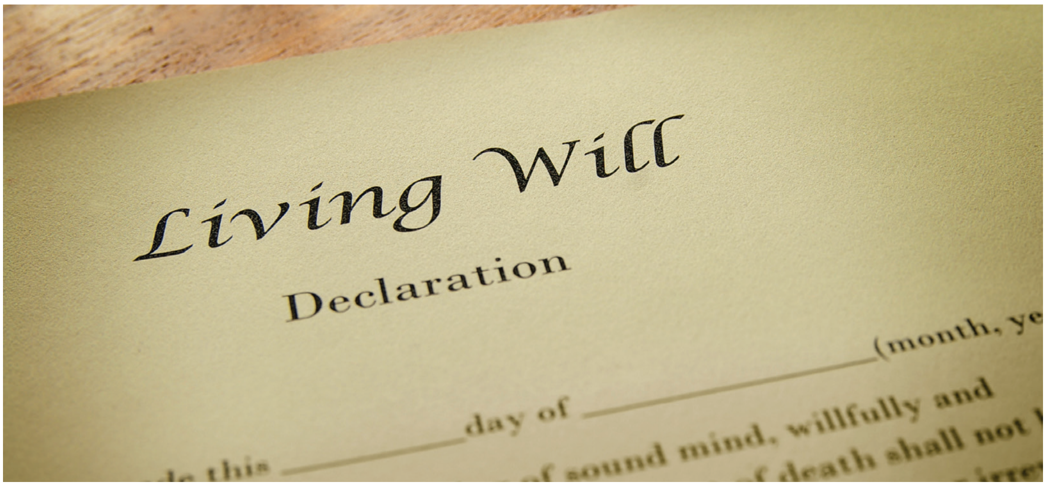
Who Do You Trust?

By Bob Prior



My spouse is not a good money manager. How do I protect him or her financially after I pass away? I have a child with a substance abuse problem. How can I leave them an inheritance without enabling their substance abuse? How do I protect my children's inheritance from lawsuits or divorce? I am remarried. How do I provide for my new spouse and still protect an inheritance for my children of my prior marriage?

The answer to all of these questions is trust planning.

Trust law developed in England during the Crusades. When the knights would leave to fight, they would appoint someone to oversee their property for the benefit of their spouse and children while they were gone. Over hundreds of years, the English courts developed a body of law about these arrangements known as trust law.

There are many types of trusts, but they are all based on a common arrangement. Someone (typically called a "grantor") contributes property to an entity they create. The grantor appoints someone to oversee that property for the benefit of someone else. The person that oversees the property is known as a trustee. The persons for whose benefit the property is held are known as beneficiaries. While a trust from these arrangements can be implied, the grantor typically writes instructions to their trustee on how to manage the trust assets. These instructions can be written in a separate document or included in the grantor's will (to become effective only after the grantor's death).

Trust planning has become the most widely used form of estate planning and can be used in numerous situations to accomplish estate planning objectives. While there are some legal limitations, in most cases the grantor is limited only by their creativity. Just a few examples follow:

A revocable living trust is a common trust arrangement that serves many purposes. It can function primarily as a last will and testament, leaving instructions to your trustee on how to distribute trust assets after you are deceased. One of the big advantages of revocable living trusts is that you are able to "fund" them while you are alive. To "fund" simply means to transfer title of your assets to the trust. Assets for this purpose include real estate, bank accounts, investment accounts and tangible personal property. At your death, there is no requirement to "probate" the trust in order to distribute trust assets. The successor trustee is able to immediately pay debts and make distributions without delay or court costs. Another advantage of the revocable living trust, is that it is effective if you become disabled, and to the extent it is funded acts as a super charged power of attorney, allowing your successor trustee to handle your financial affairs without a court proceeding.

A trust is a common way to control property after your death. A properly drafted trust can protect your beneficiaries from lawsuits, claims in divorce, and other adverse consequences. They are especially useful if your beneficiaries are too young or are unable to manage their own finances. The grantor simply leaves the property in trust for the benefit of the beneficiaries and leaves specific instructions to his/her trustee on how distributions should be made.

Trusts are often used in the case of remarriage where the spouses have children from prior marriages. This is a typically contentious situation where lawsuits are often filed due to uncertainty in planning. When the first spouse dies, a properly drafted trust can take care of the surviving spouse during his/

her life and safely leave the remaining trust property to the children from the prior marriage. It deals with everyone fairly, avoids uncertainty, and avoids the typical family squabbles.

An irrevocable life insurance trust (commonly called an "ILIT") can remove life insurance death proceeds from your taxable estate and make those proceeds available to pay estate taxes otherwise due.

For gifts to minors, a properly drafted trust can prevent minor beneficiaries from having access to trust property at age 21.

For many people, an IRA or 401(k) is their largest asset. While these plans cannot be owned by a trust while you are alive, the IRS allows special trusts to be the designated beneficiary of retirement plans, ensuring that beneficiaries make good tax decisions and are protected from creditors and divorce.

If you are concerned about long term care costs, federal law allows you to transfer assets to a certain type of irrevocable trust and keep the income from those assets for the rest of your life. After five years, the assets in the trust are not considered your resources for determining eligibility for long term Medicaid.

If you have a beneficiary who is disabled, a Special Needs Trust allows your disabled beneficiary to inherit from you (or keep a lawsuit settlement) without being disqualified for government benefits.

These are just a few of the types of trusts that can be used in connection with your estate plan. Consult with an attorney who practices in the area of estates and trusts to determine if a trust is right for you.

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