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Legacy Planning, Once Removed

ESTATE PLANNING | TRUSTS | PROPERTY
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Once Removed: Moving Assets Into Revocable Trusts — The ‘Why’ and ‘How’

Episode 53 Summary

Establishing a revocable trust is just the first step. In order to ensure that assets are properly managed and distributed during life and upon death, the client should consider whether and when to fund the revocable trust. Moving assets into a revocable trust is as much about process as it is about purpose.

This conversation clarifies what “funding” means, when retitling supports probate avoidance and incapacity planning, and when leaving assets outside the trust may be preferable, with practical guidance for common asset types and a checklist-driven approach to ensure the plan works as intended.

Transcript:

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Hello and welcome back.

I'm Steve Murphy, a trust and estates attorney with McGuireWoods LLP. And this is Legacy Planning Once Removed my podcast on estate planning, property, family, and everything else on my clients' minds.

And again, on this podcast, we help people with estate planning. We also help them think through their overall legacy. I talk about how to frame it, how to build it. And in this episode, we'll talk about those all important details to make sure it's carried out simply and efficiently.

And because we think so much about legacy, we have a tagline here on this podcast.

We like to say: walk like you leave footprints.

Today's episode tackles a question we hear all the time.

I created a revocable trust. Now what?

Do I actually move assets into it?

How do I do that?

So, on this episode, we'll cover what funding means. We'll talk about some practical steps to retitle common assets and when it might make sense to not retitle assets in the name of your revocable trust.

And as always, this is general information.

Talk with your advisors about your specific situation.

So, the first question I would ask is, why are we thinking about funding the revocable trust?

So, if you have a revocable trust, then you would likely have another document called a pour-over will.

And the pour-over will would provide that upon your death any assets held in your estate would be poured over into the revocable trust.

That means that the revocable trust likely has all the key terms for distribution of your property upon your death.

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But any assets that go through your will, that go through that estate, would be subject to probate.

So, moving assets during life into the revocable trust, I like to think of having two primary benefits.

The first is, you shortcut how the assets are moved upon your death.

If the assets are already in the revocable trust upon your death, then there's no need to have them go through probate and your will to go to the revocable trust.

That can greatly simplify things for your family, and it can provide for privacy upon your death.

And secondly, putting assets into the revocable trust during life helps to manage those assets in the event you're disabled.

We find that managing assets under a revocable trust is generally much easier to manage than managing assets held in the individual's name through a power of attorney.

So, the second question I would ask is: what's your overall goal for your estate plan?

Before we think about moving assets to the revocable trust, let's take that step back.

A lot of individuals as part of their estate planning have bequests or shares that go outright to an individual.

Maybe it's a house, maybe it's other assets they want to pass outright to an individual at their death.

Well consider it might be more efficient to hold that asset jointly with survivorship or on a separate issue, maybe name the person as beneficiary upon death.

That's very simple.

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So, upon your death, that asset would just pass to the joint owner or would just pass to the beneficiary.

There is no need to have it pass through the revocable trust.

Again, that can be very simple and very efficient.

Now, when I have that conversation with some individuals and especially married couples, they might say, okay, well that's all well and good, but what happens if we pass away at the same time?

Well, if you pass away at the same time, those joint assets would pass to the survivor or the deemed survivor, and then they would likely have to go through probate.

So, for some clients, if they're really concerned about probate, even in the event of simultaneous death of both parties, they might still prefer to fund those assets into the revocable trust.

Then the revocable trust could provide that that death that asset passes outright to that individual if they survive.

So, we've covered this question of why might we worry about moving assets to the revocable trust?

I've reminded you of the overall goal of the estate plan, how important that is.

But then third, let's ask what does the revocable trust say?

Does the revocable trust have specific bequests for individuals or charities, or does the revocable trust set up percentages, shares ongoing trusts for others?

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Well, based on that estate plan, it might be a great idea to move as many assets as possible into that revocable trust during life, so that upon death all those assets are already gathered in that one pot and can be used to fund those bequests or trusts.

So now we get to the actual practical nuts and bolts question. How do you move assets into the revocable trust?

Well, it really isn't enough to just declare that you own assets in a trust.

You really have to document that and document it with any custodian or other party who manages that account.

So here are a couple of examples.

For bank or brokerage accounts, you would actually have to have the bank or custodian retitle the asset in the name of the revocable trust or in the name of the trustee of the revocable trust.

So, you would contact that bank or custodian and ask them for new accounts or new account titling forms.

Now you might need to provide a copy of the trust document. Some clients are reluctant to provide that document. I think that's reasonable. They would like to keep the terms of their trust agreement and their estate plan private.

So, there's often a way to provide another document called a certification of trust that summarizes a few key terms about the trust without revealing all of the estate planning provisions.

So, if the bank or custodian asks you for the full trust agreement, and if you'd rather not provide it, you can talk to your legal advisors about whether to prepare a certification of trust.

How about another category: real estate?

We get this question all the time.

Clients ask, should I move my home into my revocable trust?

Well, I'd refer them to those questions we asked the beginning of the episode.

What purpose would that serve in the overall estate plan?

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It may or may not be a good idea to move the house into the revocable trust, but in order to move it to the revocable trust, you would typically need to prepare and record a deed transferring title from the individual owner to the revocable trust.

So that's a legal document—that deed—you need to coordinate to think about things like transfer taxes, title insurance, making sure the transfer is effective. But once that deed is recorded, then the property is held in the name of the revocable trust.

Out of state real estate is another excellent candidate for moving assets to the revocable trust to avoid out of state probate after your death or what we call ancillary probate, which can be especially frustrating.

But again, you'd speak to your legal counsel and maybe a local attorney in that jurisdiction to prepare and review the transaction, the transfer.

Another category of assets is tangible personal property.

In many cases, this could be a very simple assignment where you would declare that you are transferring your tangible items to the revocable trust.

But there are a number of items that might need more specific documentation—items like a car that would need a new title through your state agency, or maybe some other items like art or valuable items. It might be worth having a separate assignment.

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For business interests like a family company or a family cottage, LLC.

You would also need to assign that to the revocable trust and then update any corporate documents to reflect the revocable trust as the owner. And that would require a review of any applicable operating agreement or shareholder agreements. And you may need consents or amendments by others before you assign that interest to the revocable trust.

And then maybe one last category is digital assets.

This is a key category of assets that we're talking to clients about more and more.

It might be assets that are held in some digital medium, or it could be things like cryptocurrency.

These assets can be complicated and could be very valuable.

So, it might be a great candidate to try to avoid probate on those items.

But it's really important to understand what are the person's rights in that property and how to transfer them.

So, as you think about those kinds of digital assets or cryptocurrency, talk to your tax and legal advisors about the best way to make sure that transfer is effective.

So, there might be some assets that you really shouldn't or couldn't transfer to the revocable trust during life.

And two examples of that would be retirement plans like a qualified plan like an IRA or 401k. Typically, those actually cannot be transferred to the revocable trust during life. Those have to be held by an individual.

So, in that case, you would just update the beneficiary designation consistent with your estate plan.

I'm going to talk about that in the next episode.

Another example is life insurance.

In many cases, life insurance is owned by the individual during life.

And then again, the key document might be the beneficiary designation of how it passes upon death.

And as you're going through this process of updating the ownership, remember to fill out that checklist or that chart.

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I've talked about that on episode two and on episode 50. In episode 50, I talked about a concept called the death dossier of keeping good records and documents.

So that chart again could list who is the owner?

Is it the revocable trust? And on a related note, is there a beneficiary designation for that asset?

So, as we think about some takeaways from this episode, remember that it may not be the best solution to transfer everything to the revocable trust. You'll have to think about the overall goals and strategy.

But even if you wish to transfer assets to the revocable trust, there are very specific steps needed to make sure that that transfer is effective and serves the purposes you had in mind.

And again, keep in mind that death dossier, that chart of your assets, that can be a great place to keep good records and review periodically to make sure your property ownership is consistent with your estate plan.

Well, I'm Steve Murphy and this has been Legacy Planning Once Removed my podcast on thoughtful legacy planning.

If this episode raised questions for you, speak with your attorney or other advisors about a personalized funding plan to make sure your goals are carried out.

And until next time: Walk like you leave footprints.