I know I need a will, but do I need a trust, too? And if so: Why?

NEWS

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Guest columnist

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Q: I've been told I need a trust in addition to a will. Why?

A: Great question! A trust is an artificial creation usually designed for assets you leave to heirs. Think of it like a bucket that holds these assets, with a document (the trust itself) that governs how assets move into and out of the bucket. Then, there is a trustee (one or more) that executes the instructions in the trust

document and finally, a beneficiary (or several) to receive the assets as governed by the trust document and the trustee.

There are really two main reasons to have a trust. The first is the asset protection offered by the change to an irrevocable trust at the death of the grantor(s), which is discussed next. The second reason is to allow control of the distribution of assets after the death of the grantor(s). A less important feature of a trust in many cases is the avoidance of probate. Probate is the “clearing” of assets owned by someone who has just died, so that the funds can pass to heirs. If a trust owns the assets during life, the grantor’s death does not change the ownership by the trust, and no probate is needed for those particular funds.

So, if one has responsible adult children who do not need asset protection for inherited funds, a trust may not be necessary or even desirable. In this case, a simple will dispensing of the assets may be all that is needed. Often, titling of assets and the use of beneficiary designations can cause most of an estate to pass outside of probate anyway.

Most trusts we do encounter are revocable living trusts. Revocable implies impermanence-you can move assets into and out of the trust while you are alive as you wish. For this reason, these trusts do not offer asset protection (as a judge can compel you to invade the trust to pay a plaintiff).

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These trusts are also sometimes called grantor trusts, as the grantor term refers to the person(s) forming the trust. At the time of the grantor’s (which might be one or two people) death, the trust becomes irrevocable (which means that it is very hard to change). Once a trust is irrevocable, it offers significant asset protection-especially if there is at least one trustee that is not a beneficiary. A judge cannot compel distributions from the trust for the benefit of a plaintiff except in very special cases (child support and the IRS being two

exceptions).Any family that would be leaving a significant sum of money to minor children really must have a trust. This trust would provide control of the distribution of trust contents while also providing asset protection for this important money. How much control and for how long is highly variable and differs in each family. Unfortunately, some children never become responsible enough to safely manage an inheritance, and the control of distributions offered by the trust might be valuable.

We counsel some potential inheritors of substantial sums to consider inheriting “in trust” rather than outright. This is particularly true of heirs that work in fields that subject them to lawsuits (think medicine) or if they have a shaky marriage. Inheriting in trust would allow them to have benefits without exposing the assets to marital or malpractice creditors.

There is so much more to these structures than can be discussed in an article. The beginning of the process of forming a trust starts with deciding if it is an appropriate structure for your heirs.

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