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Privacy Advantages of a Living Trust

By Sabrina Winters, Charlotte, North Carolina Wills and Trusts lawyer

I have assisted clients as a wills and trust attorney for over 10 years. In that time, I have found that many clients do not fully understand the privacy issues that will face their family should they die without a living trust. If you have a Last Will and Testament or no written plan in place, upon your death, everything you are leaving behind to your loved ones automatically becomes a matter of public record through a statutory process called Probate (if you die with a Will) or Administration (if you die without a Will).

Through the Probate process, beneficiary names, accounts, account numbers and values are required to be disclosed. We can all agree, I am sure, that this seems like a huge violation of our privacy. What goes hand in hand with this required disclosure are the potential safety issue this poses to those inheriting your estate. There are a lot of unscrupulous people who prey on widows and beneficiaries to try to separate them from their inheritance.

So why then is this information made available to the public?

It may be easier to pallet the lack of privacy if you can better understand the true purpose of probate. One of the primary purposes of probate is to make sure the creditors of the deceased person have an easy way to collect any debts they are owed from their estate. For that reason alone, the probate process must be open and public. Notice to creditors is required to be given in North Carolina with a mandatory waiting period of 3 months to allow the creditors sufficient time to file their claims.

This information is also available to the creditors of your beneficiaries so that they have notice that they are inheriting an estate. Under this scenario, the creditors could bring an immediate claim against your beneficiary, which may ultimately result in **your beneficiary never receiving the inheritance you wanted to leave them.**

However, to be clear, I am in no way advocating that debts go unpaid. In fact, you should instruct your executor to pay your debts. But, wouldn't you rather direct how this process goes rather than leaving it to the courts?

One way to do that while simultaneously stopping the violation of privacy and loss of control over the distribution of your estate is to create a revocable living trust.

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Unlike a will, a living trust is a private document that will not become a matter of public record because it does not have to be filed with the probate court. There is no statutory requirement in North Carolina for the Court to over see the management of a living trust. Therefore, you can name beneficiaries and provide gifts while still attaining privacy since only the trustees and those involved in trust administration will know the contents of a living trust. This means that no creditor of yours or your beneficiaries, no disgruntled relative, no scam artist, and no nosey neighbor will ever have access to the details of your financial history.

Remember, there are people out there who make a living preying on young or vulnerable people that have just inherited something from an estate. They troll these public records daily looking for victims of their next heist or scam. Fortunately, with a bit of planning, you can protect your family from such privacy violations that accompany the probate process. I recommend talking to your Charlotte trusts lawyer about living trusts and how they can help your family if something unexpectedly happens to you.

Fortunately, we've made that process easier than ever by making five (5) free "Peace of Mind" planning sessions available to readers of our blog. Simply call (704) 843-1446 and mention this article to reserve your spot. Your family will thank you for it.