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When a will is not enough

Protect assets from probate costs,
taxes in an irrevocable life estate trust

By Staff Writer Jennifer Karchmer
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NEW YORK (CNNfn) - A retired couple from Virginia thought they did the right thing by drafting a will with their attorney to decide how to distribute their \$4 million in assets upon their deaths.

But the couple, in their 70s, was concerned about protecting their property from estate taxes, lawsuits, and probate court. So when they called estate planner Don Forbush for advice, he suggested they establish an irrevocable life estate trust to protect those assets from liability during their lifetime.

If the couple was sued and unable to afford the lawsuit, then a judge could force them to sell their house and other property if they had drafted only a will, said Forbush, a senior estate adviser with the National Association of Financial and Estate Planning (NAFEP) in Salt Lake City.

Under the irrevocable life estate trust, "your property can't be taken away from you," he said.

"People cannot get what you don't own," Forbush added. So the irrevocable life estate trust essentially assigns people to act as trustees who own the couple's assets while they're still living.

The Virginia couple had built up a considerable nest egg of investments and other assets including their home, two cars, a summer cabin, and a boat, totaling \$4 million.

Under the trust, Forbush separated the couple's assets into two types: the primary trust, which contains only retirement portfolios, stocks and cash; and the holding trusts, which contain physical assets such as the cars and boat.

The couple then named each of their three children and one of their adult grandchildren as trustees of the different holding trusts. Forbush said once trustees are assigned to each of the holding trusts, the couple would need their authorization if they want to sell any of the property.

"They are in charge of the assets that are in those trusts," he said. "If (the couple) wanted to sell, they give instructions to the trustee and they would have to sign."

Lastly, Forbush advised not putting all of your eggs in one basket.

The couple put about \$50,000 outside the trust in a personal savings/ checking account, which is easily accessible. However, that money is subject to liability and isn't protected like the items in the irrevocable life estate trust, he noted.

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