Using a Trust To Avoid Probate

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Estate planning is a complex topic **[1],** and there are many different facets that have to be considered. One overriding concern many people have is doing something with their assets so they reduce the amount of income tax that may be owed. This is an obvious area for expert advice **[2].** However, it is important to realize there are several other factors which have to be taken into account when organizing your estate. Sometimes an unexpected event can reveal an **inherent weakness in a specific type of estate planning strategy.**

Concerned about his wealth and the expected complications and delays in settling his estate, Simon Harvey sought legal expertise to include his assets in a revocable living trust?. This form of trust is frequently used to enable inheritance of family assets without the complicated process of probate. Harvey thought he had protected his family's inheritance as well as he could he had read about a living trust in a magazine article, and his lawyer agreed that it would make probate much easier.

Unfortunately, Harvey was not the first to die. The tenant in a duplex, owned by Harvey, was fatally injured when the wooden deck collapsed. Harveys' liability insurance only covered part of the settlement, so when he was sued by the family, he lost most of his assets.

He had mistakenly thought that a trust would provide enough protection, but found out the hard way that a 'revocable' living trust is weak in this respect. Because it was setup as a 'revocable trust', it meant that he was able to dissolve it at any time, and therefore the court could force him to dissolve it to satisfy a judgment.

In today's litigious society, there are ways to title assets so that you are not subject to surrender in a lawsuit. **Asset protection is an evolving art** that basically involves separating control of the assets from your personal wishes. That which you cannot give, the law does not require you to give, and this is the principle behind many of these strategies, often involving offshore companies and irrevocable trusts.

The disposition of the assets of a trust is dependent on a trustee, and if worded correctly, you cannot personally be forced to hand over those assets to the court. Similarly, you may be deemed not to have overriding control over the operation of a suitably established company, so cannot be required to deliver those assets in response to a court's judgment.

Depending on the amount of wealth at risk, there are increasing levels of complexity and strategies with interconnected trusts, companies and partnerships. Financial advisors who specialize in these issues keep up with current case law, as each year new judgments result in new interpretations of the law.

Dealing with these issues requires special knowledge. If someone is looking for the optimal solution, **this isn't a situation that can be properly handled without expert advice.** Every case is different. People who try to sell a packaged way of organizing an estate, particularly at informational seminars, will frequently do a disservice as generic solutions cannot fully accommodate individual circumstances.

Hiring a professional to take care of the organization of your estate [1] from all angles will more than pay for itself.

Fictitious characters for illustration purpose only.

Questions about Using a Trust to Avoid Probate?

Contact our office! **[2]**

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