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Five Non-Tax Reasons to Consider a Trust as Part of Your Estate Plan

When Congress acted decisively in late 2010 and adopted sweeping estate tax law changes that included an increase in the estate tax exemption amount to $5 million, many paused to consider what the future of estate planning would look like. Such sweeping changes certainly underscore the necessity of carefully monitoring your plan to ensure that it remains effective in carrying out your wishes. And whether you have a plan in place, or are considering adopting a plan, you may ask whether it still makes sense to include a trust as part of that plan. So, even if taxes may no longer be a driving force, I would offer at least five important non-tax reasons to consider as you decide whether to use a trust as part of your plan.

Probate Avoidance— Probate is the formal court-supervised process of attending to the final affairs of a deceased individual. Transferring title of your assets to a trust prior to your passing will remove those assets from the probate process. The benefits of avoiding probate include eliminating the time and cost invested in the process. Perhaps more important, avoiding probate keeps your financial affairs private since the process, including the financial accountings, are a matter of public record. Furthermore, using a trust to own out-of-state real estate may also be helpful in avoiding an ancillary probate proceeding in a non-resident state where you own property.

Peace of Mind in Providing for Your Heirs— Careful selection of a trustee and consideration of the terms of your trust can effectively manage the payment of trust income and principal to trust beneficiaries. A well-drafted trust can preserve capital and manage cash flow. This can be particularly important when you feel that your loved-ones' good intentions may require some oversight when it comes to making wise financial decisions.

Professional Asset Management— An institutional trustee will likely provide portfolio management as part of their service offering. Alternatively, an individual trustee should have the ability to select and hire professional asset managers to the extent he or she does not possess the requisite skills, and where beneficiaries are not equipped to make such decisions on their own.

Control in Special Circumstances—A well-drafted trust allows you to control the who, what, when, where, why and how economic benefits are enjoyed by your friends or family. A trust can be very helpful in avoiding conflict in second marriage or blended family situations, when your estate includes a closely held business, or when charity might be considered as an ultimate beneficiary. Likewise, a trust may prove valuable when your goal is to provide for your bloodline over the generations. And a trust may be indispensable when a beneficiary lacks mental capacity, or has special needs where you want to provide for an individual without affecting his or her ability to continue government benefit programs.

Creditor Protection—A well-drafted trust can protect your heirs from the claims of their creditors, including a spouse in the event of divorce.

So, even in a world where taxes may no longer drive estate planning for many individuals, use of trusts remains an important discussion point as you develop your plan with your trusted advisors.