Trusts

Dolores M. Coulter
8341 Office Park Dr. Ste C, Grand Blanc, MI 48439
Phone: (810) 603-0801, Fax: (810) 603-0804
Email: coulterdm@sbcglobal.net

What is a trust?

A trust is a separate legal entity in which property is held and managed by a trustee(s) for the benefit of certain persons (beneficiaries) according to a trust agreement. The person who establishes the trust is called the grantor or settlor. The trust agreement contains details on how the money/property in the trust is to be managed and how distributions of money/property from the trust are to be made. The trustees have a legal obligation to manage the trust according to the terms of the trust agreement and to make prudent investment decisions.

What is a revocable trust?

A trust can be either revocable or irrevocable. A revocable trust is one in which the grantor reserves the right to revoke, amend, or modify the trust. An irrevocable trust is one in which the grantor does not reserve this power. If a grantor transfers property to an irrevocable trust he/she has given the property away. The property is held by the trustee and managed according to the terms of the trust agreement.

What is a living trust?

A living trust is one that is created and funded during your lifetime. It is distinguished from a testamentary trust, which is a trust that is created by including provisions in your will to create the trust and is funded with assets that you own at the time of your death. A living trust is usually written as a revocable trust.

What are some reasons for establishing a living trust?

Avoid probate. A living trust can be used to avoid having your estate go through probate proceedings in Probate Court. After your death, the trustee will arrange to pay any debts that you owe and then distribute your property according to the terms of the trust. A living trust may include provisions to continue the trust after your death (for example, to provide for your spouse if you die before your spouse) or to set up separate trusts for children or grandchildren.

<u>Provide for management of your property after you become incapacitated</u>. If you transfer property to a trust and you later become unable to manage your financial affairs, the person you named as trustee or successor trustee will continue to manage your property according to the terms of your trust agreement. A trust agreement allows you to provide detailed directions on how you want your property to be managed and thus to maintain greater control over that process.

<u>Avoid conservatorship proceedings</u>. A trust can avoid the need for a proceeding in Probate Court to appoint a conservator in the event your become incapacitated. If your property has been transferred to your trust, the trustee will have the legal authority to manage that property. However, a conservator may be needed to manage assets that have not been transferred to the trust.

What is a special needs trust?

A special needs trust is one which is created to provide financial support and property management for a person who is unable to manage his/her financial affairs due to a disability or other condition. A special needs trust can be revocable or irrevocable. Many special needs trusts are created when a person with a disability receives a large sum of money, such as a personal injury settlement or an inheritance. Others are created and funded by a third party (often a parent or other relative) during the third-party's lifetime, and others are created by including trust provisions in a will. A special needs trust can be written so that it does not disqualify the person from Medicaid, SSI, or other government benefits that they are receiving. It can be used to pay for a wide range of services that will improve the quality of life for a person with a disability.

Does everyone need a living trust?

No. Whether you should have a living trust depends on your individual circumstances and your estate planning objectives. Each person's wishes, family concerns, and financial situation are different. A trust is a complex legal document, and the process of transferring assets to the trust and managing the trust can create additional legal and financial issues that can be time consuming and expensive. In some instances, a simple will and a financial power of attorney may be all that is necessary to achieve your estate planning goals. Keep in mind that the federal estate tax exemption is $ 5,450,000 [for 2016], so persons with estates below that amount need not worry about avoiding estate taxes. Also keep in mind that salespersons who market living trust kits often exaggerate the time and expense involved in probate proceedings. The probate laws have been revised in recent years to make the probate proceedings simpler and faster. In many cases, if a person has a modest estate and all of the beneficiaries are cooperating with each other, the estate can be probated in six months at approximately the same cost as the cost for winding up a trust.