



ARE YOU BEING A GOOD TRUSTEE OF YOUR REVOCABLE LIVING TRUST?

Many SC residents use Revocable Living Trusts (RLT) as estate planning tools. And as I have written before, and was reminded again after meeting with gravely disappointed clients recently, the main purpose of a RLT is avoidance of probate. A RLT does NOTHING to PROTECT ASSETS in the event of nursing home placement, regardless how trusts are often advertised as ASSET PROTECTION TRUSTS!

There are two steps in having a RLT. The first is creating the RLT and this is typically the attorney's job. The second is "funding" the trust, i.e. transferring assets into the trust. Except for the attorney creating deeds for the transfer of real estate, the client, as Trustee, typically transfers all bank accounts, stocks, cars, etc. into the RLT. Transferring assets into the RLT is called "Funding". For a RLT to have any value for your heirs, it should be funded with all of your assets (with some exceptions, IRA's for example).

One common problem is how clients presume that once their RLT is initially funded, there is not much else to do. A good Trustee monitors his trust during its entire existence. To have value as a probate avoidance tool, not only must assets transfer to the RLT when initially created, any newly acquired accounts or assets must also be transferred.

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Your New SC home and Bank accounts

A frequent question in my practice is: "Is my out-of-state RLT valid in South Carolina?" More often than not, an out-of state RLT is valid in SC. But, after the RLT is analyzed, I typically inquire if the RLT is "fully funded", or phrased a little differently "Have you placed all of your assets in the trust since it was created including when you moved to, and bought your home in, SC?" Most of the time the answer to that question is "No". That tells me that many clients who are Trustees of their RLT's do not understand how it works and I wonder what other assets were acquired since the trust was created that have NOT been transferred into the RLT (e.g. a new bank account set up at the local bank).

A similar issue arises when clients inherit assets or make mandatory minimum required withdrawals from their IRA's. Clients often forget to deposit the newly acquired cash assets into their RLT account(s). And, If the inherited the property is real estate, the deed which reflects the change of ownership should be one that is registered in the name of the RLT.

You don't need a lawyer to transfer your bank accounts into trust but you will need one to prepare a deed to convey your SC home into trust.

Related- Trust Amendments

A RLT intends to be a Will substitute and it may usually be amended at anytime, for any reason. And just as you may want to make changes to your Will by adding or deleting beneficiaries and bequest amounts, you may also make these changes to your RLT way of an Amendment to your Trust. A Trust Amendment can a non-complicated endeavor, but you should not attempt to make an Amendment on your own.

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