

Why a Revocable Living Trust

Denise P. Cambs, Esq.
The Cambs Law Firm, LLP
Copyright © 2009 The Cambs Law Firm, LLP

Recently, a married couple came to me to discuss their planning needs. The facts presented were not unusual to my estate planning practice: Husband and Wife owned their residence in New York State plus a Florida vacation home. They had cash savings and investments in joint names in addition to separate IRA accounts. Their planning goals were to take care of each other first, and to ensure that the ultimate distribution to their adult children on the death of the surviving spouse was accomplished in a tax-effective and efficient way.

When they first came to me, Husband and Wife both had Wills which provided first for the surviving spouse, and then for the children in equal shares. However, their assets were widely-scattered, and there was no 'disability plan' in place to ensure that those assets would be properly managed if Husband or Wife became prematurely disabled.

Because Husband and Wife owned real estate outside of New York and they had savings and investments in addition to their IRA accounts, they were good candidates for Revocable Living Trust planning. By re-titling their Florida vacation home to a Revocable Living Trust, we could avoid the need for a 'secondary' - - or 'ancillary' probate proceeding in the State of Florida when Husband and Wife were both gone. By similarly avoiding probate in New York State, the size and distribution of the clients' future Estate would remain private, rather than becoming part of the Court's public records.

Privacy and probate avoidance are not the only possible benefits to Revocable Living Trust planning - - Wills only take-effect when you die. Living Trusts are funded while the client is alive, and a properly-drafted Living Trust can therefore serve as a virtual 'road map' to govern both the lifetime management of assets in the event of disability, *and* the post-death distribution of assets after the client's death.

The lifetime management component to Revocable Living Trust planning is especially important, because individuals are more likely to become incapacitated than they are to die prematurely. In fact, one could almost consider Revocable Living Trust planning as a form of "responsibility planning", since the process of creating a Revocable Living Trust requires the client to carefully consider who will assume responsibility for legal, financial, tax and similar decisions if the client becomes disabled to the point where he or she can no longer meaningfully participate in the decision-making process.