

Making Plans

Do I really need a revocable trust?

BY KRISTIN L. BROWN

People who are contemplating their estate plans often assume they need nothing more than a will. They are often skeptical when presented with the idea of using a revocable trust rather than a traditional will as the centerpiece of their estate plan. Many mistakenly assume trusts are only appropriate for ultra-wealthy individuals who need complex tax planning. In reality, they offer a multitude of benefits for nearly everyone.

Reduction of Texas Probate

If you fully fund your revocable trust during your life, there is a strong possibility that there will be no need for probate following your death. Although

the Texas probate process is relatively simple, there is still value in saving the time, court costs, and attorneys' fees associated with it, especially when probate court dockets across the state are as congested as ever. Even if probate cannot be avoided altogether, muniment of title proceedings are much more likely to be an option for the persons handling your estate if the bulk of your assets are in trust at your death. Probating a will as a muniment of title allows those persons to forgo the requirements of an independent administration, such as providing various notices to creditors and beneficiaries and preparing an inventory, appraisal, and list of claims.

Elimination of Ancillary Probate

While failing to avoid Texas probate is unlikely to have dramatic consequences, the same cannot be said in states like California, where probate is notoriously costly and time-consuming. For individuals who own property in other states, eliminating the need for ancillary probate is critical. If you place your out-of-state property in a revocable trust, you will ensure that there is no need for probate proceedings in a potentially unfavorable jurisdiction. In our increasingly mobile society, it has become commonplace for people to move to other states. While you should still seek a review of your estate plan by local counsel after a move, having a fully funded revocable trust will, in any event, reduce your risk of having to subject your estate to a costly probate process.

Privacy

Many people prefer that their friends and family not know the exact details of their estate plan, especially if they opt to disinherit certain relatives or provide for them in disproportionate amounts. Once a will has been filed for probate, it is part of the public record and available for inspection by virtually anyone with internet access. A revocable trust, in contrast, is not required to be filed with the court, so you can protect your privacy by including all of the key dispositive provisions of the estate plan

in a revocable trust instead of a will. In conjunction with the revocable trust, you would also need to execute a pour-over will that provides for all of your directly held assets to pass to your trust post-death.

Ease of Management

A Texas will-signing ceremony requires two witnesses, a notary, and several steps that inevitably manage to befuddle some unsupervised testators and even the occasional attorney. Even when done correctly, sometimes it is simply a hassle to execute a new will or codicil when all you want to do is make a minor change to your plan. Amending a revocable trust, however, requires at most a notarized signature. There is often no need for you to sign a trust amendment in your attorney's office.

Continuity of Management

As more people are living longer, the need to plan for incapacity is more important than ever. A revocable trust, especially when funded, is an excellent tool in this regard. Should it get to the point where you become unable to manage your own affairs, a new trustee can step in and immediately begin managing the trust for your benefit, potentially avoiding the need for a guardianship proceeding. A durable power of attorney has traditionally served a similar purpose and is still an important part of an estate plan, but pursuant to new legislation effective September 1, 2017, financial institutions may refuse to accept a durable power of attorney for a multitude of reasons. Conversely, financial institutions are typically more receptive to dealing with successor trustees, making a revocable trust a more dependable guardianship alternative in most cases. **TBJ**

This article was originally published in the Dallas Bar Association's Headnotes, December 2016. It has been edited and is reprinted with permission.



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