Living Trusts

A Living Trust is a legal document that enables you to leave instructions for who you want to handle your final affairs and how you want your assets distributed after you die. Living Trusts look a lot like a will but, unlike a will, a Living Trust does not go through probate (providing privacy concerning assets included in the living trust), it prevents the court from controlling your assets if your are declared incompetent, and it gives you (not the court) control over the assets in the trust that you leave to your minor children and/or grandchildren.

A Living Trust can be revocable or irrevocable (you cannot change it or take out assets that have been placed in it). When you establish or set up the trust, you are called the Grantor (sometimes Settlor or Trustor). You will also name a Trustee to manage the assets you place in the trust. Many people name themselves, continuing to handle their affairs as they would have without the trust. Married couples often establish themselves as Co-Trustees. In case one of the Co-Trustees becomes incapacitated or dies, the other instantly has control, without court involvement, of the assets in the trust.

A Successor Trustee needs to be named in case you (or both of you in the case of Co-Trustees) becomes incapacitated or dies. This can be an individual (your adult children or dependable family friends) or a Corporate Trustee (a bank).

Each type, revocable or irrevocable, has advantages and disadvantages.

Revocable Living Trust

Advantages

- You see your trust work.
- You avoid probate and the trust can be used to avoid ancillary probate - that is probate of property in another state.
- You avoid the attendant publicity of probate.
- You will probably save your estate a substantial amount of fees and costs.
- You can provide for uninterrupted management in case of incapacity.
- You can avoid interruption of management at death.
- It's a good way to pass property to charity and save taxes at death.
- You can change your mind.

Disadvantages

- Initial cost and trouble of setup. Property must be transferred to the trust.
- It slightly complicates subsequent dealings with the property.
- It may require payment of an annual trustee's fee if someone besides yourself is trustee.
- At time of termination, there may be fees.
- There are no immediate tax advantages.

Irrevocable Living Trust

Advantages

- You see your trust work.
- You observe your trustee in action.
- You avoid probate and court costs.
- You probably will save some fees.
- It is a good way to pass property to charity.
- You save any taxes there may be on the property going to charity upon your death.
- With irrevocable charitable remainder trusts created while you are living, you can get an income tax deduction during your life.
- You may save taxes on capital gains on property placed in a charitable remainder trust.

Disadvantages

- Property must be transferred, so there are initial costs and energy in setting up the trust.
- You lose all control over the property with most irrevocable trusts.
- It requires annual fiduciary accounting and possible tax returns.
- It may require payment of annual trustee fees.
- There may be fees at the time of trust termination.
- You can't change your mind and get the property back.