The Sword of Damocles: Funding the Living Trust

Living trusts are one of the most popular estate planning vehicles in recent memory. Living trusts not only avoid probate, but they offer the ease of personal administration during life, the flexibility of revocability (in case you change your mind), and the freedom from court supervision.

Hanging by a Thread. In Cicero’s classic tale, Damocles the courtier, played king for a day. After feasting and reveling in his power, he noticed a sword hanging precariously by one horsehair over his royal seat. Similarly, walking out of the attorney’s office having signed a living trust places unsuspecting grantors in a position of both power and peril. Under [a figurative] Damocles’ sword, a vital provision is left in the hands of the grantor: funding the trust. If the trust is never funded, it never becomes operative so it does not govern the disposition of assets at death. As a result, none of the grantor’s assets avoid probate. A once valuable piece of the grantor’s estate plan is now worthless.

Averting the Sword. Procedures for funding the trust are different depending on the types of assets you want to put into trust. For cash, funding can be as easy as opening a bank account in the name of the trust with the grantor/trustees as signatories on the account. The same procedure would apply to an investment account holding stocks and bonds. For real property, funding the trust requires a few simple steps: (1) executing a quit claim deed retitling assets in the name of the trust, (2) signing the deed and having it notarized, and (3) filing it with the county clerk of the county in which the property is located. A quit claim deed can be prepared by your estate planning attorney while he or she is preparing your living trust.

For larger estates, naming a corporate trustee as co-trustee is also a great option. Since corporate trustees manage money, they will ensure that the trust is not only properly funded, but properly administered as well. Corporate trustees can also work with your personal estate planning professionals to determine which assets should be placed into trust and how those assets should be managed.

At TCO we can help remove the Sword of Damocles from over your head so you can get on with the business of living, and we can get on with the privilege of administering your trust. ⬆

Jaime O’Sheids
Assistant Vice President