Revocable Living Trusts

A Living Trust can serve a number of valuable purposes, particularly probate avoidance upon death and financial management upon disability. Initially you can set up a Trust so that you serve as your own Trustee, and the trust simply becomes an extension of yourself with the advantages listed above. In addition, the Trust could avoid the necessity of a court-appointed conservator, since the successor Trustee you name in the Trust can generally assume those duties when you are no longer able to act.

You can transfer assets to a Living Trust at any time during your life, with additional funding happening after your death via a "pour over" Will. Unlike the Power of Attorney, which ceases at death, there is no interruption to the Trust because of disability or death. After your death, the successor Trustee whom you appoint will continue to manage your affairs, pay your taxes, and finally distribute the assets held in the Trust to your beneficiaries according to our instructions in the Trust document.

A Living Trust can be altered or revoked in its entirety by you at any time during your lifetime, and you retain complete control over your assets during your lifetime. A separate tax identification number is generally not required, as you simply use your own social security numbers for the Trust. Likewise, no separate federal tax returns are required.

Living Trusts do have limitations, though. The mere existence of an executed Trust does not eliminate the need for probate. Only assets that are titled in the name of the Trust at the time of your death will avoid probate. If you have any solely-owned assets (or assets as tenants-in-common), they will be subject to probate irrespective of whether or not you have a Living Trust. If you execute a Living Trust, it is imperative that you also execute a Will to ensure that any assets that are not titled in the Trust are placed in and controlled by the terms of the Living Trust. In Maine, the costs of probate are generally insignificant, especially when compared with the costs of establishing and funding the Living Trust.

The most common myth about the Living Trust is that it acts as a tax shelter. A Living Trust, without more, does not reduce the income tax you owe during your lifetime, or any estate taxes that may be due after you die. Of course, tax-savings trusts, such as disclaimer or credit shelter trusts, can be incorporated into the Living Trust (as they can be into a Will).

Living Trusts can raise additional problems for the Maine Care (Maine Medicaid) planning – Maine Department of Health and Human Services (DHHS) takes the position that the real estate (or any other assets) are no longer exempt assets if they are titled in the living trust.

The bottom line – Living Trusts are not as essential as many national periodicals promise, at least in Maine, where probate costs are minimal. However, Living Trusts can be extremely effective as financial management vehicles, particularly for elderly persons with substantial assets.