Estate Planning

Should I have a Will or a Revocable Living Trust?

Wills

- Wills offer a measure of simplicity. A Will is a single document for the distribution of your assets at death. When a person establishes a Trust they should also have a "Pour-Over" Will and a Financial Power of Attorney. The Pour-Over Will will transfer assets into your Trust that you did not transfer during your lifetime. The Financial Power of Attorney allows another person to transfer your assets into your Trust if you become incapacitated and are not able to do so yourself.

- Clients are often more comfortable with a Will because they lack familiarity with Trusts.

- Wills are typically less expensive in the planning stage because there are fewer documents to prepare and there are no costs associated with funding a Will, unlike a Trust.

- Wills can provide for guardians of minor children, unlike Trusts.

- Wills are only effective at the time of death when probate becomes necessary.

- The probate of a Will is a judicial proceeding that requires notices and service of process as well as providing details of the Estate to public review. However, some States (such as Illinois) allow an informal or independent administration under which the details of an Estate do not necessarily become a matter of public record.

- Wills do not assist if you become disabled. Separate documents such as a Financial Power of Attorney or a Health Care Power of Attorney are necessary for those issues.

- Wills are only effective as to "probate" assets, that is, assets which are held solely in the name of the deceased individual and for which a beneficiary is not named.

Revocable Living Trusts

- A Trust operates to avoid probate, but only for the assets in the Trust at the time of the Grantor's death. For a Trust to be effective, the Trust needs to be funded during the Grantor's life and a "Pour-Over" Will is used to transfer any remaining assets at death. The general goal is that the Pour-Over Will will not need to be utilized because the appropriate assets have already been transferred into the Trust prior to death.

- A Trust allows the Trustee to continue to manage the assets even in the event of the Grantor's disability; however, a Financial Power of Attorney and a Health Care Power of Attorney should also be utilized in order to manage any assets that are outside of the Trust (e.g., retirement accounts) and to attend to the Grantor's personal health concerns.

- Trusts offer a measure of privacy for the deceased Grantor. The assets contained within the Trust and the terms of the Trust are typically not a matter of public record unless there is a dispute which requires the involvement of a court.

- Trusts are generally more expensive in the planning stage because of the costs associated with additional documentation and the transfer of assets into the Trust. Ensuring full funding of the Trust may require a number of meetings, forms and a significant amount of time. However, these additional costs are often offset by the reduction in expenses after the Grantor has died. In particular, the avoidance of court costs.

- Trusts are especially effective in reducing costs at death if the Grantor owns real estate in more than one State.

The decision of whether to use a Will or a Revocable Living Trust as the primary vehicle for distributing your assets when you have passed away is a personal one and depends upon the concerns and goals of each individual client.