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Rocky Mountain Financial Professionals

Is a Living Trust Appropriate for You?

Article Highlights:

- What Is a Living Trust?
- Is a Living Trust Appropriate?
- Establishing a Living Trust
- Pros of a Revocable Trust
- Cons of a Revocable Trust

You have probably heard others discussing living trusts but may not understand the reasons for them or whether you should have one.

Living trusts are an estate-planning tool, and there is not a one-type-fits-all living trust. Each one is customized to suit the special circumstances of the individual for whom it was created. The vast majority of the population can get by without using a living trust, and a simple will is perfect for most people, unless their estate is large or there are some special circumstances to deal with.

There actually are two types of these trusts: revocable and irrevocable. As the names imply, an irrevocable trust generally cannot be undone once made, while the provisions of a revocable trust can be changed or rescinded as long as the grantor (the individual who established the trust) is still living. A living trust becomes irrevocable when the grantor passes. Because an irrevocable trust would only be established under very special circumstances, they aren’t discussed in this article. While you can designate your beneficiaries in either a will or a living trust, there are some things that only one document or the other can do. So, even if you create a living trust, you may still need a will.

Because these are legal documents, it is probably best to have the assistance of an attorney in preparing them, although do-it-yourself software does exist. Yes, you’ll have to pay legal fees to have the work done by a lawyer, but the cost of a professional’s expertise oftentimes will pay for itself by having all the I’s dotted and T’s crossed. Unfortunately, these legal fees aren’t tax-deductible.

When a living trust is established, generally, all of an individual’s assets are assigned to the trust, including the home, rentals, stock accounts, bank accounts, etc. However, while living, the grantor still gets the use and benefit of these assets, just as if the living trust had not been established, and income and capital gains derived from assets in the trust are reported on the individual’s 1040 and state (if applicable) tax returns. As part of the process of setting up the living trust, the assets placed into the trust will need to be retitled into the trust’s name.

Generally, the benefits of a living trust outweigh the negative implications. Here is a condensed rundown of the pros and cons of a living trust:

Some of the Pros of a Revocable Trust:

<u>Avoid Probate</u> – Probate is the legal process through which the court ensures that, when an individual dies, their debts are paid and their assets are distributed according to the individual’s will, if there is one, or in accordance with state law if there’s no will or trust. Upon the grantor’s death, all of the assets held in the revocable trust bypass probate, meaning they pass to the grantor’s beneficiaries without having to go through the often

time-consuming and expensive probate court process. Probate can take a long time, and the proceedings are a public process.

Maintain Control of Assets after Death – A living trust can include provisions to delay distributions to children until they reach a specific age and to help protect assets from falling into the hands of creditors or an ex-spouse. Distributions can be designed to fit the heirs' circumstances.

Reduce the Possibility of a Court Challenge – A living trust is often more difficult to challenge than a will because it is harder to prove incompetence.

Prevent Conservatorship – If the grantor becomes incapacitated, then a living trust can protect the family from undergoing a conservatorship process. A conservatorship is when a court-appointed representative is given the authority to manage an incapacitated person's financial matters for them. Instead, with a living trust, if the grantor ever reaches the point where they are unable to manage their own affairs, a successor trustee who is already named in the trust by the grantor will step in. That trustee has a fiduciary responsibility to manage the trust's assets for the grantor's benefit.

Some of the Cons of a Revocable Trust:

Additional Paperwork – A disadvantage of a living trust is the additional paperwork required in assigning ownership of the grantor's assets to the trust. To be fully effective, the ownership of all of the grantor's property must be legally transferred to the "grantor as the trustee." If an asset has a title (e.g., real estate, stocks, mutual funds), then the title should be changed to show that the property is now owned by the trust.

No Tax Benefits – Shifting assets to a revocable trust does not save income or estate taxes. Until the trust becomes irrevocable upon the grantor's death, the grantor is still responsible for all tax issues related to assets included in the trust. Thus, the grantor should continue to implement appropriate tax strategies.

Lacks Asset Protection – Assets held within a revocable trust are treated as being owned by the grantor and are within the reach of creditors.

Difficulty Refinancing Trust Property – Since the legal title of real estate is held in the trustee's name, some banks and title firms may balk if the grantor wants to refinance the property. Providing a copy of the trust document, which specifically gives the grantor, as trustee, the power to borrow against the trust's property, should satisfy their concerns. Otherwise, it may be necessary to remove the asset from the trust temporarily by retitling it in the grantor's own name and then reversing the procedure once the refinancing has been completed.

If you have general questions related to living trusts, please give this office a call.