Failure to Fund **Your Trust**

In order to avoid the process of probate and paying large fees to attorneys to manage distribution of their assets after they passed away, my parents hired an attorney to prepare a revocable trust. Is it true that, because my parents failed to transfer their assets into the name of the trust, I must now pay an attorney to open a probate?

By Paula Ferreira Montoya, Attorney At Law

Thousands of people each year establish revocable trusts but then fail to properly fund them. The establishment of the trust is only the beginning. A revocable trust is an effective way to insure that your assets can continue to be managed for you and your family's benefit if you become disabled or incapacitated, and to pass your assets to your beneficiaries upon your death while avoiding the costs and delays of probate. However, you must make sure that your assets are in the trust at the proper time.

The act of placing your assets into the trust is called "funding" and is accomplished by re-titling your assets in the trust's name. You may also need to designate the trust as a beneficiary on certain financial assets, such as life insurance, annuities and retirement plans. The funding of your trust should be taken seriously since it is an essential component of an effective estate plan.

If your only objective is to distribute your assets to your beneficiaries via your trust and you fail to fund your trust during your lifetime, your pour-over will is sufficient to transfer property to your trust upon your death. The disadvantage is that your property must first pass through probate before it is transferred into your trust. Therefore, if one of your objectives is to avoid probate, that objective will not be met if the trust is not funded while you are living.

Take the case of Bill and Joan, a couple in their 40s who established a revocable trust. Bill owned several businesses, investment accounts and real estate properties in his name alone. Contrary to the advice of his attorney and accountant to fund his trust, Bill never got around to transferring his assets to the trust. He died suddenly from a heart attack at the age of 46. The assets held in Bill's name, worth $12 million, had to be probated to pass them to the trust through his pour-over will. If Bill had re-titled his assets as he was advised, no probate would have been necessary, saving his family hundreds of thousands of dollars.

Another reason for establishing a trust may be to insure that your assets are managed in the event of your incapacity. A revocable trust will accomplish that objective, but it can only do so with respect to property that it holds at the time of your incapacity. If you become incapacitated and unable to handle your affairs, and some or all of your property remains in your own name, then it may be necessary to have a guardianship established through the probate courts to appoint someone to manage that property for you.

Now consider the situation of Betty, a 75-year-old single woman. She set up a trust and put her home in the name of the trust. She also owned investment properties in Kentucky and Florida in her own name. She had a number of financial investment accounts, life insurance, annuities and a 401k, none of which had named beneficiaries. Betty was injured in a car accident and was incapacitated. No one could access her property to manage her care without applying for court appointment as her guardian. Betty died two weeks after the accident with all of her assets except her home being subject to probate. If Betty had titled the investment properties in the name of her trust and named her trust as the beneficiary on her financial assets, her heirs could have accessed her funds during her lifetime, and upon her death no probate would have been required.

A revocable trust can meet several estate planning objectives if properly drafted with your goals in mind. In order to insure that the revocable trust will meet your objectives, including the avoidance of the costs and delays of probate or guardianship, make sure to properly and timely fund your trust. L

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