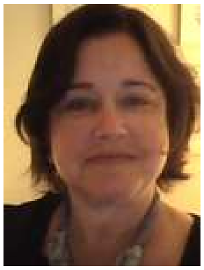
Avoiding Probate with a Revocable ("Living") Trust



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Avoidance of Probate - The Funded Revocable "Living" Trust

Probate is the process of presenting your Will to the Probate Court and having the Will allowed, ultimately resulting in the title to your property passing to your beneficiaries. Only property in your individual name alone goes through your Will (and therefore the Probate system). For instance, property held jointly or property with a designated beneficiary (such as life insurance, employment benefits, IRA's) does not pass via your Will or probate, because it passes automatically to the joint owner or the named beneficiary.

Some of the disadvantages of going through Probate are the costs (lawyer's fees and probate costs) and the delay (property going through probate will have up to a 1 year delay in passing to your intended heirs).

You can avoid probate by setting up a Revocable Trust and "funding" this trust during your lifetime (re-titling your assets into the name of this trust). Property held in the Trust is not part of your probate estate and passes as set forth in the Trust. Basically, you can be the Trustee and beneficiary of this Trust while you are alive - you do not lose any control over the property. Then the Trust provides for a successor Trustee and provisions for distribution upon your death.

In addition to avoidance of probate, funding the trust also provides you with the following benefits:

1. Management: As stated above, you can continue to manage the property as you would normally do (you continue to be treated as the owner by the I.R.S. and would not lose any current tax benefits). However, in the event that you become incapacitated, there would be no need to appoint a conservator or guardian with respect to the property already owned by the trust - your successor trustee would continue to manage the trust property for your benefit during your lifetime;

2. Privacy: When property passes at death via the trust (as opposed to your Will), it is private. No one will know who your beneficiaries are or how much money you had. Your Will and related probate documents, on the other hand, are public documents on file with the Probate Court, available for anyone to obtain.

3. In addition to avoiding probate in Massachusetts (or your state of residence), you also avoid "ancillary probate" (probate in any other state where you own real property).

Avoiding probate and reducing estate taxes are two different matters entirely. **However, If your assets are under $1 million (the MA estate tax cut-off point), your estate will not owe any estate taxes.**

Also, although the Trust avoids probate, it does not shelter assets from the rights of a spouse or from the claims of creditors. In addition, if does not protect your assets from Medicaid or nursing home costs.

Will: You still need to have a Will in addition to the Trust. The Will would pass everything into your Trust at your death (any assets you have not transferred into the Trust trust during your lifetime).

Income Taxes: You are still treated as the owner or owners of the property in the eyes of the IRS - all income continues to be reported on your individual 1040 and as part of your own social security number(s).

"Funding" Your Trust:

1. Liquid Assets: To transfer liquid assets into these trusts, you can go through your broker or financial planner, or obtain the necessary forms from the institution to change the title on the accounts, stocks, etc. to the names of your trusts.

2. Real Estate: To transfer your real estate into your trust, a new deed is prepared and recorded at the Registry of Deeds, along with a simple 1-page Trustee Certificate (so that the entire Trust does NOT have to be recorded at the Registry of Deeds).

**** Under a new MA Homstead law, you can now get the creditor protection from the MA Homestead even if you have re-titled your home into a Trust (to avoid probate or for other estate planning purposes).**

If you are currently receiving any real estate tax exemption from your town (i.e. annual residential exemption, veterans exemption, elderly exemption), you may need to file some forms with your town in order to continue to receive those benefits.

Lastly, if you decide to transfer your real estate into trust, you should notify any insurance companies which insure your property that the property has been transferred into a trust, as well as mortgage companies.