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Revocable Trusts –Not Only for the Rich

Revocable Trusts have been a very popular estate planning tool for several years, for a variety of planning objectives. However, with the increase in the federal estate tax exemption amount to \$2,000,000 in 2006, many people think they are not “rich enough” to benefit from revocable trusts. This may or may not be true, but clients should discuss this option with an attorney experienced in estate planning, trust and probate law.

The final decision will depend on the client’s family situation, finances and personal preferences. Some of the reasons to use revocable trusts unrelated to federal estate taxes include the following:

- If the client is married, then there is the opportunity to avoid Ohio estate taxes by using a credit shelter trust of the first spouse to die in the same way it can avoid federal estate taxes. Over \$20,000 in Ohio estate taxes can be saved if properly structured, based on present law. Currently, the Ohio estate tax exemption amount is 4338,333.
- Confidentiality of their financial and legal affairs and to avoid Probate administration at death. Probate includes public disclosure of the Will and assets of the deceased person and the names and addresses of the heirs (which may be accessed through the Internet on the Probate Court website).
- Efficient management of assets during a client’s lifetime in the event of disability or failing health by allowing the successor trustee to take over when appropriate.
- Ease of change: Revocable trusts can be changed, amended or revoked during the client’s lifetime.
- For second or subsequent marriage planning: Revocable trusts are a preferable vehicle rather than a transfer outright to the surviving spouse in a second or subsequent marriage situation, to maintain the lifestyle of the surviving spouse but ensure that the remaining trust assets will flow to the family of the client’s first marriage (or according to his or her wishes).
- For clients who have received substantial gifts or inheritance: Revocable trusts can be used by clients who have received substantial gifts or inheritance and are concerned about their

gifts or inheritance going to unknown heirs, such as a remarried spouse's step-family or others not intended by the client.

- Avoiding claims of creditors: assets titled in a revocable trust are generally not subject to claims of creditors at death (unless the trust provides to pay them).
- Avoiding statutory claims of the surviving spouse: assets titled in a revocable trust are generally not subject to the statutory claims of a surviving spouse who desires to take against the client's estate (applies to only the Probate estate).
- Controlling the distribution of income and principal to the beneficiaries after death in a private manner.

Also, clients' assets that are currently below the federal estate tax exemption amount can grow substantially over time, and become subject to federal estate taxes (whether by appreciation, inflation or change in the laws). Obviously, tax planning is very important. The maximum current Ohio estate tax rate is 7% and the maximum current federal estate tax rate is 46%. Thus, failing to properly set up and fund a credit shelter trust of the first spouse to die to "bypass" estate taxes in the estate of the second spouse to die could cost the family several thousand dollars in Ohio estate tax and possibly hundreds of thousands of dollars in federal estate tax.

Thus, there is no "one size fits all" answer for clients. Clients need to periodically review their situation with a knowledgeable and experienced estate planning attorney, to make sure their plan is appropriate. Also, even if they have revocable trusts, clients need to check to see that assets have been titled in their respective trusts, or if they have properly changed the beneficiary designations of their life insurance policies or other assets to flow into their trusts. Ignorance is not bliss in estate planning. Taking time to update your estate planning will ensure you protect what you have accumulated and provide for your loved ones.

James L. Jacobson, a Shareholder and Chairperson of the Probate and Estate Planning Department at Pickrel, Schaeffer and Ebeling, is an OSBA certified specialist in Estate Planning, probate and Trust Law. He earned a B.S. Degree at University of Michigan and a J.D. at The Ohio State University. He is a third generation attorney and member of the Ohio and Florida Bar Associations. In October 2004, he was selected as "Best of the Bar" (one of only three attorneys identified in the Estate Planning/Probate practice area) based on a survey of all attorneys in the Dayton area.