from owning the assets that you intend for them to have.

Establishing a trust and properly "funding" it (i.e., transferring ownership of assets into the trust) can eliminate the need for probate court altogether. After you die, the trustee of your trust distributes your assets in accordance with the instructions that you wrote into your trust.

Three Types of Savings. In considering whether to create a trust, you should be aware of three major savings opportunities - in terms of money, time and stress - that generally are made possible by a trust.

- *Money:* Avoiding probate reduces legal fees incurred by your estate and to pass along those savings to your family and other heirs.
- *Time:* The time required to administer your estate is reduced substantially.
- *Stress:* Since a trust simplifies the process for the beneficiaries, it can ease (a) the emotional pain of losing you and (b) the stress associated with a messy and protracted administrative process.

Any of these benefits is sufficient to justify your serious consideration of a trust (if you haven't already created one). If you would like to explore the advantages further, we would be happy to lead you through that process.