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Should I Have a Will or a Revocable Living Trust?

Similarities Between a Revocable Trust and a Will

A Revocable Living Trust and Will accomplish many of the same objectives. Both determine who will inherit your assets after your death. Both documents name the person or persons who will administer your estate, including gathering assets, paying expenses and distributing assets to the persons you have named to receive your estate. In addition, neither has an advantage over the other in terms of reducing estate taxes. Estate taxes are imposed based upon the value of the assets you own at time of death, regardless of whether they pass to your family by a Will or a Revocable Trust or any other method.

You can change the provisions of a Will and a Revocable Trust at any time. You can add or eliminate beneficiaries, change the distribution of assets, and alter the persons who are in charge.

Reasons to Use the Revocable Trust

After your death, a Revocable Trust does not need to be validated or activated by a Probate Court. It is already in place, so that it continues on, beyond your death. In comparison, a Will needs to be validated by the Probate Court as part of the Probate process and procedure before a person can legally administer the estate. Using a Revocable Trust can save your beneficiaries considerable Probate Court costs and fees, and time delays following your death.

In Minnesota, the Personal Representative appointed by Will has no authority to act until the Probate Court formally appoints him or her. Increasingly, with the reduction in Court staff, this can mean several weeks or longer between the date the Probate documents are submitted and the date the Court issues its approval. In contrast, the Trustee of a Revocable Trust can act immediately upon your death. The Revocable Trust does require administration at the time of death, but this is generally less expensive and less time-consuming than the Probate process.

We draft the Revocable Trust Agreement with the provisions you decide upon. It is a formal legal document. After it is signed, you will then transfer the title of your assets into the Revocable Trust from you as an individual to yourself as Trustee of the Trust. We give you detailed directions to complete this process. No income taxes are due on this transfer.

Once established, everything transferred to the Trust then belongs to the Trust. As Trustee, you maintain control. You can buy, sell, trade, or gift Trust assets. From a practical standpoint, very little changes in your day-to-day dealings with the assets inside of a Trust.

A Revocable Trust has some distinct advantages over a Will for use in estate planning. A Will is not effective until after you have passed away, and after it has been formally authenticated by the court by the Probate process. In contrast, a Revocable Trust goes into effect as soon as you sign it. Upon your death, the Trustees you have named then follow the directions in the Trust. This allows the Trustees and your beneficiaries to avoid the Probate process for assets in the Trust.

Having property in a Revocable Trust will allow your beneficiaries to avoid having to disclose your assets and the value of your assets in the public Probate process. Since the Revocable Trust is a private document, and not subject to Probate, it is not open to the public. This maintains confidentiality of who is inheriting, as well as the value of your Estate.

A Revocable Trust also provides for the management of assets during your lifetime, and addresses what happens if you are incapacitated. In that event, a successor Trustee is named in the Trust document that can manage, invest, sell and liquidate your assets.

If you die owning real estate in more than one state and you have a Will, assets must be probated in each of those states, which means additional legal fees and costs. With a Revocable Trust, multiple probates can be eliminated.

A Revocable Trust is as efficient as a Will in saving estate taxes. You are treated as the full owner of any property held in a Revocable Trust or by you as an individual. A Revocable Trust does not require any additional income tax filings during your lifetime; you will still report the gain or loss resulting from the sale of any asset owned in a Revocable Trust on your individual income tax return.

Reason to Use a Will

The only “disadvantage” of establishing a Revocable Trust over a Will, is that it generally costs more to create and takes more of your time to complete. In order for a Revocable Trust to be effective at avoiding Probate, you must transfer ownership of your assets (other than life insurance, annuities, retirement accounts and other qualified assets) to the Trust during your lifetime. We give you specific directions on this and will work with you and your financial advisor to complete the necessary transfers. A Will, on the other hand, does not require these transfers until death when your Personal Representative (Executor) will be faced with that task.

Call Us

For more information, or if you have any questions, please feel free to contact your Estate Planning attorney at Winthrop & Weinstine.

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