PLANNING PERSPECTIVE

Winter 2004 • Vol. 2, No. 2 A Publication of Fitzgerald Law Office

The Case for Revocable Trusts

The purpose of estate planning is to look ahead and exercise some control over what happens in the event of death. Who inherits its money and assets? Who is in charge of the process? What taxes will be due? The Revocable Trust is one of many tools available to shape the results and accomplish one's goals.

At its heart, the Revocable Trust is designed to avoid probate. Cutting out the probate court makes the process of accounting for assets and distributing the inheritance more efficient, private, and cost-effective.

In many cases, a Revocable Trust may not substantially change who inherits the estate or how much tax is due when compared with a Will and probate. However, the Revocable Trust can give heirs and the people in charge of the estate a radically different experience during administration. Indeed, the Revocable Trust is often far superior for people who own property in more than one state or who are tempted to use a combination of other techniques to avoid probate.

As 2004 comes to a close, all of us at Fitzgerald Law Office are thankful for the opportunity to assist so many clients this year. We wish our friends, associates, and clients a wonderful holiday season and a prosperous and healthy New Year!

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Funding the Revocable Trust: The Most Common Mistakes

Mistake for Single People: Not Funding the Trust — A Revocable Trust will not work for an unmarried individual unless all of his assets are owned by the trust. While there are some limited exceptions to this rule (see "Getting It Done" article), placing the trust's name on real estate, investments, bank accounts, and other assets is essential for single people. Failure to do so may cause the trust to fail. (Married clients should read the story below.)

Not only must clients place the trust's name on their assets, they must also keep good records of what was done. Clients who keep records of their work can better explain it to their child or the person taking over as trustee after death. They can also better adjust to changes over time or more easily verify their situation at our next meeting.

There are many ways to fund the trust. The most important point is that clients do so and are able to document it for themselves and for those whom they rely upon for help.

Mistake for Married People: Failing to Understand Their Plan — Single people using a Revocable Trust have two options: fund the trust or risk failure. Married people must also fund their trust, but they have more options available to do the job. Unfortunately, these choices can lead to confusion. The biggest mistake that married clients make, and the one that causes the most confusion, is forgetting how they funded their trust.

Fully funding a trust can, in some cases, be awkward and time consuming (that is why single people need to be so careful). Many attorneys and financial advisors expect married clients to take on this task. However, I generally prefer to take a different course. Except in special cases, my plans rely upon a Marital Property Agreement to do the job with less effort.

The biggest drawback to the Marital Property Agreement is that it is so easy that my clients often have trouble remembering that they funded their trust. When talking to an advisor who wants to know about the trust, some clients find no obvious sign that the trust is funded – the names on their house, bank accounts, and other assets have not changed. They incorrectly conclude that they failed to fund the trust. The keys to working through this issue are (a) confidence in a solid estate plan and (b) an understanding that, as a married couple, there are more options available. As with any rule, there will be exceptions (real estate or other assets held outside Wisconsin, for example). However, in most plans, the Marital Property Agreement does all of the work to fund a Revocable Trust for a married couple.

Getting It Done: Options for Funding the Trust

There are some variations involved when "funding" a trust or changing ownership on assets. The tools we use are tailored to fit our clients' situations. Not all plans will look alike.

For example, clients should not change ownership on an IRA, 401(K) or similar retirement account because of income taxes and possible penalties. Changing ownership on a Certificate of Deposit or annuity can trigger penalties as well. However, all of these assets allow some form of beneficiary designation that can be used to send the asset to the appropriate beneficiaries at death.

Real estate owned outside of Wisconsin is another example. A couple's Marital Property Agreement will not automatically put out-of-state property into a trust. There must be a deed in the file showing that title has been changed. Due to these variations, I encourage clients to closely track how they funded the trust and which tools they used.

Programs and Events

Doug Fitzgerald attended the *30th Annual Notre Dame Tax and Estate Planning Institute* in South Bend, Indiana. The speakers addressed issues such as allocating estate tax liability among beneficiaries in an estate, the value of lifetime gift strategies in the current low interest rate environment, estate tax planning strategies for a primary or secondary home, and practical planning for retirement plan beneficiary designations.

Doug's cable television program completed its seven-part series on long term care planning and Title 19 benefits. The upcoming series will review retirement plans, beneficiary designations and coordinating income tax, and estate planning with these unique and valuable assets.

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