STOVER & SPITZ LLC
ATTORNEYS AT LAW

DO YOU NEED A REVOCABLE (LIVING) TRUST?

- **REASONS TO HAVE A REVOCABLE TRUST** - It is easy to be confused about whether a revocable trust (also known as a living trust) is right for you. A revocable trust is typically created to hold all or some of your assets during your life and to receive the remainder of your assets at your death. A revocable trust also contains directions for how to distribute your assets at your death. Reasons to have a revocable trust include the following:

    - **AVOID PROBATE** - You can avoid probate at your death if you have a revocable trust and transfer essentially all of your assets to the trust, or name the trust as beneficiary of your assets.[1] However, in Colorado, probate can be advantageous and is usually a process that that should not be avoided. For more information on Colorado probate, see Tom Stover's article "Ten Good Reasons Not to Avoid Colorado Probate" (available at http://www.stoverlawcolorado.com/docs/Ten Good Reasons.pdf).

    - **AVOID ANCILLARY PROBATE** - Regardless of whether you attempt to avoid probate in the state where you reside (e.g. Colorado), you may want to avoid probate in other states where you own property (known as "ancillary probate"). For example, if you own a vacation home in California, it may be advisable to create a revocable trust and transfer that home to the trust. For more information on planning for out-of-state property, see Jennifer Spitz's "10 Estate Planning Considerations for Out-of-State Property" which was published in the August 2016 issue of *The Colorado Lawyer* (available at http://www.stoverlawcolorado.com/docs/Planning for Property in Other States.pdf).

    - **ASSET MANAGEMENT** - A revocable trust can be a useful way to enable someone else to manage your assets. You create a revocable trust while you are fully competent, and you may serve as the initial trustee to manage the trust. However, if you were to become incapacitated, a successor trustee named in the trust agreement would take over management of the trust assets.

    - **PRIVACY**- When probate is opened, notice must be given to your spouse and children, if any, and any other heirs. If you want to disinherit these individuals and avoid this notice requirement, you can create and fully fund a revocable trust in order to avoid the need for probating your estate.

- **MYTHS AND MISUNDERSTANDINGS** – Revocable Trusts are often perceived as having advantages that they do not offer, including the following:

    - **MYTH #1: CREDITOR PROTECTION** - Transferring your assets to a revocable trust during life will not protect those assets from your creditors. In a few states, you can create a

[1] At your death, if you own probate assets with a total value of at least $66,000 (under current Colorado law), or if you hold any real property in your own name and not in joint tenancy, your estate must be probated. Probate assets are assets you hold in your own name and which are not held in joint tenancy or with a payable on death beneficiary (other than your estate), regardless of whether your estate is ultimately probated.

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domestic asset protection trust (DAPT), transfer your assets to the DAPT, and provide some protection for your assets against your creditors. DAPTs are generally irrevocable and require special planning and adherence to state-specific rules. An offshore asset protection trust (OAPT) presents an even more sophisticated option.

A more common planning technique is to establish irrevocable trusts (during life or at death) for other beneficiaries (*e.g.* your children) and protect the assets from their creditors. This planning technique can be implemented in a revocable trust, but can just as easily be implemented in a Last Will and Testament (a "will").

- **MYTH #2: AVOID PROBATE, AVOID ESTATE TAX** - As discussed above, it may not be advantageous to avoid probate at your death. In addition, even if you do avoid probate, avoiding probate is not the same as avoiding estate tax. Estate tax is imposed on all assets you own at your death, regardless of whether the assets are probate assets or non-probate assets. For example, estate tax is imposed on all assets held in a revocable trust and, in some limited cases, other assets not held by you or your trust.

  If your estate is less than the total estate tax exclusion amount ($5,490,000 in 2017), generally, no federal estate tax will be due at your death. If your estate is over $5,490,000, there are techniques for reducing or eliminating estate tax at your death, but transferring assets to a revocable trust is not one of them.

- **MYTH #3: MARITAL DEDUCTION PLANNING** - For married couples, there are estate planning options to eliminate estate tax at the first spouse's death, and minimize estate tax at the surviving spouse's death. Under current law, a married couple can leave up to $10,980,000 in assets to others free of federal estate tax. These planning techniques can be contained in a revocable trust, but can just as easily be contained in a will.

- **MYTH #4: NO WILL REQUIRED** - Merely creating a revocable trust does not eliminate the need to have a will. If you have a revocable trust, you also need a certain type of will called a "pourover will" which coordinates with the trust. Probate asset are then added to the trust at your death in accordance with the will.

Stover & Spitz LLC is pleased to provide a variety of estate planning services, including the preparation of wills, trusts, medical and general powers of attorney, and living wills. Stover & Spitz LLC can also assist with most facets of asset transfer after your death whether it be probate, trust administration or non-probate transfers.

If you wish to discuss our potential representation for estate planning or following a death, please call us at 303-682-0433 to set an appointment.