

WHAT ARE THE MAIN REASONS PEOPLE CREATE TRUSTS?

People create trusts for various reasons. The main reasons are to:

- Avoid probate; or
- Pay less in federal and/or state estate taxes.

This article will discuss the uses of trusts in estate planning and whether they are right for you.

Avoiding Probate

People who desire to avoid probate usually want to do so because they:

- Want to limit probate fees and costs; and
- Want less disclosure of their personal assets for public consumption.

What Is Involved in the Probate Process?

If there is a will, the executor must petition the court to accept the will for probate, which is the process of collecting assets and distributing them pursuant to the terms and conditions of the will. Along with submitting the will for probate, the executor must give notice to beneficiaries listed in the will (and cite heirs).

This leaves an opportunity for a will to be contested if the heirs or potential beneficiaries dispute the terms of it. After filing the probate petition, the court generally sets a date for heirs to file their objections, if any. If objections are filed, then there could eventually be a hearing as to whether the will is valid or not.

If There is No Will

If there is no will, notice must be given to heirs who could possibly receive an inheritance. With no will, there is no executor or personal representative so there could be a contest regarding who should represent the estate. This occasionally happens when more than one sibling wants to be the representative.

Matter of Public Record

Within the probate process, an accounting of assets is sometimes necessary with court approval. Both the will and the accounting are a matter of public record (unless the court closes the records).

The probate process can be costly for large estates and may take a few years to end. And even for modest size estates that are less complicated, the process could be costly, cumbersome and time consuming.

Why Do People Use a Trust to Avoid Probate?

Sometimes people want to form a trust to hold their assets. Usually, this involves a revocable trust (wherein the assets are still under the control of the person forming the trust and in his or her estate). That way, the assets do not have to go through the probate process.

Assets in a revocable trust (as well as in an irrevocable trust) do not have to be probated. This means that the trustee can distribute the assets more quickly than an executor who has to file a petition with the court and most likely have to account for the assets. With a trust, there is no predetermined judicial scrutiny of the accounting, although a beneficiary can always request an accounting and motion the court for one, if necessary.

Also, a trust is usually private, not public like a will. This allows the grantor to distribute assets to the beneficiaries with privacy. It is also much more cumbersome to contest a trust because the trustee is not required to provide information about the trust to those not named in it. Those not named in the trust would have to petition the court to get a copy.

Further, setting up a trust, although an additional cost during the estate planning process, generally saves money later in terms of the cost of probate, which is more expensive.

Limiting Estate Taxes

In addition to forming a trust to avoid probate, some people with larger estates subject to federal or state estate taxes create trusts to limit the amount that their estates will have to pay the federal or state governments. Basically, the trust grantor is taking money out the estate and transferring the money to beneficiaries through a trust instead of giving the assets outright to the beneficiaries. This allows for more control of how much the beneficiaries will receive -- and when they will get the assets.

There are many different types of trusts created to take the assets out of an estate. Each trust must uniquely fit the person's individual situation. Tax laws are very strict as to the proper language necessary to make a trust effective.

These are only the basic reasons why people uses trusts. There are other reasons. During the estate planning process, speak with your attorney to determine if a trust is right for you.

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