

July 14, 2014

Does Your Client Need a Revocable Trust?

By Tracy Craig at [www.financial-planning.com](http://www.financial-planning.com)

Every so often, a client will come in and announce that he or she needs a revocable trust. Typically the request stems from something the client has read in a book or article, or perhaps advice from a neighbor or friend.

Of course, not everyone needs a revocable trust -- a trust that can be changed or amended by the grantors at any time during their life -- but these instruments can be very powerful estate planning tools. Here are five situations in which a revocable trust might be helpful for clients.

## **1. PROBATE AVOIDANCE**

A main use of revocable trusts is to help avoid probate -- because, upon death, the trust will dictate how assets in or payable to the trust will pass. In many states the probate process is time-consuming and expensive, making this is extremely important.

Although a trust is not the only way to avoid probate -- advisors may also want to recommend joint accounts, beneficiary designations and transfer-on-death accounts -- a revocable trust is the only method that can avoid probate and provide additional extra benefits.

Avoiding probate becomes even more important for clients who own real estate in more than one state -- a situation that could entail a second (or ancillary) probate in another jurisdiction. I've been involved in many estates that have had two simultaneous probates due to real estate ownership. Ancillary probate processes usually require hiring another set of estate attorneys licensed in the second jurisdiction -- potentially costing thousands of dollars in legal and probate court fees.

Typically, the cost of creating the revocable trust, and having a deed prepared to transfer ownership of the real estate to the trust, is less expensive than the cost of that ancillary probate.

## **2. PRIVACY CONCERNS**

Whenever a famous person dies, the will ends up on the Internet for interpretation -- often with limited facts. Routine provisions get questioned and inventories of assets become the subject of discussions.

The reason: When wills are filed with the court upon death, they become public record. Revocable trusts, on the other hand, remain private documents.

Even if your clients are not public figures or celebrities, they may find the privacy argument compelling. They probably do not want their friends and neighbors -- nor any relatives who are not provided for in the estate -- to learn about either the extent or disposition of their assets. Several years ago I handled an estate where the decedent was divorced and owed money to the ex-wife. The first person who turned up at the probate court to review the will was the ex-wife's attorney. But since most of the estate's assets were in the revocable trust, there was very little information for the ex-wife's attorney to discover by looking through the probate court file.??

### **3. SECOND MARRIAGES & BLENDED FAMILIES**

When married couples have children from previous marriages or relationships and both parties leave all their assets to each other, the surviving spouse has the ability to disinherit the stepchildren. A revocable trust can remedy this situation -- providing lifetime benefits to the surviving spouse but, after his or death, leaving the assets to children.

Among my clients were a couple in a blended family; their main asset was the husband's IRA. By leaving the IRA to a trust for the benefit of the wife, we were able to ensure that the wife would receive the required minimum distributions from the IRA -- and after her death, his children would receive the remainder. (Additional distributions could be made to the wife in the discretion of the trustee.)

Of course, this plan sacrifices the income tax benefits associated with a spousal rollover. But in this case, the client was more interested in ensuring that the IRA ended up in the proper hands than in any potential income tax benefits.

### **4. PLANNING FOR INCAPACITY**

A revocable trust allows a co-trustee or a successor trustee to have unrestricted access to assets, in the event of incapacity of the grantor of the trust. Recently I have had created trusts for the adult children of elderly or sick clients: The trust holds all the assets during the client's life, but allows seamless access to assets when the client becomes too sick to manage their finances.

A durable power of attorney may still be necessary for other reasons -- signing admission papers to a hospital or nursing home, dealing with insurance companies or managing retirement accounts, for instance. But for practical reasons, I find that a revocable trust works better.

### **5. SPECIAL NEEDS**

In addition to planning for their own care, many clients seek a careful approach to providing for loved ones with special care needs.

For anyone receiving important government benefits, for instance, a gift or inheritance might result in the denial of benefits. However, assets can be left in certain trusts to

provide for supplemental needs, allowing the disabled person to continue to receive benefits.

Recently, I met with a woman whose mother passed away and left many assets outright to a disabled child. As a result of the inheritance, the sister was going to lose the benefits. Fixing such a problem can be expensive and time-consuming, and may involve going to court. It is always less expensive to plan properly from the beginning.

*Estate planning attorney Tracy Craig is partner at Mirick O'Connell and chairwoman of the firm's trusts and estates group.*

**Read more:**

- [Selecting a Trustee? 3 Factors to Consider](#)
- [New Ways to Change 'Irrevocable' Trusts??](#)
- [Estate Plan Revise? 5 Key Questions](#)

(c) Copyright SourceMedia. All rights Reserved.