
The Who and the How

By Richard F. Roth

Over the years, many clients have asked me whether they need a trust. More recently, with the estate tax lifetime exemption (*actually called the “basic exclusion amount” by the IRS*) being \$5,450,000 for an individual and \$10,900,000 for a married couple, clients again are asking whether they need a trust.

In order to determine whether my client needs a trust, I always ask two questions. First, **“whom do you want to provide for in the event of your death?”** Of course, this question is not always easy to answer. The second question is: **“how do you want to provide for your loved ones?”** Outright distributions? Installments over time? Pay for college expenses? After answering the “who” and “how” questions (with my guidance), I explain there are many benefits to establishing a trust to ensure that, after the client has passed, the assets are distributed according to their wishes.

To begin with, each client needs to determine **“who”** should benefit from their life’s work. For example, if married, should the spouse receive everything? Is there a special needs child or parent who needs long-term care or other financial assistance? What, if anything, should the children receive when both parents die? What if the spouse or a child predeceases them? Who would receive the family business, real estate properties, investments assets or a charitable contribution?

Once my client has dealt with “who,” the “how” question needs to be answered. For the **“how”** question, we discuss whether the client wants to leave everything outright to his or her spouse, children or others. If the client leaves his or her estate outright to the spouse or children, but the spouse or children pass away before the client, would the children’s issue (if any) receive their deceased parent’s share of the estate outright? If the client’s grandchildren are minors, should they receive their bequests over time until a certain age is attained? Does the client want to establish a college fund? How can a special needs child be protected? Perhaps the client may want to consider giving a life estate to aging parents.

After the “how” question is answered, I explain that a revocable living trust which is properly funded with the client’s assets will help family members avoid a probate proceeding in the local courts and the expense and time delays that are incurred in probate, as well as the legal fees. Clearly, a trust is the best estate planning vehicle to accomplish the foregoing. A trust can also be used to minimize estate taxes, if any. Often when a successor trustee takes over, there is minimal legal work required, which greatly reduces legal fees. Since the successor trustee can act immediately, all of the family’s concerns can be addressed without delay.

Meanwhile, since the trust is revocable at any time, the client does not lose control over his or her estate, and there are no income tax consequences when assets are transferred to a revocable trust.

In conclusion, the use of a trust in estate planning is favored because of its flexibility and the personal, legal and tax advantages it provides.