post-gazette.com
Pittsburgh Post-Gazette

September 25, 2022
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Elder Law Guys: So you have a Trust. Now What?

If you are a regular reader of this column, you know we have continually preached the virtues of integrating one type of trust or another into a comprehensive estate plan.

There are many reasons why someone prepares a trust. Here are just a few examples:

- Reducing tax exposure
- Protection of trust assets from bad actors/marital discord
- Avoiding probate
- Reducing administration and court costs both during lifetime and after death
- Protecting the benefits of a person who has special needs.

And there are many more. However, a trust itself is created by a trust document — and it's just a document. Unless the trust is properly funded or designated to be funded at a future date, it may not accomplish the goals anticipated by the trust creator or the trust's beneficiaries.

As an example, let's use the metaphor of a suitcase.

Think of a trust as a suitcase that you place your assets into and then they can be "carried around." So, during your lifetime, as the trustee of the trust (or suitcase), you can carry around the assets until you no longer can or want to act as trustee. This transfer of the suitcase normally occurs when the trustee becomes disabled or dies, at which time the successor trustee grabs the suitcase handle and continues the custody of the suitcase and its contents. Utilizing a trust in your estate plan can avoid having to wait at the baggage claim area otherwise known as probate.

But, what happens when you purchase that fancy suitcase and never put anything into it? We have some bad news — and it involves heading back to the baggage claim area.

In order to make the trust design work properly, not only does the trust document require careful preparation, but also the trust funding requires diligent follow through as well. We call this "funding the trust." You would be surprised how many people contact us who have already done the former without following through on the latter. (Imagine arriving at your beach vacation to find your suitcase wasn't packed.)

If you are one of those people who already have a trust, in an effort to alert you of some common funding mistakes, we've compiled a non-exhaustive list below that should give you a checkup of sorts:

1. Have you re-titled your residence, any vacation homes or other real estate into the name of your trust? This can be confirmed easily by reviewing the deed or checking online at the local real estate assessment office.

2. Have you confirmed that your investment accounts are owned by your trustee? And what about death beneficiary designations on those accounts?

3. Is your trust named as the beneficiary of your Individual Retirement Account or other tax deferred savings plan? If not, why not? Furthermore, this type of planning also forces you to name contingent beneficiaries for your IRA so that your beneficiaries can even engage in post death tax planning through what are known as qualified disclaimers.

4. How are your life insurance and annuity policies owned and who are the beneficiaries? Once again, these assets typically flow through the trust but must name the trust as an owner/beneficiary to operate as anticipated at death.

5. Have you re-titled your bank accounts into your trust?

These are just a few common mistakes people make when preparing a trust that does not get properly funded. Interestingly, depending on the type of planning involved, sometimes a trust will be funded during the trust creator’s lifetime and sometimes it is funded automatically at death (as in the case of an IRA beneficiary).

The important point to remember is that your trust document and all of the titles to your assets need to “talk” to each other and the beneficiary designations of assets like IRAs, annuities and life insurance policies need to also be “pointed” in the right direction to eventually enter the trust funnel; otherwise, your heirs could be left holding an empty bag. So, pack a full suitcase.

Correction! In our last column about “Observation Status” we inadvertently stated that “Observation services are classified as outpatient services, not covered by Medicare Part B.” Our proofreading error: they are covered by Part B. Thanks to some sharp eyes at SHIP (the State Health Insurance Assistance Program) for catching this.

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