Potential Benefits of Trusts

Benefits at Death

1. **Privacy:** Maintains privacy by avoiding probate and guardianship proceedings.
    a. Will & guardianship proceedings are on public record, giving more visibility to those who might want to take advantage of the situation.
2. **Dynasty Planning:** Creation of long-term estate tax-efficient plans, that can continue for the benefit of beneficiaries for as long as the trusts are allowed to remain.
    a. A will or trust without these provisions would not be able to carry generational wealth protection outside of the reach of the estate tax across multiple generations.
3. **State Law Consistency:** Valid across states, interpreted under original state laws.
    a. Where do your kids (or grandkids) live? If you ever move a will could be interpreted under different laws, differently than originally planned.
4. **Reduced Probate Hassles:** Less risk of delay, potentially lower cost and no need for court appearances (if probates are not needed at each death).
    a. Probate is prolonged, can be expensive, may have to occur at each death (you pay each time), can delay access to needed assets, and may postpone needed asset or business management.
5. **Long-Term Beneficiary Support:** Provides for beneficiaries for extended periods.
    a. Without a trust, a will cannot provide for more than one-time distribution at death – no on-going asset administration, planned distributions, or creditor protection.
6. **Insurance Benefits:** Facilitates insurance benefits without probate.
    a. While insurance can be distributed outside of probate by means of a beneficiary designation, certain trusts can be used to provide you with more control over how insurance benefits are used, and to provide beneficiaries with asset protection.
7. **Asset Protection:** Shields insurance benefits and other assets from beneficiaries' creditors.
    a. Having no trust to hold a child's or spouse's inheritance would make it more accessible to their creditors, predators, or future divorcing spouses.

8. **Estate Tax Planning:** Efficiently meets estate tax planning objectives.
    a. A will without trusts, cannot remove future asset growth from an estate ("estate freezing"). It also may not be able to separate assets that are intended to be exempt from estate tax, eligible for the marital deduction, out of reach of GST taxes, or intended for different purposes and beneficiaries, etc.
9. **Special Needs Protection:** Protects beneficiaries with special needs from losing assistance.
    a. Wills only distribute property. Without the right kind of trust they cannot move property outside the reach of government assessment for Medicaid eligibility. The result? Expensive care for those with special needs could essentially impoverish the estate and leave a spouse or children with nothing.
10. **Challenge Resistance:** Harder to challenge for incompetence or undue influence.
    a. A will opens a probate action with a court and puts family and creditors on notice, while a trust does not initiate probate court proceedings. Also, a trust created and funded many years prior to death may more easily support the proposition that the trust-maker was of sound mind and was not unduly influenced.

Benefits During Life

1. **Continuity:** Functions during life *and* after death, unlike a will or power of attorney.
    a. A will only works after you die, not during dementia or incapacity, etc.
2. **Flexibility:** Easier to amend than a will.
    a. Wills have more formalities, require finding disinterested witnesses…
3. **Ease of Signing and revising:** Simpler signing and revising process.
    a. Wills have more formalities (witnesses, may include self-proving affidavit, etc.).
4. **Avoid Guardianship:** Potentially prevent guardianship "of the estate" if you become unable to manage property.
    a. Guardianship proceedings require going to court, and getting a judge to decide to take away precious rights, so they prefer if there is some less restrictive alternative…
5. **Incapacity:** Provide guidance from a trustee in the event you or your spouse become incapacitated (unable to make proper decisions with regard to your property).
    a. A will can't do anything to care for your assets if you or a spouse are incapacitated.

6. **Liability Reduction:** Reduces third-party liability concerns compared to powers of attorney.
    a. Powers of attorney put a lot of liability risk on financial institutions like banks and brokerage companies.
7. **Define Incapacity:** Allows defining incapacity without court involvement.
    a. Some documents (or having no documents) may require people to go to court, and it is sometimes very difficult to get doctors to "approve" or "diagnose" incapacity b/c of their fear of liability (since the results are very significant and limiting for an individual)...
8. **Incapacity Guidance:** Provides care instructions if incapacitated.
    a. Long POAs can give pause to financial institutions (b/c there is more liability for them to worry about). Some institutions won't work with a power of attorney for loans, or other transactions.
9. **Immediate Property Management:** Manages property immediately upon incapacity or death.
    a. Wills cause property management and distribution delays... and invite courts... and NOTIFY creditors and the public...
10. **Asset Management in Absence:** Manages assets during life in cases of disappearance or incapacity.
    a. Wills don't do anything, or provide legal benefits to you until you die, and only then, until after probate. If you were to disappear, there would be further delay without there being proof of death.
11. **Efficient Transition:** Ensures smooth management of assets and business continuity.
    a. Wills can cause assets, businesses, or real estate to go unmanaged or to be "in limbo" (sometimes for several months or even much longer)...
12. **Modification Flexibility:** A Trust Protector can make updates to an estate plan.
    a. Wills can only be changed by the testator, while they are still alive, and while they have the necessary capacity to make a will, or to modify it by a codicil. Trusts can be changed by the trust-maker during life, or they may be updated by a trusted independent party who is a trust-protector. This allow for ongoing flexibility and updates that align the trust with as circumstances and needs change over time.

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