

The Advantages of a Revocable Trust

07.21.2011

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Clients who are thinking about revising their estate planning documents may want to consider creating a Revocable Trust as part of their estate plan. Although a Revocable Trust may not make sense for all clients, for those clients in the following circumstances, a Revocable Trust can save substantial probate court costs and other estate administration expenses after the client's death, while enabling the client to retain complete control over the assets transferred to the Revocable Trust during the client's lifetime.

Ideal candidates for a Revocable Trust

- Clients with significant assets (\$750,000 or more) held in stocks and securities or bank accounts. In North Carolina, if a client dies with these types of assets in her sole name, the assets will be subject to probate court costs that can run as much as \$6,000. In addition, the income generated from these assets during the estate administration, as well as any sales or other transactions involving these assets, must be accounted for and reported to the Clerk of Court. This can result in substantial additional work and administrative expenses for the Estate. Assets transferred to a Revocable Trust prior to a client's death avoid these probate court fees and probate court accounting requirements.
- Clients who own real estate outside of North Carolina. Clients who reside in North Carolina but who own real property in their own name at their death in other states (such as a vacation home or family farm) will be required not only to probate their Will in North Carolina, but also in every other state in which they own real estate. This process is



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known as ancillary probate administration and can result in significant costs for an estate as the estate will be required to engage legal counsel in the other state and to pay probate court fees to the probate court in the other state. However, if the client establishes a Revocable Trust prior to her death and transfers the out-of-state real estate to the Revocable Trust, there should be little, if any, ancillary probate required at the client's death. Note, however, titling out-of-state real estate in a Revocable Trust will not avoid such property being subject to estate taxes imposed under the law of the state in which the property is located.

- Clients who desire to keep private the specifics of the disposition of their estates, including the names of their beneficiaries, the amounts they are to receive, and the size of the client's estate. If a client's main document for the distribution of their estate is only her Last Will and Testament, then the entire Will must be filed (probated) with the Clerk of Court in the county in North Carolina where the client resided at her death, and all of the assets passing under the Will must be disclosed to the probate court. Once the client's Will is probated, the provisions of the Will become public record and are subject to the scrutiny of the general public, including the media and others (such as business competitors of the client) who may be interested in knowing about the client's financial or business matters. A Revocable Trust, however, does not have to be probated before a Clerk of Court and therefore remains a private document not subject to public disclosure, and any assets owned by the Revocable Trust also do not have to be reported to the probate court and therefore remain out of the public eye.

Although a Revocable Trust may not make sense for all clients, for those whose situation is similar to those described above, they should consult their personal estate planning attorney to see if the establishment of a Revocable Trust makes sense as part of the revision of their estate plan.

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