



Elder Law: The pros of having a living trust

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By Julian Gray and Frank Petrich /

Our column last month on wills evoked a number of comments from readers as they related either to not having wills and/or to additional horror stories of botched do-it-yourself wills. We also had a number of questions about the advantages/disadvantages to the use of "living trusts" versus the use of a will.

What's the primary purpose of either a will or a living trust? It's to pass on what one owns to the person(s) or institution(s) (usually charitable) the person dying wants to favor at her/his death. If a person dies owning assets in her/his sole name, the individual appointed in a will as executor has a duty to open up an estate by taking the will to a Register of Wills to have the will proven as valid. This is called probating the will. Any assets held either in joint ownership with another or which have named beneficiaries such as IRAs and life insurance policies would get distributed outside of the will.

Once the will is probated, and the executor is granted Letters Testamentary (often called "short certificates") the executor gathers all of the decedent's assets, pays any creditors, pay any taxes which may be due (Pennsylvania inheritance tax, federal estate tax and final local, state and federal income taxes), notifies any people or organizations who are entitled to distributions under the will, and generally winds up the financial affairs and can conclude the administration of the estate by providing an accounting of how the estate was handled either to the court and/or to the heirs.

In Pennsylvania, the probate process is relatively simple and, assuming no family or creditor issues, can be completed in a fairly timely manner compared to many other states.

So, why a living trust? Well, if you want to avoid the probate process, are concerned about the possibility of someone contesting your will, don't want to have anyone know the terms of your will (which is generally a public document once it is probated), then such a trust might be a consideration.

The trust names a trustee or co-trustees who can be individuals and/or corporations such as banks to own and manage the assets you put into the trust. The trustee can be the creator of the trust and might even include a spouse as a co-trustee. The first question as to trustees is how much you trust the proposed trustee if it's someone other than you or your spouse [do you even trust your spouse?] The trustee should have some knowledge both of tax law and money management. You need also to consider how much they will charge to manage the trust. Will there be enough money in the trust to support the fees a trustee may charge?

Do you want the trust to be in effect now or at your death? Having it in effect immediately may be of benefit to older, married individuals who have limited family members and are concerned, because of health reasons, that they may become disabled. If the trust is in effect, successor trustees can take over that role for them.

What is generally the biggest mistake people who have living trusts make? They fail to go through the often time consuming and arduous task of retitling all of their assets into the name of the trust. Why is this important? Well, not having retitled all of these assets may mean that a will would still have to be probated for the non-retitled assets and that would have defeated the primary reason for creating the trust in the first place.

Also, be on the alert for "living trust mills" where individuals or companies (whose primary interest is in selling financial products, especially annuities) go directly to older individuals to sell a canned estate planning package.

What's the takeaway? You need to discuss both the pros and cons of a will/living trust with an elder law/estate planning attorney. Your situation is unique to you. At least be aware which of the options is best suited to your individual situation.

MMNA Update

Marie, the community spouse of our favorite married couple, Ralph and Marie, about whom we last wrote in our February column, got a little increase in her Minimum Monthly Maintenance Needs Allowance. This is the minimum amount of income a community spouse is permitted in order not to become impoverished as a result of the institutionalized spouse (Ralph) being in a nursing facility being paid for by the Medical Assistance program.

As of July 1, the MMNA increased to \$1,939 a month, a 2.5 percent increase (\$47) from the prior year's amount of \$1,892 a month. The Maximum Monthly Maintenance Needs Allowance of \$2,898 will not change until Jan. 1, 2014.

It must also be noted that there are times when the maximum can be exceeded, such as unique hardship situations (for example: One spouse is in a nursing facility and the other in assisted living with its significant monthly living costs).

Julian Gray and Frank Petrich are both Certified Elder Law Attorneys with over 55 years of combined elder law experience who practice in the Pittsburgh area at Gray Elder Law. Send questions for consideration in this column to elderlawguys@grayelderlaw.com and visit their web site at www.grayelderlaw.com.

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