

JOHNSON, GASINK & BAXTER, LLP

TWO THINGS CERTAIN®

September, 2011

DO I NEED TO FUND MY REVOCABLE LIVING TRUST?

By Spencer M. Baxter

"I long to accomplish a great and noble task, but it is my chief duty to accomplish small tasks as if they were great and noble."

-Helen Keller

Every Revocable Living Trust Estate Plan needs periodic review and upkeep to maintain its relevance regarding family, resources, as well as changes in the law. The 'funding' of the trust is equally important to review, to be certain that assets are coordinated with the goals and objectives of the estate plan.

Complacency on the part of the client and lack of proper instruction on the part of attorney are the typical culprits for unfunded trusts. Trust creators often focus on the terms of the trust and how the trust can protect their wishes, as opposed to filling out retitling and beneficiary designation paperwork to make sure the assets are administered and distributed according to the terms of the trust. I'm not suggesting that you completely discount the importance of trust language, but without the proper titling of assets into the name of the trust, the trust is just a conceptual combination of ideas and thoughts, without the power to do anything. More often than not, when we review improperly funded non-JGB trusts, the clients are upset once they come to the realization that they have gone unprotected, without a funded trust, for so long.

POUR-OVER-WILL

Surprisingly, we have encountered circumstances where instructions given by prior attorneys to their clients expressed that "it's not worth the hassle to fund their trust while they are alive," because their 'Pour-Over Will' will take care of everything when they die. A properly funded trust will avoid probate, but if a Pour-Over Will is used to fund the trust at death, a full probate will likely be required. Even more, the attorney that instructed the client to fund their trust in a testamentary manner through the Pour-Over Will, may have also included themselves as the executor of the estate, which will likely result in their compensation for their probate services.

INCAPACITY

Death is not the only danger to an unfunded trust. If incapacity strikes, the trust creator's assets may not be easily accessible for their benefit. JGB trusts allow for the Successor Trustees to make financial decisions over the trust assets upon incapacity of the trust creator. Unfortunately, with an unfunded trust, no practical authority is held by anyone to make financial decisions, as the assets are not owned by the trust. The result is that a friend or family member petitions the court to be appointed as the legal guardian, or to try and use a Power of Attorney and hope that it is accepted by the financial institutions. A common mistake that we often see is where trust creators keep the account title in their name alone, and add an account designation of "Transfer on Death." While this designation will avoid probate at the death of the trust creator, it will do nothing to provide access to the account during the owner's incapacity.

EASE OF FUNDING

The funding of a trust while the owner/creator is alive and healthy is simple. It can be accomplished with minimal paperwork, stress and time. All assets that a trust creator owns should be coordinated with their estate plan, including Real Property, Retirement Accounts, Life Insurance, Business Interests, and even Automobiles. Some of these assets will be re-titled into the name of the trust, while others will be designated to the trust at the owner's death. Everyone has a different set of circumstances, therefore legal and financial advisors should be consulted when deciding on the proper funding of a trust.

CONCLUSION

The investment of time and emotions that go into the creation of a proper estate plan can be substantial. It is for this reason that it is critical that a trust is properly funded. The attorneys at Johnson, Gasink & Baxter, LLP educate our clients on the importance of coordinating assets with the estate plan. If it has been more than two years since your last appointment, please contact us to schedule an appointment with your JGB attorney to review your estate plan and/or the current funding of your trust.



Johnson, Gasink, Baxter, LLP.

1138 Professional Drive
Williamsburg, VA 23185
(757) 220-9800
(804) 824-9690

GENERAL DISCLAIMER:

This newsletter is intended to be used for informational purposes only and should not be construed as personal legal advice. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship.



About the Author:

Spencer Baxter is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Spencer takes great pride in making sure that his work for clients is always reliable, correct, and on time.

CIRCULAR 230 DISCLOSURE:

U.S. Treasury Department Regulations require that we advise you that unless otherwise expressly indicated, any federal tax advice contained herein is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.
