CONSIDER THE IMPORTANCE

Putting Too Much Trust in a Revocable Trust

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When reviewing a client's estate plan, the conversation should include whether the client has created or is the beneficiary of any Trusts. Sometimes a client may simply tell you that certain assets are "in a Trust" and leave it at that. It is important that the conversation does not end there, as the type and structure of each Trust is vitally important to understanding the full nature of the estate plan.

Too often a client may overestimate the power and scope of a Revocable Trust, and an advisor should be sure that they don't fall victim to that same mindset. Let's re-examine the pros and cons of Revocable Trusts and their limitations when it comes to estate planning.

REVOCABLE TRUSTS

Make no mistake, a Revocable Trust, also known as a Living Trust, can be an effective tool for estate planning. By creating a Revocable Trust and transferring assets into its name, a client (known as the "Grantor" to the Trust) can ensure that those assets no longer have to be distributed per the terms of their Will. This achieves one of the hallmarks of a Revocable Trust: avoiding probate.

Assets that pass through a Revocable Trust as opposed to a Will can often be distributed more quickly than through the probate process. Unlike probate, which is a matter of public record, the distribution of assets through a Revocable Trust also has the benefit of privacy.
Additionally, the Trustee who is responsible for distributing the assets after the Grantor's death can also manage the assets during the Grantor's life if they are incapacitated. In sum, a Revocable Trust can offer a client piece of a mind that their assets will be taken care of according to their wishes, all while avoiding the cumbersome process of probate.

LIMITATIONS

While Revocable Trusts certainly have their advantages, it is important not to confuse them with the estate planning and tax advantages of *Irrevocable* Trusts. Because a Grantor retains ultimate control over Revocable Trust assets (by the very ability to revoke the Trust), the assets held in a Revocable

Trust are not removed from the Grantor's estate for tax purposes. From a tax perspective, a Revocable Trust is merely an extension of the Grantor and their estate. As such, strategies such as naming a Revocable Trust as a beneficiary of a life insurance policy or qualified retirement account can be inefficient and generally ill-advised.

For those who have concerns for asset protection, a Revocable Trust is not an effective means of achieving that protection from creditors. Again, as a Revocable Trust is effectively an extension of the Grantor and their estate, the assets held in the Trust are accessible to creditors, despite the fact that they are "in Trust." For clients in personal service occupations with a risk for lawsuits, such as doctors, lawyers, accountants, and financial professionals, this can be true even if there is a limited liability corporate structure in place. These professions require additional considerations for asset protection, including liability insurance and employing Irrevocable Trusts to achieve creditor protection.

WHERE DO WE GO FROM HERE?

Revocable Trusts are a great first step in almost any estate plan. As an estate grows in complexity and overall value, however, we must remember that Revocable Trusts are relatively *reactive* entities – they operate based on the tax law, estate value, and document language variables in effect at a given point in time, *e.g.* the death of the Grantor. Effective estate planning requires the conversation to move beyond the simplicity of "in a Trust" and having meaningful discussion about what *proactive* methods might be appropriate for a given client's estate plan.

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