A Legal Update

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DOES EVERYONE NEED A TRUST?

Answers to some commonly asked questions about "Trusts used for Estate Planning"

What is a Trust? A trust is a legal document by which one person, as trustee, holds, manages and controls property for the benefit of others (usually family members) called beneficiaries.

When should you establish a Trust? A trust should only be created when there is a specific need or benefit – such as:

- To avoid the expense and public exposure of the probate process;
- To provide for a disabled child or elderly family member;
- To protect your assets if nursing home care is ever required;
- To provide relief from death tax liability and the burdens of financial management;
- To provide lifetime gifting to family members;
- To engage in charitable planning and giving;
- To provide for minor children.

When planning your estate are all Trusts the same? There are many different types of trusts, each designed for a particular purpose. The following is a list of some of the most common trusts used for estate planning:

- **Revocable Trust** – can be changed or terminated at any time by the creator - these trusts allow the creator to retain control of the property. Often used to avoid probate and protect your privacy;

- **Irrevocable Trust** - cannot be changed or terminated by the creator. These trusts are often utilized to make gifts to minors and are also used to protect assets from creditors;

- **Credit Shelter or Bypass Trust** – in a will, one spouse leaves property for the benefit of the surviving spouse if needed, then to children or other heirs. This reduces the estate tax upon the death of the surviving spouse.

- **Children's or Minor's Trust** - established to hold and manage parents' assets in the unlikely event that there are still young children when both parents have died.

- **Special Needs or Supplemental Needs Trust** - established to provide for those with special needs or for the elderly. These trusts supplement needs that are not met by public support programs.

- **Spendthrift Trust** - created for the benefit of a person who manages finances poorly(spendthrift), who is then paid income from the trust. Trust assets are protected from the spendthrift's creditors.

Should you establish a Trust to avoid probate?

One goal of estate planning is to avoid having the probate court manage your estate. To accomplish this goal, the ownership of assets must be transferred during life. A revocable trust can be created and real estate, bank accounts, investment accounts and other assets can be transferred into the trust. After death the trust, not the probate court, will direct the assets to the named beneficiaries. This strategy will save probate expenses and fees and distribute assets to heirs quickly. Your estate remains confidential because trust assets are not reportable on public probate forms.

Should you establish a Trust to reduce estate taxes? Beginning January 1, 2006, estates in excess of $2,000,000 will be subject to Federal Estate Tax liability and those in excess of $1,000,000 will be subject to Massachusetts Estate Tax liability. There is a well established strategy available to married couples who can reduce or eliminate liability by establishing revocable trusts. The couple must also transfer their assets from joint ownership to individual ownership. When this plan is completed properly the couple can effectively double the assets (up to $4,000,000) that will pass to their children without tax liability.

Should you establish a Trust to protect assets if nursing home care is needed?

Trusts can be an effective method of protecting assets if nursing home care is needed. The trust must be irrevocable and established long before the nursing home care is required. Irrevocable trusts are often used in combination with a reserved life estate to protect the principal place of residence. Used in combination with a reserved life estate, a homeowner will retain substantial control over the primary residence, but if used with liquid assets, control will be relinquished.

Should you establish a Trust to provide for your children?

Trusts are used almost universally by parents providing for children up to a certain age. In a typical estate plan, a children's trust will be established to manage assets for children until they reach the age of 25. A family member is most often named as trustee to hold, manage and finally distribute the funds from the trust when the children are old enough to manage it themselves.

Establishing a trust is an important and often complicated part of estate planning. You should only establish a trust after careful consideration of the possible advantages and disadvantages.

Please feel free to call Russell, McTernan, McTernan & Fruci, LLP if you have any questions or would like to schedule an appointment to discuss estate planning or any other legal matters.