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It's Your Estate Workshop — Spring 2024
Wills & Trusts

I. What is a Trust?
   A. A trust is a legal arrangement whereby assets are transferred from the Settlor (also known as the Grantor, Trustor, or Trustmaker) to the Trustee who manages assets for the benefit of the beneficiary.
   B. For a revocable trust, the person or married couple creating the Trust typically is/are the Settlor(s), Trustee(s), and beneficiary(ies) during his/her/their lifetime.
   C. The terms of the trust dictate who will be the Successor Trustee and remainder beneficiaries upon the incapacity or death of the Settlor(s).

II. What are the types of Trusts?
   A. Revocable. Can be changed. Traditionally used to avoid probate.
   B. Irrevocable. Cannot be changed. Traditionally used to hold gifts and inheritances and reduce federal gift, estate, and generation-skipping transfer taxes.

III. What is included in a basic estate plan?
   A. Revocable Trust (also known as a Living Trust, Inter-Vivos Trust, Family Trust), Pour-Over Will, Durable Power of Attorney, and Advance Health Care Directive.
   B. Ancillary Estate Planning Documents: Certification of Trust, Grant and Assignment, Nomination of Guardians for Minor Children, Durable Power of Attorney, Advance Health Care Directive, and Authorization for Release of Protected Health Information.
   C. Funding of the Trust: Assets need to be transferred to the Trust to ensure probate is avoided at a person's death. Also, important to review beneficiary designations on retirement accounts (e.g., IRA, Roth IRA, 401(k), etc.) and life insurance policies.

IV. What is the difference between a Will and a Trust?
   A. With a Will, an Executor is named and beneficiaries are named in the document. However, the Will is subject to a probate proceeding which, in California, can be a complex, costly, and time-consuming process. On average, it lasts 18-24 months.
   B. With a Trust, a Trustee is named and beneficiaries are named in the document. However, the Trust is not subject to probate. The administration of the Trust can be handled without court oversight saving money and time.

V. What are the benefits of a Trust?
   A. Avoids conservatorship and probate proceedings with properly funded Trust.
   B. Person acting as Successor Trustee is someone you have chosen.
   C. Assets are distributed to beneficiaries on terms that you have established.
   D. No probate court involvement; assets and provisions of the Trust are not public.

VI. What are the drawbacks of a Trust?
   A. Legal fees to establish a Trust.
   B. Need to fund a Trust during lifetime in order to avoid probate.
   C. Advisable to re-visit your estate plan every 5-7 years to ensure it still meets your estate planning goals and is in compliance with then-current state and federal laws.

VII. For a single person, what happens to a Trust at the death?
   A. Trust becomes an irrevocable trust and will need its own tax identification number.
   B. Assets are identified and valued. Creditors are identified and paid.
   C. Successor Trustee follows the Trust terms to make distributions to beneficiaries.

VIII. For a married couple, what happens to a Trust at the first spouse's death?
   A. Surviving spouse's 1/2 of community property and all of his/her separate property is held in a Survivor's Trust to avoid probate. The Survivor's Trust is a revocable trust.
   B. Deceased spouse's 1/2 of community property and all of his/her separate property is transferred to the Survivor's Trust, the Bypass Trust, the Marital Trust, the Bypass Trust and Marital Trust, or to beneficiaries or charities.
      1) Survivor's Trust is sometimes referred to as the "A Trust"
      2) Bypass Trust is sometimes referred to as the "B Trust"
      3) Marital Trust is sometimes referred to as the "C Trust"
   C. Types of Trusts: A-B Disclaimer Trust, A-B Trust, A-C Trust, and A-B-C Trust

IX. How should distributions be made to beneficiaries?
   A. Assets can be distributed outright to beneficiaries upon the Settlor's death.
   B. Assets can be held in trust in separate shares until a beneficiary reaches a certain age. Example: at age 25, one-third of the trust; at age 30, one-half of the trust; at age 35, the remaining balance of the trust. Trustee has discretion to make distributions prior to a full distribution for health, education, support, and maintenance purposes.
   C. No outright distributions of assets. Trustee has discretion to make distributions for health, education, support, and maintenance purposes.
   D. Differences between holding assets in a "pot trust" v. "separate shares."

X. What are gift and estate taxes?
   A. Federal transfer taxes that could apply to transfers during life and at death.
   B. For 2024, the exemption from gift and estate tax is $13,610,000 per person. If you use a portion of the gift tax exemption during life, then you have used a portion of your estate tax exemption.
   C. Unless Congress acts to extend the current estate tax law, the estate tax exemption will revert to $5,000,000 per person indexed for inflation in 2026.
   D. Gift and estate tax rate is a flat 40%. Gift and estate tax is paid only by the donor after the donor have used his/her gift and estate tax exemption.
   E. No California gift or estate taxes.
   F. Not subject to gift tax: (1) gifts to spouse and charity, (2) gifts below the annual exclusion amount of $18,000 per person per calendar year, and (3) gifts to pay for tuition or medical care of anther that are made directly to the education institution or to the medical provider.