From: McManus Blog Archives

Estate and Family Planning with a Revocable Living Trust
Published 03/07/2012

A Trust is created by a Grantor who turns financial assets over to a Trustee to be managed in accord with the Grantor's written instructions contained in the Trust Agreement. A Trust is a Testamentary Trust when it is written in a Will and the assets of the Trust have to pass through Probate under the Will before the Trust will receive them. A Trust is a Living Trust when it is created by the Grantor by a written agreement during his/her lifetime, and the assets are transferred to the Trustee simultaneously with the signing of the written Trust Agreement or during the Grantor's lifetime.

A Trust is revocable when the Grantor reserves, in writing under the agreement, the power and authority to revoke, modify or amend the Trust Agreement.

Any person, including the Grantor, can act as Trustee under the Trust Agreement. Any bank or savings and loan association having trust powers can act as Trustee. The Grantor may receive the income produced by the trust assets as long as he/she lives or may direct other uses of the income and principal of the Trust.

Whenever the Grantor appoints himself/herself as Trustee, he/she will name some other person or bank to take over as Trustee upon his/her death or disability. If the Grantor is to receive the income from the Trust, he/she will designate who is to receive the income and principal after he/she dies. Distribution of the Trust income and principal is made after the Grantor's death, in accord with the instructions contained in the Trust Agreement. The assets owned by and passing under the Trust are not subject to the Grantor's Will and do not become probate assets passing under the Will when the Grantor dies.

Generally, estate tax planning is best accomplished when both spouses are living, since the benefits of the marital deduction can be utilized. In 2006, there is no estate tax on estates under $2 million. The nontaxable limit increases to $3.5 million on January 1, 2009. In 2010, under present law, the estate tax disappears, but under a sunset provision, the estate tax reappears in 2011 for estates over $1 million.

Successful trust planning requires some familiarity with the laws concerning real and personal property, probate and federal and state income and estate taxation. Appreciation for individual and family needs is most important. A Trust is a very flexible arrangement that can be tailored to meet difficult problems such as property management and protection for minor beneficiaries or physically or mentally disabled people.

Properly planned and utilized, the Revocable Living Trust can reduce the expense of transferring property at death, provide protection and property management for incompetent beneficiaries or poor money managers and reduce the amount of estate taxation occurring on the Grantor's death.

The principal advantages or benefits derived from a Revocable Living Trust are:

1. Avoidance of probate
2. Property management for beneficiaries who do not want management responsibility or who should not have the responsibility
3. The reduction or elimination of estate taxation
4. Assuring financial resources and other resources are used wisely for the benefit of family members and others

A Trust is a formalized statement for the management of property contained in a written document. Every Trust has three parties:

1. The creator called the “Grantor, Trustmaker, Donor or Settlor”
2. The property manager referred to as the “Trustee”
3. The parties who receive the benefits in the form of income or principal payments called the “Beneficiaries”