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TAX & WEALTH ADVISOR ALERT: CREDITORS, PREDATORS AND DIVORCING SPOUSES ARE WHY HAVING A TRUST MAY BE BETTER THAN A WILL

As I have stated before, when people find out what I do, the most common "cocktail party" question I get is "do I need a will?" Over time, my answer to that question has evolved. I used to respond by asking a couple of questions: Do you have minor children? Who do you want to get your property when you die? Now, my answer is "you don't need a will or an estate plan, but let me tell you why you want one: to protect your loved ones from creditors, predators, and divorcing spouses."

As I have mentioned in previous blog articles, virtually all of the plans I have created in the last three years, leave Mom and Dad's assets not to the children, but to lifetime trusts for their children's benefit. As I tell my clients, the reason I recommend this structure is simple—if you could control your property and still keep it protected from creditors, you would. Unfortunately, under the laws of most states, the clients cannot do that. In general, they have a choice; own the property and expose it, or give away the property—along with control and enjoyment of the property—and protect it. Generally, clients are appropriately reluctant to give away the property they worked hard for and are left accepting creditor risk.

But, those same rules do not apply if Mom and Dad leave property in trust for the children. In that case, those children can control the property as trustees and enjoy the property as beneficiaries. However, because those children did not create the trust (Mom and Dad did), if the children engage in dumb behavior and get sued, unlike property left to children under a will which would be exposed to creditors, the property left in trust is not exposed. Or, if the children make poor investments in a business and sign personal guarantees, the property in trust cannot be seized by the bank, whereas property left outright to those children can be seized. And, perhaps most important, given the statistical likelihood that a child's marriage will end in divorce, property left to the child in trust, will stay with that child, and not go to the person that broke the heart of Mom and Dad's baby.

So, do you need a will? Maybe not. Do you want an estate plan that protects your family from creditors, predators, and divorcing spouses? Absolutely.