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"Planning today for your family's tomorrow"

OVERVIEW OF A REVOCABLE LIVING TRUST

What is a Revocable Trust?

A **Revocable Trust** is a document created by you to manage your assets during your lifetime and distribute the remaining assets after your death. The person who creates a trust is called the "Grantor" or "Settlor." The person responsible for the management of the trust assets is the "Trustee." Initially you serve as trustee, and may appoint another person, bank or trust company to serve as your successor trustee. The trust is considered "Revocable" because you may modify or terminate the trust during your lifetime, as long as you are not incapacitated.

How are assets managed in a Revocable Trust?

During your lifetime, you as the Trustee invest and manage the trust property. Most trust agreements allow the Grantor to withdraw money or assets from the Trust at any time, and in any amount. If you become incapacitated, the successor trustee is authorized to continue to manage your trust assets, pay your bills, and make investment decisions. This may avoid the need for a court-appointed guardian of your property. This is one of the advantages of a revocable trust. Once you are no longer incapacitated, you will resume as the trustee of the trust.

Upon your death, the successor trustee is responsible for paying all claims and taxes, and then distributing the assets to your beneficiaries as described in the Trust Agreement.

How are assets placed in a Revocable Trust?

Your assets, such as bank accounts, real estate and investments, must be formally transferred to the trust before your death to get the maximum benefit from the trust. This process is called "Funding the Trust" and requires changing the ownership of the assets to the trust. Assets that are not properly transferred to the Trust may be subject to probate. However, certain assets (such as retirement accounts) should not be transferred to a Trust because income tax problems may result. Typically, the Trust is named as the successor beneficiary on qualified accounts. You should consult with your attorney, tax advisor and investment advisor to determine if your assets are appropriate for Trust ownership.

Who may act as Trustee or Successor Trustee?

The choice of a trustee is extremely important, and may have tax consequences. You can name almost anyone as your successor Trustee. A Trustee does not have to live in North Carolina or be related to you. You can name any other individual (subject to tax considerations), or a corporate trustee, such as a bank or trust company. The individual Trustee can be a family member, friend or professional advisor. Many individuals appoint family members or friends as successor trustee, to assume responsibility for the trust management and distribution after their death. When a family member or friend is chosen, consideration must be given to the person's qualifications, the potential for friction with other beneficiaries, and the potential burden you are placing on that individual. The trust agreement should allow these individuals to hire qualified professionals to assist them in their duties, such as attorneys, accountants and financial advisors.

Does the Trust provide protection from creditor's claims?

In North Carolina, the Trust assets are not protected from the claims of your creditors. During your lifetime the assets in a Revocable Trust are treated as owned by you and subject to the claims of your creditor as if you owned them in your personal name. If the trust assets remain in Trust after your death, the interests of the beneficiaries may be protected from their creditors by a "spendthrift" provision in the trust agreement. North Carolina law provides special protection for many types of assets, including assets owned by a husband and wife as "tenants by the entirety." Consideration should be given to these assets when you decide how to fund your Revocable Trust. An attorney can advise you on the types of assets that offer creditor protection and the effect of funding your Trust with them.

Why choose a Revocable Trust over a Last Will and Testament?

There are several reasons why a Revocable Trust is chosen over a Last Will and Testament. First and foremost, the decision is specific to the situation, needs and circumstances of each client.

Privacy Issues: Many people choose a Revocable Trust because it maintains privacy. In North Carolina a Last Will and Testament is public record once a Probate is started. This means that your assets, listed on the Petition, are viewable by other parties not members of the Court system. A Revocable Trust is not required to be filed with the Court when you pass away therefore maintaining your privacy.

Monetary Issues: In North Carolina the maximum allowed Court fees for a Probate is currently (2009) \$6,000.00. However, there is legislation that may be passed that will

increase this amount to \$12,000. Many clients feel that they would rather have the Estate pay this amount at their death as opposed to paying the extra fees now and transferring all the assets into a Trust.

Ease of transferring property: The Court does not oversee the settlement of an estate through a Trust. This means that the successor trustee may step into his or her role almost immediately and manage or distribute the assets without the need for court approval or court supervision. This allows for the assets to be transferred within in less time than if the estate was under the supervision of the Probate Court.