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Estate Planning | Wills & Trusts

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One of the most common misconceptions regarding Estate Planning is that trusts are only for the wealthy. The reality is that, as discussed in [past newsletters](#), a [Revocable Living Trust](#) has many benefits including providing privacy, maximizing Federal and State estate tax exemptions, setting distribution terms for assets, avoiding the costly process of probate and expediting the distribution of assets to beneficiaries. This newsletter will focus on two of the many benefits of using a [Revocable Living Trust](#) to plan your estate—protecting your child’s inheritance from creditors, divorce or his or her other personal issues and avoiding the significant costs of out-of-state property going through the probate process.

Protecting Your Child’s Inheritance

An outright bequest (see the *Definition of the Month* below) made either through a Will, trust or intestacy allows the beneficiary to directly inherit the assets—as long as he or she has reached the age of 18 in Illinois—and do with it as he or she may please. However, there are many reasons why a parent or grandparent may want to control how and when a beneficiary receives an inheritance. Whether your beneficiaries are minors and such planning is purely precautionary, your beneficiaries have given you a reason to limit their control over inheritances or you have a philosophical opposition against individuals receiving large financial windfalls too early in life, using a [Revocable Living Trust](#) to plan your estate gives you the flexibility to set the terms on which your children will inherit your estate.

First, a properly drafted [Revocable Living Trust](#) will allow the creator to establish the purposes for which the trustee may distribute assets to children—often the child’s health, support and education—and the ages at which children may withdraw the trust assets. This allows a parent to ensure that a child will be taken care of if and when the need for financial support arises but will not be able to inherit a large sum of money without any restrictions at the age of 18.

Second, a properly drafted trust will permit the trustee to delay any such withdrawals in case the beneficiary is experiencing creditor issues or involved in a divorce proceeding at the time that such withdrawal rights go into effect. Additionally, if the beneficiary has experienced drug or alcohol addiction issues in the past, the grantor may add additional restrictions on any withdrawals or distributions by the trustee while the beneficiary is undergoing treatment or suspected of continued abuse.

By utilizing a [Revocable Living Trust](#) when planning an estate, the creator can ensure that his or her wishes and concerns are made clear to the trustee and the beneficiaries and that a child's inheritance is protected even when the child is unable to protect it him or herself.

Out-of-State Property & the Probate Process

Keeping trust assets out of probate is a benefit that not only reduces legal fees for the estate but also expedites the distribution of assets to beneficiaries. An additional benefit that may apply to you is that placing out-of state property into your [Revocable Living Trust](#) may help your estate avoid ancillary probate—the probate of assets located in another state.

When a decedent passes away owning property located in a state other than the state of his or her residence, that out-of-state property must pass to beneficiaries either (a) by legal instrument or (b) through the probate process. Legal instruments that allow the property to pass outside of the probate process include a deed providing for joint ownership with right of survivorship for real property, a beneficiary designation for certain accounts or a [Revocable Living Trust](#). If the proper planning is not completed prior to death, then the property must pass through the probate process of the state in which the property is located. In other words, if an Illinois resident has a second home located in Michigan, the home is owned in his individual name only and no Estate Planning is completed prior to his death, then following his death, his estate will be required to probate his Illinois assets in Illinois and probate the Michigan property in Michigan.

Probate in even a single state can cause the estate to incur significant legal fees and delay the distribution of assets to the beneficiaries. These issues are greatly exacerbated when dealing with probate in multiple states. Through proper planning, the hurdles of estate administration can be minimized.

Definition of the Month: *Outright Bequest*

An “outright bequest” is a transfer of assets without limitation as to when or for which purposes the recipient may use such assets. The alternative for the giftor who is concerned about how and when the assets will be used and wants to set limitations as well as protect the assets from the beneficiary’s creditors, possible divorce and other personal issues is to make the bequest through trust. For bequests in trust, it is the trustee’s duty to abide by the guidelines stated in the trust document when making distributions to the beneficiary.

Upcoming Event – Saturday, May 7 – EP Café, Evanston, IL

I will be hosting *EP Café* on Saturday, May 7, at Café Mozart in Evanston from 10:00 a.m. to 4:00 p.m. You are welcome to come by, have a cup of coffee and have your Estate Planning questions addressed in a friendly, casual environment. There is no fee and no obligation for visiting *EP Café*. Café Mozart is located at 600 Davis St. in Evanston (corner of Davis and Chicago).

Although our conversation will be casual and free of charge, I do ask that you [contact me](#) in advance and reserve a 30-minute window for a time that is convenient for you so that people are not waiting for others to finish.

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Manish C. Bhatia is an Illinois attorney focusing his practice in the area of Estate Planning. Manish has focused his education and practice on Tax Planning, Estate Planning and Business Succession Planning since the first year of law school. He has also added Asset Protection, Elder Law and Nonprofit Organizations/Charitable Giving to his fields of practice. Manish is also a member of the Chicago Bar Association, the Asian American Bar Association of Chicago and the Indian American Bar Association.

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Disclaimer

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Circular 230 Disclosure

I am required by Treasury Regulations (Circular 230) to inform the readers of this newsletter that, to the extent that the information contained herein concerns federal or state tax issues, such information was not written or intended to be used, and cannot be used, for (1) avoiding federal or state tax penalties or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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