

Stiller Law Offices

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Client Article-Part One

Estate Planning – Revocable Living Trusts – Part One **Opportunities and Options for Everyone**

Nothing is more important to you than your family. What is your vision for them after you are gone? Will you leave them with a financial disaster or a secure future? You have the power to reduce the cost, risk and stress that they will suffer if you have a well-designed estate plan. Okay, your name is not Rockefeller, Buffett (Warren or Jimmy) or Gates. So you may think the idea of using a Trust for your estate plan is not an option. After all, Trusts are just for rich people, right? That's what many people believe. If you are like them, you may decide to skip this article – but you'll be missing out on a great opportunity. You owe it to yourself and your family to learn more about Trusts before you decide. This article is the first part of a three part series of articles regarding revocable living trusts. It is not meant to convince you that you need a Trust. It is meant to educate you on the reality regarding Trusts so that you can decide for yourself if it is an appropriate option for your family.

A Trust is the single most powerful and flexible estate planning solution available to put your vision in place for your family's future. It doesn't matter what your vision is or whether you're rich. A Trust can be as simple or as complex as you want.

The point is that a Trust puts you in control, in a way unlike other estate planning option.

THE BIG PICTURE

Nobody enjoys dealing with his or her estate plan.

You Should Know



A trust is an agreement for the management and distribution of assets. It is similar to a contract in that it sets forth the rules to be followed by the persons involved with the Trust, i.e. the Trustee, the Grantor (or Settlor) and the Beneficiaries.

Facing one's own mortality can be frightening. Besides, why should you care – you'll be dead, so it doesn't do you any good! You should care because your estate plan is not about you; it's about your family. Your estate plan is your opportunity to exercise control over the consequences that may occur if you become incompetent or pass away. It enables you to minimize the emotional and financial impact that your family will suffer.

First, you need to understand the objectives of estate planning. A good estate plan will give you complete control of everything while you are alive and well. It will allow you to provide for the care and support of your family and yourself if you become incompetent. When you pass away, your estate plan will contain your specific instructions for giving what you have to whom you want, when you want and in the way you want. If the plan works well, all of this should

occur at the lowest possible overall cost for you and your family.

But you need to make good choices.

You can choose to be in control. Control comes from understanding your options and making decisions about what you want to happen.

While you cannot currently "choose" not to die, you can choose the legal and financial impact that your family will experience because of your death.

Good planning requires that you begin with the end in mind. You can look at estate planning like planning for a permanent vacation. When you plan a vacation, do you get in the car and start driving? Or do you first decide where you want to go, and then get out the map (or ask your GPS) to determine the best way to get there? The legal documents that comprise

your estate plan are just the roadmap for reaching your desired destination – they accomplish the end results that you want to achieve. You have to figure out the destination first.

The single most important consideration in every estate plan is your personal goals. Every family is unique, so you need to determine what's best for your family and how you want things to work when you are gone. There are no right or wrong personal goals. What is "right" for you is for you to decide, not some attorney, accountant or financial advisor.

THE RIGHT TOOL FOR THE JOB

Estate planning is not about the documents you use. It's about the results you achieve. Estate planners often refer to Wills and Trusts as "tools" in an estate planner's toolbox. A Will or a Trust is just a legal tool for accomplishing your goals. You have to use the

Estate planning is an educational process for you and your attorney. You need to teach the attorney about you, your family and your hopes, dreams and concerns for them. Using that information, the attorney will be able to teach you about the legal solutions available to address those issues. Then you can work together to devise a plan that works the way you want.

At Stiller Law Offices we are accessible and are always available to listen to you and to advise you about options for resolution of your estate planning issues.

right tool for the job. Have you ever tried to pound a nail with a screwdriver, or to set a screw with a hammer? The problem isn't with the nail, screw, hammer or screwdriver. The problem is that you're not using the right tool for the job. Don't let the legal tool – Will or Trust – dictate the results you want to achieve. The choice between a Will and a Trust depends on which one is the best for accomplishing your personal goals. There are big differences between Wills and Trusts. But you cannot choose one over the other without first understanding how it is going to accomplish your goals.

Wills vs. Trusts

A Will is only effective after you die. It doesn't do anything for you while you are alive or if you become incompetent. A Will requires that you end up in the probate court because that's the only place you can administer a Will. Its sole purpose is to distribute your assets after you're gone, but the options for how that gets accomplished are limited. A Will is a single-purpose tool, like a screwdriver. It can be perfect in the right situation,

but it doesn't work well if your job requires more.

A Trust is a multi-purpose tool – it is the Swiss Army knife of estate planning. It is effective immediately when you sign it, and can work during your lifetime, even if you become incompetent, and for as long as you want after your death. It can eliminate the need to go through probate for anything. A Trust is very flexible and can provide nearly unlimited options for addressing your estate planning goals. It, too, can be a perfect tool in many cases, but it may be unnecessary in the simplest situations.

Unfortunately, misinformation and bad advice are all too common in the world of estate planning. Most estate planning professionals – attorneys, accountants and financial advisors – mistakenly view estate planning as a simple financial transaction. One look at your net worth and they tell you exactly what you need. If you are rich enough to have estate tax liability, you get a Trust. If not, you get a Will. This obsession with

money and taxes is a disservice to estate planning clients. Dollars and taxes may be important issues to address, but they are just a few among dozens of issues to consider. Yet, estate-planning professionals routinely pigeonhole you into one plan or the other with a simple glance at the bottom line of your financial statement.

Pigeonhole planning ignores all of your other important goals and deprives you of the knowledge you need to make informed decisions about what is best for your family. Money and taxes are just potential roadblocks in getting to your desired destination. You have to plan around them to get to where you want to go, but they are not the end goal.

“Probate shortcuts” – joint and survivorship, payable-on-death and beneficiary designations – may also seem like an easy way around real planning. Sometimes they work well in the right situations, but not always. The problem is that most people don't know when they are the right tools and when they are not. If you use them

improperly, or in the wrong situations, you are likely to create unintended disasters.

In order to make wise estate planning decisions, you have to understand the options you have available. One option you need to know about is using a Trust in estate planning. It may not be the right tool for every job, but it is an excellent tool in many situations.

WHAT IS A TRUST?

A Trust is an agreement that provides for the management and distribution of a person's assets. Trusts can be verbal agreements but most are in writing. Since you control what the Trust says, you can tailor it to meet your specific goals. A Trust is a set of rules and instructions and the options for what you can include are almost limitless.

A "living" Trust is one that you create while you are alive. A "testamentary" Trust is one that only becomes effective after you die. Testamentary Trusts are most often contained in a Will, which makes them subject to probate court administration. Testamentary Trusts are old-fashioned concepts and are

not an effective solution in modern estate planning.

In Ohio, a comprehensive set of statutes known as the Ohio Trust Code governs how Trusts work. Pennsylvania also has its own set of trust statutes known as the Pennsylvania Uniform Trust Act. Trusts are also subject to state and federal tax laws.

Even with these rules, Trusts are extremely flexible arrangements. It is not difficult to comply with these laws as long as you don't do something that violates public policy.

Trusts generally fall into two categories: revocable and irrevocable. A "Revocable" Trust is one that you can change or terminate any time you want. An "Irrevocable" Trust is one that you cannot change. These Trusts have different purposes.

Irrevocable Trusts are common in situations that require more advanced estate and gift tax planning. There are many different types of Irrevocable Trusts, each with a specific purpose. They are like the sophisticated "power tools" in the toolbox. The most common use of an Irrevocable Trust is to hold

large life insurance policies. You may have heard them of them – "Irrevocable Life Insurance Trusts" or "ILIT's." The purpose of an ILIT is to hold life insurance policies in a way that excludes the insurance proceeds from estate tax. This can save your family thousands, sometimes millions, in estate tax liability.

Other types of Irrevocable Trusts provide ways to make large gifts without losing control of the assets. The gifts may be to individuals or to institutions like charities. Gifting is often an important part of minimizing or eliminating estate taxes for wealthy people with potentially taxable estates. Estate planning for wealthy clients often involves one or more Irrevocable Trusts along with Revocable Trusts.

Revocable Living Trusts are the most common type of Trust in normal estate planning. Again, "revocable" means you can change it, and "living" means that you create it while you are alive. When you die, however, a Revocable Trust becomes irrevocable.

This series of articles focuses on Revocable Living Trusts. Much of the information

applies to Irrevocable Trusts, too. If you learn about Revocable Living Trusts first, it will be easier to understand Irrevocable Trusts later, if you ever need one. Many more people will benefit from Revocable Living Trusts, though, so we'll focus on them. We will usually just refer to them as "Trusts" to keep it simple.

An important thing you need to understand about Revocable Living Trusts is that they don't protect you against nursing home costs or help you qualify for Medicaid coverage. Neither do Wills. They are not the right tools for that job. That's a completely different type of elderlaw planning that is beyond the purpose of this article. Now that you have a little background, we can look at Revocable Living Trusts in more detail.

The second part of this article will focus on the structure of a

Revocable Trust and the people needed to make it work--the Grantor, the Trustee, and the Beneficiary.

Contact us for more information about the topics discussed in this article. This information is provided as a service to our clients and is not intended to be and does not constitute legal advice.

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