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IT IS HEART MONTH

February is American Heart Month, providing a good opportunity to better understand the risk factors for heart disease and how to live a more heart-healthy lifestyle. According to the World Health Organization (WHO), cardiovascular disease is the world's number one cause of death. Per the Centers for Disease Control and Prevention (CDC), it is the leading cause of death in the United States for men, women, and people of most racial and ethnic groups.

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EMPLOYEE SPOTLIGHT

This month we feature paralegal, Ashley Henry



Ashley joined the Law Offices of Beth A. McDaniel, PLLC in October of 2022 as a remote based paralegal. She supports Beth and Beth's clients in the areas of probate, guardianship, and trust administration.

Ashley has 9+ years of experience in the legal industry with knowledge in several areas of law. She grew to become a paralegal with the true desire to help clients navigate the challenges that the legal industry brings. The tenure in the legal field has been a very rewarding career path for Ashley and she has enjoyed working with Beth and her team.

Originally from King County, Washington, Ashley now resides in Coeur d'Alene, Idaho with her six-year old daughter. In her free time, Ashley enjoys woodworking, riding quads with her daughter, and awaits the welcome of their first puppy in Spring of 2023.

Ashley can be reached at Ashley@bethmcdaniel.com or (425) 502-5735

WHY DO I HAVE A TRUST?

By Beth A. McDaniel, JD, CELA



Sometimes estate planning documents are signed which sound really great and appropriate at the time, but the purpose for those documents - and whether they are still wanted - or needed - may become less clear over time. Over the next several months, I will write about various estate planning documents. This month I will cover Revocable Living Trusts.

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Symptoms of Heart Disease:

Common symptoms of heart disease include shortness of breath; chest pain; pain that radiates in the back, neck, and shoulders; irregular heartbeat; heart palpitations; fatigue; dizziness or confusion; nausea; and sweating. Additional symptoms for heart failure include a cough producing white or pink phlegm; swelling of the abdomen and ankles; rapid weight gain; and frequent urination.

Note: If symptoms come on suddenly, medical treatment should be sought immediately in an ER – not a doctor's office or urgent care clinic. Rapid-onset symptoms may include sudden, extreme weakness and shortness of breath;; radiating pain through the left arm, back, and neck; nausea, vomiting, and lightheadedness; fast, irregular heartbeats; chest pain; or chest discomfort. Source: entirelyhealth.com.

Heart Disease Prevention

Now for good news. According to the NIH's National Heart, Lung, and Blood Institute

there are some actions that you can take to reduce your risk for heart disease, even if you have a family history or genetic predisposition. Here are some good ways to reduce your risk for heart disease:

- Engage in daily physical activity, like a 30-minute brisk walk
- Cook and consume meals that are low in sodium and unhealthy fats
- Take prescribed medications and keep medical appointments
- Sleep for 7-8 hours per night
- Regularly engage in stress reducing activities like knitting, yoga, a bath, reading a good book, or watching puppy or kitten videos – whatever is your cup of tea
- Embrace technology by using a wearable device that can measure your sleep, heart rate, and steps
- Engage in positive, close personal relationships

To learn more, consult your physician or visit CDC.gov/heartdisease/facts. Also, don't forget to wear red on National Wear Red Day, Friday, February 3, 2023.

If have questions or wish to make an appointment, please contact our client care coordinator, Margo Passeau, at (425) 296-3121.

CONT: WHY DO I HAVE A TRUST?

Revocable Living Trust. – Definitions:

A Revocable Living Trust is a document created by one or more persons during his or her lifetime - "Revocable" implies that the trust's creator ("Trustor" or "Settlor") can revoke or amend the Trust provided he or she is competent and able to do so. For a Revocable Living Trust to be effective, the Trustor's assets (real properties, accounts, stocks, bonds, and any other assets which would otherwise be subject to probate), need to be retitled into the Trust's name. For example, instead of an investment account being owned by 'John R. Smith, the ownership would be changed to the 'John R. Smith Trust'. The process of retitling assets into the Trust's name is referred to as "funding the trust."

The Trustee of the Revocable Living Trust is the person, persons, or corporation who manages the Trust's assets in accordance with the Trust's terms. Typically, the Trustor serves as the Trustee until he or she dies, resigns, or is no longer able to do so due to incapacity. When the Trustor can no longer serve as Trustee, the named successor Trustee continues to manage the Trust's assets. The Trustee has the highest fiduciary responsibility under the law with regards to the management and distribution the assets in accordance with the terms of the Trust Agreement.

An individual who creates a Revocable Living Trust, still must have a Last Will and Testament, also known as a "Pour over Will." The sole beneficiary of a Pour over Will is the Revocable Living Trust. The Pour over Will used only if it was discovered after the Trustor's death that one or more assets were in the Trustor's sole name (versus the Trust) and thus subject to probate.

Pros of a Revocable Living Trust:

If a trust is fully- funded (everything which is otherwise subject to probate has been retitled into the Trust name), there will be no probate upon Trustor's death. If the Trustor (or his agent) retitles property interests he or she has in other states into the Trust prior to death (including time share interests), probate will be avoided in those states as well.

In simplest terms, probate is the process is in which a court order is signed stating the Will is the Last Will and appoints an individual ("personal representative") to carry out the Will's terms. There are many statutory deadlines the personal representative must meet. In most cases, the attorney fee is the largest fee in a probate.

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In Washington, the attorney can charge a 'reasonable fee,' which is typically hourly. In other states, the attorney gets a percentage of the probate assets (ranging from 6% to 10%, depending upon the state) as the fee. In most Washington probates, the attorney fee is less than 1%. An average probate takes 18 months to complete.

Different from a probate, with a Revocable Living Trust, upon receipt of a death certificate, the successor Trustee (the person or company whom the Trustor has designated to be Trustee upon his or death) will be empowered to administer the Trust. This includes paying creditors, selling assets, and ultimately distributing the assets to the beneficiaries. In a typical trust administration, the attorney's involvement is to help provide notice to the Trust beneficiaries, to prepare documentation which shows the Trustee is authorized to act, to prepare a final account for the Trust's beneficiaries, and finally to prepare receipts, releases, and waivers for the beneficiaries to sign once they receive all the assets to which they are entitled. Trust administration is ultimately a gift to the successor Trustee, who is likely a busy individual with other life demands.

Unlike a probate, Trust administration is private. Thus, the terms and beneficiaries of a Revocable Living Trust do not become a matter of public record.

Unlike a Last Will and Testament which is state law specific, if all assets are titled in the name of your Revocable Living Trust, it does not matter where you live as your estate will not be subject to the probate court. However, if you do relocate, it is advisable to meet with an attorney of the new state so, at minimum, an amendment can be created which states that if there is a dispute the law of that state will apply.

A Revocable Living Trust can be a great vehicle in the case of incapacity as it provides for the continuous management of the Trust assets when the Trustor is no longer able. It is possible to have an incapacity plan with a Last Will and Testament through a General Durable Power of Attorney; however, a General Durable Power of Attorney may not cover every financial situation.

It is still important for someone who has a Revocable Living Trust to also have a General Durable Power of Attorney

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to cover situations outside the Trust, such as the ability to sue on your behalf, transfer assets to the Trust, file for bankruptcy, revoke documents, change beneficiary designations, manage your retirement accounts, and file taxes.

An agent under a Power of Attorney cannot access Trust assets. Thus, if a neighbor or caregiver with ill intentions persuaded you to appoint them as power of attorney, the financial damage would be minimized as they would not be able to access your Trust assets.

Compared to a probate, it is more difficult to contest a Revocable Living Trust. In a probate, if someone wishes to contest a Last Will and Testament, he or she simply needs to file a motion and note a hearing. In contrast, to contest a Revocable Living Trust, an individual would need to hire a lawyer (and likely pay the lawyer a sizeable advance for the attorney's fees) to commence a lawsuit.

Cons of a Revocable Living Trust:

-There are three significant cons to a Revocable Living Trust. First, there is more initial expense for creation of a Revocable Living Trust versus a Last Will and Testament. The initial expenses for the Trust may be two to three times more.

However, as stated above, if the Revocable Living Trust is fully funded (there are no assets outside of the Trust which are subject to probate), with little exception, the Trust administration will be significantly less costly than a probate.

Second, there is more work initially in that any asset otherwise subject to probate (real property, accounts, stocks, bonds, partnership interests, etc.) must be retitled into the Trust name. One way to look at it is that you do the work that otherwise would be done in a probate to make your estate more organized and easier to administer for your successor Trustee.

Third, as previously mentioned, unlike a Last Will and Testament which, aside from a periodic review, you can tuck away in a safe place and forget about, you must remember that you have a Revocable Living Trust. Thus, any time you acquire a new property or open a new account, you need to make sure the new asset is in the Trust name. Otherwise, although a Revocable Living Trust may be properly funded initially, years later there may be assets outside the Revocable Living Trust requiring a probate.

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Is a Revocable Living Trust right for you?

There are definite circumstances in which a Revocable Living Trust should be considered:

1. You own real property interests in other states
2. You own multiple parcels of real estate (the more real estate an individual owns, the more drawn out – and expensive – probate will be)
3. You want to privatize the administration of your estate, for example, to avoid a possible Will contest
4. You are concerned about the continuous management of your assets upon incapacity
5. You think you may relocate to another state
6. You want to make it more difficult for someone to contest the administration of your estate
7. You want to make the administration as simple as possible
8. You want to better protect yourself from financial exploitation

9. You are married and have assets which total more than \$2,193,000.00. In this case estate tax planning should be considered. In this situation, a Trust can help avoid two probates (one on the first death and one on the second death).

You may not be a candidate for a Trust if?

1. Your assets are less than \$100,000.00 and you do not own real estate
2. All your assets are considered 'non-probate' and thus will transfer to beneficiaries outside of probate. Here, it is important that, none of your beneficiaries are irresponsible, disabled, or a minor, and you have planned for payment of your final arrangements, liabilities, and administrative expenses
3. A Last Will versus a Revocable Trust is your preference

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