What is a Trust?

Many people have the impression that a trust is a very complicated legal instrument that is only useful for the super wealthy who have millions of dollars in their estates. They may have been told that unless they are going to have a federal estate tax liability upon their deaths, setting up a trust is not worth the trouble that administering a trust during their lifetime will cause. However, such a view overlooks the benefits of a revocable living trust and the manner in which it can be operated.

A Contract

Viewed simply, a trust is a contract between two people, called the Trustmaker and the Trustee, to hold property and use it for the benefit of a third person (or persons), called the Beneficiary. The Trustmaker creates the trust and includes provisions giving the Trustee *authority* to act over the trust property and *instructions* on what to do with the trust property under specific circumstances. The Trustmaker then transfers his or her property to the Trustee. This lifetime transfer of property into the trust is necessary to avoid probate proceedings over the assets when the Trustmaker passes away.

Maintaining Control

One of the central principles of the definition of effective estate planning is maintaining control of your property while you are alive. The process of transferring all of the Trustmaker's property to the Trustee may strike some as a loss of control over the property. However, in most cases, the Trustmaker will name himself as the initial Trustee of the Revocable Living Trust, and therefore the transfer of the property to the Trustee is merely a transfer from himself as an individual to himself in his capacity as Trustee of his trust. There is no loss of control.

While the Trustmaker is alive, the Trustmaker will also be the beneficiary of the trust, as well as any other persons that the Trustmaker chooses, such as the Trustmaker's spouse and dependent children. In this manner, even though all of the Trustmaker's assets have been transferred into the Revocable Living Trust, the Trustmaker/Trustee still has the ability to use the assets as needed to care for himself and his loved ones.

Naming Helpers

There will come a time when the Trustmaker can no longer serve as Trustee. That could be because the Trustmaker is disabled (can no longer manage his own property and financial affairs) or because the Trustmaker is deceased. Therefore, when the trust is created, the Trustmaker names one or more successor Trustees to take over the management of the trust and the trust assets when the Trustmaker can no longer serve as Trustee. If the Trustmaker is married, he may name his spouse as the first Successor Trustee, and may name one or more people to serve as Successors if the spouse is also unable to serve.

Administration

One of the benefits of setting up a living trust is that the trust will avoid probate for the assets that have been transferred to the trust. When the Trustmaker passes away, the Successor Trustee takes over the management and control of the trust, settles the Trustmaker's estate (pays expenses, claims and taxes), and then distributes the trust assets in accordance with the Trustmaker's wishes as expressed in the trust document. To sum up, a living trust is an effective way to create an estate plan designed to allow the Trustmaker to maintain control over their assets and provide an efficient means to settle the estate at the Trustmaker's death.