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OUR TAKE ON TRUSTS

First, a disclaimer. We are not lawyers and in no way are offering legal advice. We're simply discussing some very basic concepts concerning trusts, since we view them as a valuable planning tool for retirement (or at any time, for that matter, when you feel your assets should be protected). If you feel that pursuing the creation of a trust would be beneficial to you, please do so only after consulting with an experienced attorney.

There is a lot of different reasons to consider placing your assets in a trust, but being able to protect and control those assets certainly ranks high on the list. Here's how a properly drawn trust may do just that.

Basically, a living (revocable) trust arranges for a third party (called the trustee) to hold assets for the benefit of either a single beneficiary or even several beneficiaries. There are a lot of different options with trusts, but you're probably most concerned with how one can be used to your and your family's financial advantage. So, let's review how a living trust can do just that. First of all, trusts are private and therefore avoid the attention an estate may attract when the grantor (person who placed the assets in the trust) dies. That's because a trust doesn't have the same disclosure requirements as a will. After all, it should be nobody's business, except the family or other beneficiaries, as to who got what, or how much money or property was involved when the grantor passed away. Otherwise, the probate process would require the grantor to make known to the whole world what he/she intends to do with their assets when they die. Also, trusts can be structured to help avoid estate taxes, thereby saving a lot of money that can now go to family members, charity, etc. rather than the state.

Now, trusts do cost more than a simple will to set up but there's no doubt they're worth it, especially for more valuable estates. Just consider the probate dilemma.

There are several steps to the probate process with no trust involved:

🕐 the deceased's property has to be both identified and inventoried

🕐 this may also require paying for certain items to be appraised

🕐 the will has to be proved to meet the state's requirements for being valid

🕐 any outstanding debts and taxes have to be paid

🕐 then, as decreed by the will, the assets that remain must be distributed

A typical cost for legal and other fees to accomplish all of this is somewhere between 2% and 5% of the estate. That's why in some circles probate is known as the "lawyers' retirement plan." Also, all of the above steps become part of the public record—there is no privacy attached to the process to protect the family's interests. But a properly drawn trust can help your estate bypass the entire probate process while saving the frustration inherent in the unbelievable amounts of paperwork involved. Who needs all the extra aggravation while you're still grieving the death of a loved one?

There's also this point to consider: it's not uncommon for probate to be very slow to conclude, sometimes taking up to a year. But what if there were a lot of costs involved in the death of your loved one. Wouldn't you want some money as soon as possible to take care of those costs? Of course you would. And the good news is that normally a properly drawn trust's assets take only weeks to be distributed, not months or maybe even longer.

Hands down, this is the best way to handle the probate problem. Something else to consider, although you may not like to think about it, is this: something could happen to incapacitate you--a car wreck, a botched operation, a severe illness--but if you've set up a revocable living trust, for example, you can have a successor trustee take over and prevent the possibility of either probate being forced on the estate or a guardian being appointed. In other words, by appointing a successor trustee of your choice while you are considered able, you will not have to worry about your assets being taken over by a guardian and a supervising court. Do you really think they'd have your best interests at heart? And if the incapacitation leads to death, the same scenario applies: your assets remain protected and ready to be distributed per your wishes and instructions.

Something else trusts do that is very important: they make sure assets go to the person for whom they are intended. This can really be important in situations where, for example, there are children from two different marriages. There will be no doubt which specific family members receive exactly what you want them to receive, as there could be if probate entered the picture. If that happened, any dispute by the heirs could lead to the court distributing your assets based on what the judge believed to be equitable, regardless of what you had intended.

Also, keep in mind trusts can be utilized to restrict the rights of beneficiaries to receive income or principal. This is often done to prevent irresponsible beneficiaries from receiving monies they would mismanage, both before and after the grantor's death. While there are additional costs over and above those associated with a simple will, trusts can and do save money in the long run (especially for wealthier individuals). An irrevocable trust, for example, can go a long way toward protecting assets from any estate tax. Or, as many people know, you can gift money to your child/children every year by giving it first to your trust. That way, the child/children typically won't owe taxes on the money since the trust, not them, owns those assets. And never forget all the money you'll be saving by avoiding the probate process.

Lastly, let's touch on Medicaid Trusts. These are trusts designed to try and preserve as many assets as possible if the owner of those assets has to go into a nursing home. With nursing home costs well into the thousands of dollars a month, it doesn't take long to spend all the assets of even a sizeable estate. And the typical trust we reviewed earlier doesn't work for Medicaid purposes. Why? Because it's revocable, meaning the person who formed the trust can go back and change or rescind it later. Medicaid, therefore, considers the funds/assets which make up the trust as "countable" when determining someone's Medicaid eligibility. This renders these types of trusts as totally ineffective for Medicaid planning purposes. But you may be able to help yourself with certain other trusts that receive a special nod from Medicaid.

Or even better, keep yourself in such a state of vigorous health that you'll never have to consider moving to a nursing home; just click below to be taken to the site for the Life Extension Foundation, the premier anti-aging organization in the world: lef.org. When you arrive, you'll be able to explore all the options: supplements, latest health alerts, view a recent copy of their magazine and even check out cutting-edge cures for a health issue you're concerned about. You'll be getting information most doctors have no idea about. (**Please take advantage of this priceless opportunity!).**

The first issue to deal with is the amount of "countable assets" a person is allowed to have while qualifying for Medicaid. In most states, the limit is around $2,000.00. The obvious solution is to give away your assets so you no longer own them, and no longer have to have them counted against you. But if you do, you will no longer control those assets and will not be able to prevent the person you gave them to--a child, trusted friend or relative for example--from losing or wasting them.

However, an irrevocable trust may be a good solution. In this kind of trust, a "trustee" now holds legal title to the assets for the benefit of the beneficiaries. And the trustee is legally bound to follow the rules the trust instrument has set forth, assuring that the wishes of the person funding the trust are observed as much as possible. However, many people are reluctant to give up complete control of their assets and are seeking less restrictive strategies.

Generally, there are 3 trust strategies that are used to satisfy Medicaid requirements:

- A testamentary trust is created vis-à-vis a will. There is a Medicaid "safe harbor" that allows the Medicaid applicant to accept funds from the trust because the trustee has been charged with the applicant's support. In other words, someone dies and leaves the testamentary trust funded. Then, even though the assets haven't been in the trust for 5 years (the current Medicaid window), they can be used to pay for special services not paid for by Medicaid. Such items as legal fees, transfers to other nursing homes, special equipment, extra therapy and so on. But these funds will not count against the "countable assets" limit that Medicaid is keeping a close eye on, and should not interfere with the recipient's Medicaid status.
- An income-only trust is an irrevocable trust that pays income to you (the person who established the trust) for the rest of your life; but the principal can't be of benefit to either you or your spouse. When you die, the principal is then paid to the designated heirs. This is a very workable approach since it both protects the principal as well as provides the trust grantor (person

funding the trust) income for life. And Medicaid doesn't count the principal in these trusts against the "countable assets" as long as the trust doesn't allow the trustee to pay these funds to either you or your spouse.

Quick note: if it turns out you have to move to a nursing home, then the trust income will no longer be paid to you; it will go to the nursing home.

Quick note 2: this arrangement is very inflexible and prevents you from accessing the trust funds even in the case of an emergency; so be sure you have other funds available outside the trust to meet emergencies or other possible expenses.

Quick note 3: when you fund an irrevocable trust, you can become ineligible to receive Medicaid benefits for 5 years.

- Also to be considered is a supplemental needs trust (otherwise known as a special needs trust). Medicaid has specific exceptions for transfers of funds that will be used for the sole benefit of people under the age of 65 who are disabled. What this means is that, even if you've made the move to a nursing home, you can go ahead and transfer assets into a trust and then use them for the benefit of the disabled person without making yourself Medicaid ineligible. This can be a terrific planning tool under the right circumstances.

(But be aware of this drawback: after the disabled person dies, any Medicaid funds spent on them have to be reimbursed to the state).

So, as we indicated at the beginning of this report, there are any number of effective trust options available to protect your privacy, wishes, assets and loved ones. Consulting with a qualified estate attorney specializing in this area is the right place to start.

Here's something really important to think about: where you establish your trust. Some states are much more trust-friendly than others. Your attorney will know which ones. Also, be absolutely sure your trust will allow you to select your own money manager(s) so you can invest as you feel necessary and with whom you feel best meets your financial goals. Do not put yourself at the mercy of the money managers at your local bank, for example, unless you want to limit your options.

And limiting options is a very unpleasant thought considering the coming financial uncertainty we find ourselves faced with. There has never been a more critical time to keep your aim steady and your powder dry. And that doesn't mean watching your hard-earned money eroding daily at current c.d. or money market rates when the effective rate of inflation (as tracked by the excellent site **ShadowStats**) is around 8.5% (using the original 1980 inflation table which has since been modified to hide the true inflation numbers).

Bottom line: spend the money; set up the trust; know that you've done a good thing.

Here's to protecting your assets,

J. Michael for

The Boost Retirement Income Team

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