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Trust Funding: the Overlooked Estate Planning Tool

BY REBECCA MACGREGOR • MAY 11, 2020

Many clients create an estate plan, then put the documents safely away, until they are needed. However, they have forgotten to complete one final important step. Trust funding is the most overlooked estate planning tool.

Trusts can be used by the trustee during the lifetime of the grantor (person who created it) during incapacity to administer the trust assets for the benefit of the incapacitated grantor. It should be noted that the trustee only has authority over assets, which are owned by the trust. This means that if you (the grantor) want your trustee to be able to take care of you during incapacity, then you need to make sure that your trust is funded. To do this, you must change the title of assets owned by the grantor to the trustee of the trust. Please note that is often still the grantor, but the new title will state it is owned by the grantor as the trustee. This can be done with many assets, such as, bank accounts, stocks, business, and real estate ownership.

After the death of the grantor, the trust assets are administered for the benefit of the beneficiaries (the grantor's named loved ones in the trust). If the assets were held in the individual name of the grantor at death, without a designated beneficiary, then those assets must pass through the Last Will and Testament of the deceased grantor at the probate court. The probate court process to administer the assets is expensive and time consuming, usually lasting more than a year. If you have a trust, then it is likely that your Last Will and Testament will pour over your remaining probate assets into your trust. This means that when the probate process is complete, the Personal Representative of the estate will transfer the remaining probate assets to your trust. The trustee will, at long last, have access to the assets and can administer and distribute them to the beneficiaries.

This long and tedious probate process can be avoided by funding your trust during your lifetime, or alternatively, by funding your trust upon your death by designating your trust as the beneficiary of certain assets, such as life insurance proceeds and retirement accounts. Trust funding allows the trustee to have immediate access to the funds to be administered for the benefit of the trust beneficiaries, and avoids the expensive and time consuming probate process. We recommend that you review your estate plan and discuss trust funding in further detail with your attorney. Take this last step, and your beneficiaries will thank you.