Should I Have a Trust?

As you might imagine, this is a very common question for an estate planning lawyer. Some folks are very familiar with Trusts often because a parent or grandparent set one up for them. Other folks may have heard about the benefits of certain types of Trusts and wonder whether they should have one as well (or whether they might need one). There are many types of Trusts and in some instances, the same type of Trust may be referred to by different names. Because of the importance of Trusts in estate planning, I thought it would be helpful to have a series of conversations about the various types of Trusts and the purposes they serve in estate planning. This is the first Blog in this Trust Series.

Let's start with some general principles and terminology.

A Trust is typically a written arrangement between the person who creates the Trust and the person(s) who will manage and administer the property of the Trust (called the Trustee) and is created for the benefit of one or more persons (called the "Beneficiaries"). The Trustee is the person who is responsible for managing and administering the property held in the Trust. One or more adult individuals can serve as Trustee. In many cases, because of the significant duties and responsibilities that a Trustee has regarding the Trust, a financial institution that maintains a separate "trust department" staffed with experienced trust officers and that is authorized under state law to administer trusts, often will serve as Trustee (or as Co-Trustee). A Trustee can also be a combination of one or more adult individuals together with a financial institution.

A Trust can be created by your Will and this type of Trust is known as a "**testamentary trust**." A testamentary Trust receives property as directed in your Will and becomes effective only after death. With a testamentary Trust, all of the terms and provisions about how the property that is held in the Trust is to be managed and administered are set forth in your Will.

A Trust can also be created during your lifetime and this is often called an "***inter vivos***" or lifetime Trust. The person who creates the "*inter vivos*" Trust is often referred to as the Settlor. Sometimes the person who creates the "inter *vivos*" Trust is also called the "Trustor," the "Trustmaker" or the "Grantor" but in this Trust Series, I'll refer to the creator of the "*inter vivos*" Trust as the Settlor. The Settlor is the person who makes one or more transfers of property to the "*inter vivos*" Trust. Spouses, for example, can be the Settlors of a single *"inter vivos"* Trust. A written Trust Agreement sets out all of the terms and provisions about how the property held in the "*inter vivos*" Trust is to be managed and distributed. By definition, a testamentary Trust is not an *inter vivos* Trust and cannot be changed, modified, or terminated after death.

An "*inter vivos*" Trust can be either "revocable" or "irrevocable" and these terms have their common meaning. An irrevocable *inter vivos* Trust is a Trust that cannot be amended, modified, changed or terminated by the Settlor. Irrevocable *inter vivos* Trusts are often created to accomplish asset protection purposes and tax objectives, in addition to asset management purposes. I will discuss irrevocable *inter vivos* trusts in more detail in subsequent Trust Series Blog posts.

A revocable *inter vivos* Trust (also known as "revocable trust" or "revocable living trust") is often used like a Will to direct who receives assets at death. A revocable *inter vivos* Trust also serves many other estate planning purposes, including providing a vehicle for consolidating and managing assets during lifetime and while the Settlor is incapacitated and holding real property that the Settlor owns in a state other than the state where the Settlor is domiciled. A revocable *inter vivos* Trust can be amended, modified, changed or revoked by the Settlor. I will discuss revocable *inter vivos* trusts in more detail in the next Trust Series Blog post.

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