

The Elder Law Update: Living Trusts

By Remo A. Hammid, Esq.

Clients consulting with our office often start the meeting with a statement of their desire to have a "living trust." The abundance of information delivered by online legal services, television programs, advertisements, newspaper articles and seminars by various professional advisors have left the public believing that a "living trust" is the panacea for all of our estate planning needs.

While living trusts are effective for many of our clients, they are but only one tool that an elder law or estate planning attorney may choose from. Living trusts are sometimes unnecessary and even inappropriate for certain situations.

This month's installment of the Elder Law Update will provide you with information about trusts, including living trusts, so that you can better understand their role in estate planning.

To begin with, the term "living trust" is overly broad to provide any useful meaning. The world of trusts can be divided into two categories. The first are trusts that are created while you are alive, hence the term "living" trust. However, a living trust is really without meaning unless qualified further. The second category

are trusts that are created after you die, usually through your Last Will & Testament. These trusts are called "testamentary" trusts.

Living trusts can refer to a trust established to hold assets for grandchildren, to hold assets for a child that is irresponsible with money, to avoid probate, to minimize estate taxes, to provide for a pet, etc. All of the aforementioned are perfectly plausible purposes for establishing a living trust. However, with the exception of avoiding probate, all of these purposes could also be satisfied through the use of a testamentary trust (one that is created through your death).

The more important distinction that you should make when discussing living trusts is whether the trust will be "revocable" or "irrevocable." It should be noted, all testamentary trusts are irrevocable because they are created after your death. Hence you are no longer here to revoke it.

The value of a revocable (living) trust is that it will allow you to place assets in a separate vehicle for management. And because it is revocable, you are always able to alter it if circumstances change (e.g., changes to the tax laws,

death of a beneficiary, estrangement from a beneficiary) or if the trust is not operating the way you thought it would. The typical reasons for using a revocable trust are estate tax planning and the avoidance of probate.

Irrevocable (living) trusts, on the other hand, cannot by definition be revoked (or altered in many cases). These types of trusts remove assets from your reach since you cannot revoke the trust and therefore also from the reach of your creditors. These types of trusts are often used for asset protection for seniors concerned about future medical costs, for life insurance policies, and by professionals (e.g., doctors) who operate in a field where the likelihood of being sued is high.

Finally, you should be aware that the benefits touted by the use of a living trust may not be worthwhile or even applicable in your particular case. For example, avoidance of probate is a legitimate use of a living trust but completely unnecessary if your sole asset is an IRA (retirement) account with named beneficiaries.

The use of trusts in estate planning (revocable, irrevocable and testamen-

tary) have saved our clients significant sums of money. However, which trust (if any) is appropriate for you is something that requires an analysis of your specific situation.

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