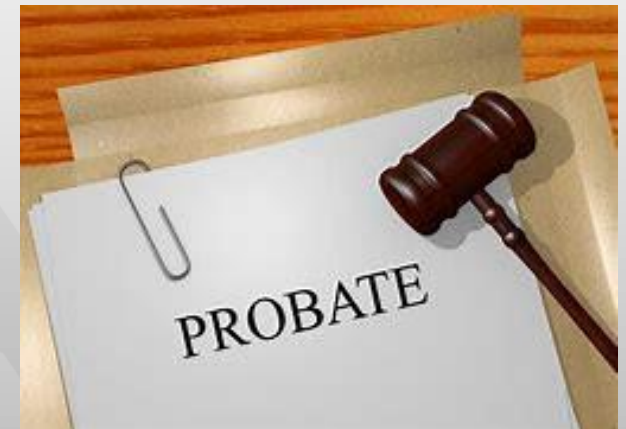




ANDERSON KILL'S WILLS, TRUSTS
AND ESTATES FALL SEMINAR

October 26, 2023
4:00 pm – 5:00 pm

AVOIDING PROBATE TRAPS: REVOCABLE TRUSTS, DESIGNATED BENEFICIARIES AND OTHER FIXES



Disclaimer

The views expressed by the participants in this program are not those of the participants' employers, their clients, or any other organization. The opinions expressed do not constitute legal advice, or risk management advice. The views discussed are for educational purposes only, and provided only for use during this session.

SPEAKER:



Susan Rothwell, Esq.

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Susan Rothwell is a Shareholder in the New York office of Anderson Kill and a member of the Wills, Trusts and Estates practice group.

Susan advises clients on estate and tax planning for wealth preservation and prepares wills, trusts and other vehicles to achieve client goals. Susan also works with clients on strategies to protect assets, minimize taxes and transfer wealth to future generations. For clients who wish to make charitable donations, she suggests strategies that benefit the charity while maximizing tax benefits to the donor. To avoid the expense and emotional trauma of litigation, she works with clients to avoid and manage conflict among family members. Susan also counsels Trustees and Executors on tax, fiduciary and estate administration matters and assists small business owners with estate and succession planning.

Susan advises foreign nationals owning property in New York as well as New York residents owning property in other countries. She assists in planning to minimize transfer taxes and ensures that property will be transferred to beneficiaries with a minimum of cost and delay.

Susan is a frequent lecturer and writer on estate planning topics. She is also a member of STEP, an international organization of estate and financial planners.

SPEAKER:



Michael C. Levy, Esq.

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Michael Levy is a shareholder in the New York office of Anderson Kill and a member of the firm's Wills, Trusts and Estates Group.

Prior to joining Anderson Kill, Michael maintained a practice focused on estate planning, trust and estate administration and Surrogate's Court practice for 20 years, including 11 years as a solo practitioner. Through continuous communication and a genuine concern for his clients' well-being, Michael helps his clients navigate life's many changes and challenges, serving as a lifetime advisor. His practice encompasses basic and complex estate planning, business succession planning, family charitable and philanthropic planning, estate and trust administration and Surrogate's Court practice/estate litigation.

In three consecutive years between 2014 and 2016, Michael was named to the "Rising Stars" list by Super Lawyers magazine for the New York Metro area.

TRUSTS AND ESTATES LAW

Demand Grows for Revocable Living Trusts

September 11, 2023

BY SUSAN ROTHWELL
AND MICHAEL C. LEVY

New York's elderly population is expanding, with individuals living longer in the aging Baby Boomer generation. This growth has led to more people suffering health and incapacity incidents, more deaths and an increased workload for New York Surrogate's Courts. This comes as the metro area courts have not recovered from increased caseloads and delays created by COVID-19 shutdowns.

Because of this, revocable living trusts have become more appealing to advisors and their clients. Revocable trusts have been used in New York State for decades because of their many advantages. The assets titled in the trust can escape court intervention because the trustee of the trust maintains legal control of the assets after the grantor dies.

A revocable trust also enables the swift transfer of control over assets for elderly clients when failing health or incapacity cause individuals to

SUSAN ROTHWELL and MICHAEL C. LEVY are shareholders in Anderson Kill's Wills, Trusts and Estates Group. Both are based in New York City.



require help in managing their assets. Revocable trusts may provide other benefits including facilitating the transfer of a decedent's real property located outside of New York, avoiding estate litigation, and avoiding the consequences of delays in a Surrogate's Court proceeding.

This article will discuss some of the issues and trends that are driving practitioners to recommend revocable trusts more often and to a wider variety of clients.

Two key statistics help clarify the reason for today's shift from traditional will planning to the use of revocable trusts. First, from 2010 to 2020,

PROBATE VS. NON-PROBATE ASSETS

- Assets in a “probate estate” will pass under the terms of a Decedent’s Last Will and Testament (Probate) or under the rules of New York’s Intestacy Statute (Administration) under the supervision of the New York Surrogate’s Court.



Source: YouTube.com

PROBATE ASSETS

- Any asset owned by an individual that is not 1) subject to a right of survivorship and 2) does not have a named beneficiary.
 - Individually owned bank and brokerage accounts
 - Individually owned real property and tangible personal property
 - Individually owned business interests
 - Property that has been disposed of by a Decedent using a general or limited power of appointment

NON-PROBATE ASSETS

1) Jointly Held Property

- Bank and Brokerage Accounts
- Business Entities
- Real Property



Source: boatmanricci.com

- **Joint Tenancy - any 2 or more owners with a right of survivorship**
- **Tenancy by the Entirety - Joint ownership by a married couple**

*Once there is only one surviving owner, property passes through their probate estate unless otherwise transferred or disposed of.

NON-PROBATE ASSETS

- 2) Property subject to a beneficiary designation (Life Insurance, Retirement Accounts, Annuities).
- 3) Accounts labeled as “In Trust For” or ITF.
- 4) Property owned by Trusts.



Source: thebalance.com

ANCILLARY PROBATE/ADMINISTRATION

Decedent's domicile will dictate where their estate is administered with two exceptions:

- 1) Real Property; and
- 2) Tangible Personal Property



Source: legalplanninglawgroup.com

For these forms of property, where the property is located determines what state/country's courts have jurisdiction over the property.

ANCILLARY PROBATE AND ADMINISTRATION (CONT'D)

- Owners of properties in multiple states/countries may be subject multiple proceedings to transfer their properties to their heirs or beneficiaries.
- In New York and other jurisdictions, shares in a cooperative apartments are considered real property for purposes of estate administration.
- Using a revocable trust is one way to avoid ancillary probate or administration.

TITLING ASSETS AND BENEFICIARY DESIGNATIONS

FUNDING A REVOCABLE TRUST

- Bank and Brokerage accounts-Transfers done in person, by phone or online through each specific institution.
- Real Property
 - Houses and other single unit properties - Record a new deed with County Clerk.
 - Coops and Condos - Transfer must be approved by board and reviewed by the board's attorneys.
- Tangible Personal Property - By assignment indicating property details.
- Business interests - By assignment.

BENEFICIARY DESIGNATIONS

- Online
- Forms from holder of the accounts or policies.
- Typically, revocable and changeable at will of the owner.



Source: Pinterest.com

BENEFICIARY DESIGNATIONS (CONT'D)

➤ Who?

- 1) Individuals as primary and successor beneficiaries
- 2) Trusts-Lifetime and Testamentary
- 3) Charities
- 4) Divisible Interests
 - Multiple persons can share a portion of the property
 - Percentages for each beneficiary rather than dollar amounts

COMMON PROBLEMS

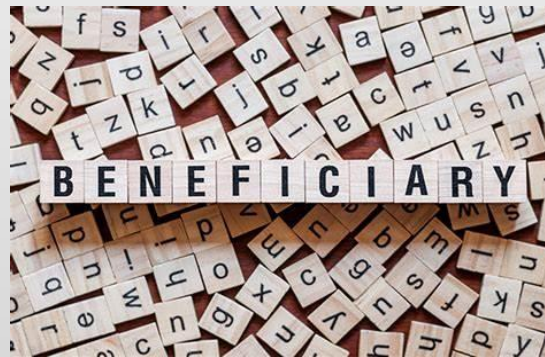
1) Failure to fund revocable trust

- An unfunded trust defeats the purpose behind the trust.
- Assets can still be transferred by the Surrogate's Court through a guardianship proceeding for an incapacitated person or an estate administration for a deceased person.
- Ways to protect unfunded property:
 - Pour Over Will - Short form Last Will and Testament that transfers probate assets into a revocable trust.
 - Power of Attorney - Allow appointed individual to fund revocable trust.

COMMON PROBLEMS (CONT'D)

2) Failure to designate successor beneficiaries

- Depending on the institution, assets may pass to the probate estate or specific relatives.
- Issues can be created if default beneficiaries are infants, disabled, have government benefits or estranged.



Source: educadoresparasempre.blogspot.com

COMMON PROBLEMS (CONT'D)

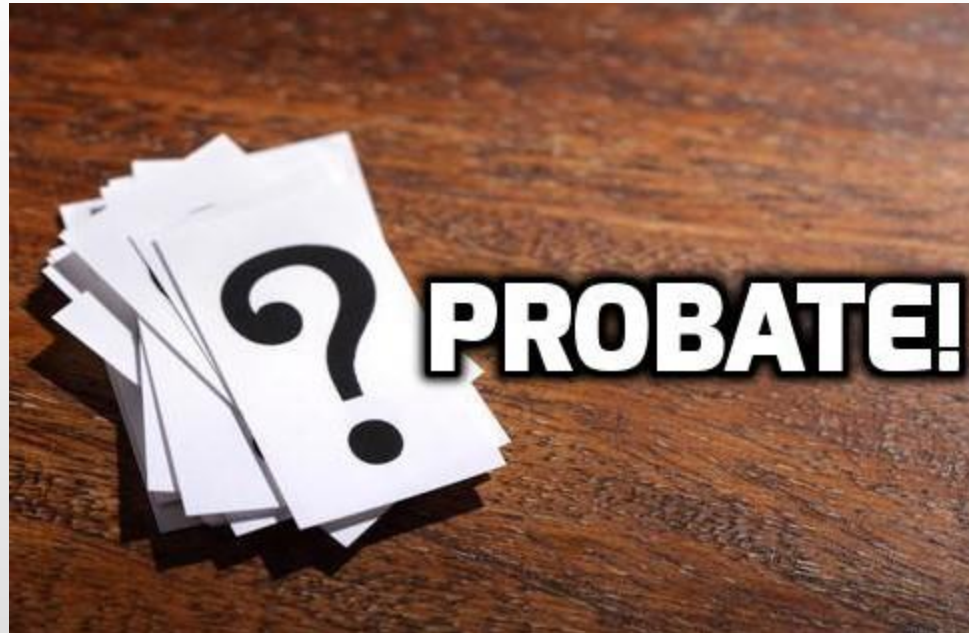
- 3) Failure to update beneficiary designations in the event of divorce, death or dispute.
- Loss of control over who receives assets.
 - NY and other jurisdictions provide statutory protections in the event of divorce, but estate planning documents should be drafted to ensure that any spousal entitlement terminates upon divorce.
 - Out-of-date beneficiary designations may create conflict and litigation in certain instances.

COMMON PROBLEMS (CONT'D)

4) Estate Planning Documents and Beneficiary Designations conflict

- Beneficiary designations should be reviewed by estate planning attorney to ensure the goals of your estate plan will not be thwarted by beneficiary designations.
- By default, beneficiary designations will be given credence over estate planning documents most of the time.

QUESTIONS?



Source: caroasella.com

THANK YOU.



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