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Common Misconceptions About Trusts

By James S. Rizzo, Esq.*

Whether meeting groups during estate planning seminars or clients individually, I've found there is a general misunderstanding of trusts and their function. Far too many people think trusts are for "others" when they may be ideal candidates for a trust to protect their assets and avoid probate when they pass away. The following are the most common misconceptions:

"I don't want to lose control of my assets. Doesn't someone else control the Trust?"
– **Answer: No.** Whether you are setting up a Revocable or Irrevocable trust, you can be the Trustee and it is your choice to pick other co-trustees, if any, who control the trust. That person may be your spouse, child and/or other person(s) to serve as a co-trustee with you. You also choose who your successor trustees are; i.e., those persons who will take over the trust if you become incapacitated and upon your death.

"Trusts are for rich people. There is no point in creating one if I'm not a millionaire." **Answer: False.** Generally, if you own property, have life insurance and/or have other assets which total over \$150,000 (including life insurance and real property), you are a candidate for asset protection. The type of trust you set up will of course vary depending on your age, general health, amount and type of assets, lifestyle and goals. For instance, a healthy person between the age of 18 – 55 with a large amount of life insurance and/or other assets would be a good candidate for probate avoidance and tax protection using either a Revocable Living Trust or a Will containing a Testamentary Trust. However, a person over 55 who has health issues or fears the potential for nursing home care would be more of a candidate for an Irrevocable Medicaid Trust to protect assets from ever escalating nursing home costs, in addition to probate and tax avoidance.

"I don't want to put all my assets into a trust and not have money to live and enjoy retirement." **Answer: You don't need to!** A well-crafted estate plan will balance and factor in your expenses, goals and future needs and wants. You also retain more flexibility depending on the type of trust you set up. A Revocable Living Trust generally allows you to continue to use and access any assets, as these Trusts are primarily set up for tax and probate avoidance purposes as opposed to nursing home and creditor protection.

An Irrevocable Medicaid Trust, on the other hand, is designed to insulate your assets from nursing home costs but it also restricts you from taking the principal assets back directly. However, the "win-win" feature is that any assets within the trust can be used to fund costs and expenses of real property also within the trust, such as mortgage payments, taxes, furnace and

roof repairs, additions, etc. An Irrevocable Medicaid Trust should be set up to leave enough assets outside of it so you can have an active retirement and maintain whatever hobbies or pursuits you currently enjoy. We refer to the assets left outside the trust as “mad money”, which is in addition to any pension, Social Security or IRA income you have. Generally, the primary assets to go into an Irrevocable Medicaid Trust are more passive, such as real estate, life insurance and other funds not relied upon for everyday living, enjoyment and retirement.

“Can my children or other beneficiaries take assets from the trust?” Answer:
Generally no, unless you specifically name them as a Trustee with that power. However, most often, the Trustmaker (the person creating the trust) retains control over what assets, if any, may be gifted during that person’s lifetime. The Trustmaker can also impose restrictions on assets being distributed after death by such things as making the minimum age for minors to inherit 25 or 30 years old. If no age is established, an 18 year old stands to inherit at death which can be a recipe for your hard earned assets to be quickly dissipated. Also, if you know a beneficiary is financially irresponsible, suffers from a disability, physical ailment or has drug, alcohol or gambling issues, you can impose further restrictions on your assets or appoint additional trustees to oversee funds going to that person.

Misconceptions aside, the important thing to keep in mind when meeting with an estate attorney is that Trusts should be crafted and customized to suit your individual needs. You should be wary if an attorney offers a “one size fits all” or “simple” type of Trust. Everyone has different degrees of assets, unique family situations and/or health issues. Trusts should be carefully crafted to address all of these situations while giving you peace of mind that your assets will be protected and your loved ones provided for when you are gone.

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