IS A LIVING TRUST RIGHT FOR YOU?

In every newspaper, in frequent radio and television commercials, various attorneys and others are advertising Living Trusts as though this were the solution to every person's estate planning problem. All of the ads assume that every person has a probate problem and none of the ads explain what a living trust will actually do for you.

A Living Trust (also Referred to as an inter vivos trust) is a revocable trust established by a husband and wife or by a single person. In its simplest terms, it is a method by which title to all of your assets is held. The method can be changed at any time, until your death.

During the lifetime of the person(s) establishing the trust, the trust can be changed or terminated at any time. Upon the death of the person(s) establishing the trust becomes irrevocable and the property held in the trust will be distributed as set forth in the trust agreement without the necessity of any court proceedings.

Living Trusts are extremely worthwhile estate planning devices However, the decision to establish a Living Trust should be made only after determining if it is right for you.

The Benefits of a Living Trust

<u>1. Avoiding Formal Probate Proceedings in court</u>

The most frequent reason given for establishing a Living Trust is to avoid a court proceeding called a "probate" of the assets of the deceased person(s) establishing the trust. A Living Trust does accomplish this purpose, because assets transferred to the trust does under the terms of the trust and do not go through a probate. However, if all of your assets are held in joint tenancy with another person, then there will not be any probate of those assets held in joint tenancy.

<u>2. Ease of Administration in the event of Incapacity</u>

If the person(s) establishing the trust become incapacitated, the trust will usually be written in such a way that the assets held in trust may continue to be administered by the person designated by the person establishing the trust (usually the disabled person's spouse) without having a conservator appointed by the court. Of course, this feature is more important for an older couple than a younger couple. This can also be a dangerous feature if the person selected to manage your affairs is not supervised by the court or any other authority.

<u>3. Estate Tax Savings</u>

Estate tax savings is given as another reason given for establishing a Living Trust. However, a living trust does not in fact save you any Estate Taxes by itself. Although tax savings can be obtained with proper planning, a living trust is not necessary to obtain the tax benefits. While the trust may be written in such a way as to minimize estate taxes, the estate tax savings can normally be achieved with a properly Drafted Will. It is also important to remember that there are no Estate Taxes unless your estate exceeds $600,000.00. Placing value on your estate, you must include all property and assets which would normally pass outside of probate.

Disadvantages of a Living Trust

1. Lack of Protection Against Creditors' Claims

When an estate is probated in California, creditors must file a claim after a Notice to Creditors is published, or their claims will be barred. Thus, a probate can effectively cut off certain contingent claims such as personal injury or property damage claims which the deceased person may not have known about at the time of his of her death. In addition, all creditors claims that are paid must be approved by the court. Since a living trust is not probated, creditors' claims will not be barred so quickly, nor will they be subject to the court's supervision.

2. Initial Cost of the Trust

In most cases, the initial cost of a Living Trust will be higher than the cost of merely establishing a Will. Generally, as a person ages and the size of his of her estate increases, a Living Trust becomes more economically justifiable.

3. Lack of Court Supervision

An advantage of a probate is that the activities of the executor (the person managing the estate) are supervised by the court. This type of supervision is not present with a Living Trust. If a substantial portion of the assets are going to someone other than the surviving trustee, it may be important to have the judicial supervision for the protection of both the trustee and the beneficiaries. This can be a particularly important issue if there are minor children involved.

If the primary wage earner owns their own business, it may important to have a probate to protect the interests of the surviving spouse from some creditor's claims.

Conclusion

In conclusion, while Living Trusts are often a desirable and necessary estate planning device, you should not make an automatic assumption that a living trust is best for your particular needs at this time.