

Trusts for Same Sex Couples

Average Americans work 80,000 hours in a lifetime, or 45 to 55 years. In spite of all the resources and assets we earn, national statistics indicate that 80% of Americans die without leaving a Trust or Will. There are several reasons for this: fear of death; procrastination; and misinformation (people presume that only the rich or married with children need to have Wills). Whatever the excuse, it is clear that all same sex couples would benefit from having a Trust or Will.

In the absence of a Trust, Will or other legal arrangement to distribute property at death, your partner cannot receive any assets and cannot administer your estate. The result can be lengthy delays and other problems. Individuals in gay or lesbian relationships need properly drafted Trusts. Wills and estate planning documents more than straight persons. The probate laws generally provide if a person dies without a Will, their property goes to family, rather than a partner they had a relationship with for years or decades.

Probate is defined as the procedure by which an Executor proceeds to admit a Will to the jurisdiction of the Surrogate Court, which is proved to be valid or invalid. The term generally includes all matters relating to the administration of estates. There are instances where Surrogate Court monitoring of the estate is desirable. Much has been written about the disadvantages of probate. Following are just a few of the problems associated with probate.

Lack Of Privacy

Documents filed with the Surrogate Court are public information. They are available for inspection to anyone who asks. Sometimes someone does not want to know who is receiving his or her assets. In large estates, which require an accounting, your probate file will contain a complete list of all assets devised by your Will including business assets. This lack of privacy may lead to problems among family members who now know the plan of distribution and may then contest any provisions with which they disagree. Disinherited relatives and creditors are notified and given time by the Court to contest the Will distribution.

Time Consuming

The probate of an estate may take 12 months to several years to complete.

Fragmentation - Real Estate

If you own real property in more than one state, probate rules must be followed in each state in which real property is located. The cost and time may be increased.

REVOCABLE LIVING TRUST

A Revocable Living Trust is a legal device that allows you to maintain complete control over your assets and AVOIDS PROBATE. Because there is no probate of a Living Trust, your private financial matters remain private, there are no probate costs, no long delays and loss of control, and no fragmentation of the estate.

You Maintain Complete Control Over Your Property In Trust

The principle behind a Revocable Living Trust is simple. When you establish a Living Trust, you transfer all your property into the Trust, and then name yourself as trustee, or you can name you and your spouse as co-trustees of the Trust. The trustees maintain complete control over the property, the same control you had before your property was placed in trust. You can buy, sell, borrow, pledge, or collateralize the trust property. You can even discontinue the Trust if you choose. That is why it is called a "Revocable" Living Trust. We will explain the "Irrevocable Trust" at the end of the article.

Transferring Property Into The Trust

The transfer of title to property into the Trust is a relatively simple matter. Anywhere you have assets, you will get help in transferring your property into the Trust. Your attorney, securities investor, etc., will provide you with assistance needed to transfer your property into your Revocable Living Trust. Your attorney will provide all the information and assistance you need to properly fund your Trust.

Complete Privacy

Probate records are public, your Revocable Trust documents are private. A Revocable Living Trust will safeguard the privacy of your family and your private financial matters.

Naming A Trustee

Most people name themselves and their spouse as the initial Trustees of their Trust. This is usually true unless one spouse is incapacitated to the point that he or she is not able to manage your assets in the same way you do now.

Gifts To Charitable Organizations

Many people wish to give a portion or sometimes all of their assets to a charitable organization in order to carry on the work of those organizations that have given them comfort or peace of mind during their lifetimes. This is easily accomplished with a Revocable Living Trust.

Irrevocable Trusts

An Irrevocable trust cannot be changed or canceled once it is set up without the consent of the beneficiary. Contributions cannot be taken out of the trust by the grantor.

Irrevocable Trust Accounts _Irrevocable trust accounts are deposits held by a trust established by statute or a written trust agreement in which the grantor (the creator of the trust - also referred to as a trustor or settlor) contributes deposits or other property and gives up all power to cancel or change the trust.

An irrevocable trust also may come into existence upon the death of an owner of a revocable trust. The reason is that the owner no longer can revoke or change the terms of the trust. If a trust has multiple owners and one owner passes away, the trust agreement may call for the trust to split into an irrevocable trust and a revocable trust owned by the survivor. Because these two trusts are held under different ownership types, the insurance coverage may be very different, even if the beneficiaries have not changed.

Sometimes, persons can avoid Medicaid and nursing home liens by settling up an irrevocable trust and waiting 60 months to apply for Medicaid.

WHAT IS MEDICAID.....

Medicaid is a Federal medical bills assistance program that pays medical bills for eligible, needy persons. It is administered by each state. All payments are made directly to the providers of medical and other health care services. The Medicaid-eligible person does not pay the health care provider for services. The only exception is a patient in a Medicaid-approved nursing facility who may be required to contribute part of his/her income toward the cost of care.

Medicaid typically has a lien on assets you own.

OTHER ITEMS OF CONCERN TO BE PREPARED BY YOUR ATTORNEY

-Power of Attorney- to allow your partner or another person to administer your assets during your lifetime, either upon disability or now

-Living Wills/ Advance Directive- to state your wishes concerning medical care in the event of your serious illness and to allow your partner or another person to make medical decisions.

For a confidential consult, call KENNETH VERCAMMEN & ASSOCIATES, PC ATTORNEY AT LAW 2053 Woodbridge Ave. Edison, NJ 08817 (Phone) 732-572- 0500 website: www.njlaws.com

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He is a highly regarded lecturer on litigation issues for the American Bar Association, ICLE, New Jersey State Bar Association and Middlesex County Bar Association. His articles have been published by New Jersey Law Journal, ABA Law Practice Management Magazine, and New Jersey Lawyer. He is the Editor in Chief of the New Jersey Municipal Court Law Review. Mr. Vercammen is a recipient of the NJSBA- YLD Service to the Bar Award.

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