

The Word “TRUST” by Ray Deal

I'm speaking of the kind used for estate planning. Just the word TRUST seems to scare so many people, even lawyers who don't deal with them on a regular basis. Well, fear not! Trusts are not bad or scary and here's why, trusts can save money, control assets after death, avoid probate and sometimes protect property in the event of long term care needs.

Let's take an example. Mary and John have a family business and three children. They have one son, John, Jr. (J.J.) who helps Mary and John with the business and the other two children live out of town. The business along with the home are the main assets and Mary and John want all children to inherit equally from them. They both have wills leaving everything to each other and then to the children in equal shares. Mary and John are killed suddenly in a car accident. The children share equally but J.J. is the only one involved in the business and his siblings now have majority control and they can't agree on anything (sound familiar?). This is a setting for great family conflict unintended by Mary and John!

Compare the results if Mary and John, as part of their estate planning, created a revocable living trust stipulating that when both of them die the business is to be held in trust and J.J. has control as Trustee. Upon J.J.'s retirement or death the business is to be sold and the proceeds distributed in equal shares to all the children.

Mary and John didn't lose control of their business by putting it in a trust. They can be the trustees as long as they are living and able to manage their business. The terms of the trust set out exactly what is to happen upon their deaths and they choose who will be trustee at that time, avoiding family squabbles.

A big misconception about trusts is that somebody else is in control of the assets placed in trust. That can be the case with some trusts but not all. In the majority of living trusts today the person creating the trust is also in control of the trust as trustee.

Trusts are varied but most fall within two recognizable categories, revocable living trusts and irrevocable trusts. The revocable trust is a living trust which can be changed. It alleviates the need for probate and cuts out the “red tape” in getting assets distributed to heirs. It is very useful in deciding who has control of certain assets as in the example above with J.J. and can help preserve assets for your descendants when there are issues with children's spouses, irresponsible children or grandchildren or those with special needs.

The irrevocable trust is a trust in which the terms cannot be changed and is often used for Medicaid planning in long term care situations. Even with the irrevocable trust you can still be the Trustee and in control of your assets.

Trusts are very helpful estate planning tools and are not anything to fear. Trust me!