Massachusetts Trust Lawyers

About Massachusetts Revocable and Irrevocable Trusts

A trust is a legal arrangement that is established during the trust creator's lifetime (living trust) or after that person's death (testamentary trust) and involves transferring assets to a person known as a trustee to be held, protected and managed for the benefit of a beneficiary. The person creating the trust is typically referred to as the "Settlor." Some primary reasons for creating a trust are to accomplish that which a Will [5] alone cannot do: avoid the delays and expenses of Probate [6], minimize Massachusetts Estate Taxes and Federal Estate Taxes, shield property from creditors, and provide a way to manage assets in the event of the settlor's incapacity [7]. A trust that can be terminated anytime by the settlor is a "Revocable Living Trust" and a trust that cannot be terminated at will is referred to as an "Irrevocable Trust."

At Silveri & Wilson, we take our estate planning representation, knowledge and expertise to another level above our competition. We can help you to establish a variety of trusts, for a variety of reasons, including avoiding probate, minimizing estate taxes, business succession planning, and creditor protection.

Avoiding Probate in Massachusetts

A Revocable Living Trust is created and funded during the settlor's lifetime. By comparison, a Trust that is created and funded under the terms of somebody's Will is called a Testamentary Trust. The terms of a Revocable Living Trust, and its beneficiaries, can be changed at any time while the settlor is alive but at death becomes an Irrevocable Trust and cannot be changed. One of the most important reasons for having a Revocable Living Trust as part of your estate plan, compared with a Will, is that once the assets are placed in the trust, the settlor no longer owns them in his or her name alone. When this is done, the trust assets are completely removed from the Probate process. Virtually any type of asset may be placed in the Trust, such as real estate, money, stocks, mutual funds, and life insurance proceeds. An asset not placed in the trust during the settlor's lifetime will be added to it after death through a "Pour Over Will".

Revocable and Irrevocable Trusts and Asset Control

With a Revocable Living Trust, although legal ownership of assets is passed to the trust itself, this does not necessarily mean that control has passed with it. You may be the trustee and the beneficiary during your lifetime and retain the power to remove your assets from the trust. Essentially, the assets can be used in the same manner as if they were owned individually, without the need for a separate tax identification number.

If the trust is an Irrevocable Trust, however, then the settlor is relinquishing control over the trust assets. This type of trust is more common in larger estates and often times is one way that a sizeable estate can be reduced to an amount below the state and/or federal estate tax exemption amounts. For example, properly assigning and following other formalities of an Irrevocable Life Insurance Trust (ILIT) would keep the policy benefits out of your estate. In other words, a $2,000,000 life insurance policy would not be included in your estate for estate tax purposes.

Credit Shelter Trusts and Estate Tax Savings

Although assets placed in a Revocable Living Trust will avoid probate, such assets are still included in a person's gross taxable estate. Married couples, however, can enjoy both savings in probate costs as well as estate taxes by establishing a trust. This dual benefit is accomplished through what is commonly known as a Credit Shelter Trust (also called a "by-pass trust", “AB trust” or “Marital/Family Trust”).

Through the use of a Credit Shelter Trust, when the first spouse dies an amount equal to the then applicable estate tax exemption amount is in a trust for the surviving spouse and children (or other beneficiaries). Although the assets placed in the trust are not directly left to the surviving spouse, the income earned and the principal may be used for the support of the surviving spouse and children. After the surviving spouse dies, the trust assets pass to the children, or other named beneficiaries, free of estate taxes. Moreover, the surviving spouse can still pass an amount of assets, up to the then applicable exemption amount, free of estate tax to his or her beneficiaries. The net result is that the two estate tax exemptions are used so that double the amount may be passed to your beneficiaries estate tax free while still providing for the surviving spouse.

Contact our Estate Planning Lawyers in Newton and Danvers Massachusetts

Contact [8] us today to learn more about how one of our estate planning lawyers can help you with your legal needs.

Irrevocable Trusts Living Trusts Massachusetts Trust Lawyer Trust

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