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If you have any questions about this Advisory, please contact:

MICHAEL T. CLEAR
203.363.7675
mclear@wigin.com

About the Private Client Services Department

Experience the boutique feel of Wiggins and Dana's Private Client Services team, which includes over four dozen skilled lawyers and dedicated staff members conveniently located in the communities where our clients live and work.

Backed by a full-service law firm with a global reach, we are adeptly positioned to handle a wide range of complex issues while providing personalized attention that our clients appreciate.

TOP 5 REASONS TO CREATE AND FUND A REVOCABLE TRUST IN NEW YORK

A revocable trust is a flexible estate planning tool that allows you to manage and distribute your assets during your lifetime and after your death. You retain full control over the trust while you're alive, with the ability to amend or revoke it at any time. Upon your death or incapacity, a successor trustee steps in to manage or distribute the assets according to your instructions without the need for court involvement.

Creating and funding your revocable trust during your lifetime can offer significant legal, financial, and administrative advantages. Below are the top five reasons to consider this important step in your estate planning.

1. WHAT HAPPENS IF I BECOME INCAPACITATED?

Your revocable trust ensures uninterrupted management of your assets. If you become incapacitated due to illness or injury, your successor trustee can immediately take over the management of your trust assets, without the need for court-appointed conservatorship (and the time and cost associated with the proceedings). During your lifetime, assets may be used for your benefit and the benefit of your spouse, and gifts may be made to your descendants in amounts up to the annual federal gift tax exclusion (currently, \$19,000 per recipient). Gifts may also be made to your descendants in unlimited amounts for tuition payments or medical expenses. This allows your financial affairs to continue smoothly, protecting your investments, paying bills, and supporting your dependents. Overall, it's a proactive way to ensure stability and avoid delays or legal complications during a difficult time..

2. CAN A REVOCABLE TRUST AVOID PROBATE IN NEW YORK?

Yes, a revocable trust is not subject to probate in New York. Setting up and funding your revocable trust now can streamline the settlement process and reduce administrative costs, such as legal fees, court filings, and delays associated with probate, significantly reducing the burden on your heirs. If you die owning any assets in your sole name (i.e., not in a revocable trust), probate proceedings in surrogate's court will be required and a statutory probate fee will be assessed on those assets ranging from \$45 for probate estates valued at less than \$10,000 to \$1,250 for probate

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estates valued at \$500,000 or more. While this statutory fee will always apply to assets held in your individual name, a fully funded revocable trust can avoid probate and the fee altogether.

3. WHAT IF I OWN PROPERTY OUTSIDE OF NEW YORK?

Your revocable trust can help avoid ancillary probate in other states. A probate proceeding must be initiated in each state where your property is situated. If a state where you own property is not the state of your domicile, the process is referred to as “ancillary probate.” While it may be a simpler version of the typical probate process, it will require filings, fees and often the need to hire local counsel. If you own real estate outside of New York, transferring title to your revocable trust during your lifetime can help avoid ancillary probate. By placing out-of-state property into your trust, you simplify administration and reduce the burden on your heirs.

4. WILL MY ESTATE BE SUBJECT TO NEW YORK SURROGATE COURT OVERSIGHT?

Assets held in your revocable trust are not subject to court oversight. Assets held in your revocable trust pass outside of probate, and any continuing trusts created under your revocable trust are not subject to ongoing New York surrogate court jurisdiction. This means your trustees will not need to file periodic accountings with the court, which can be both costly and administratively burdensome. Overall, the benefits of avoiding court oversight can provide greater flexibility and privacy in managing long-term trusts for beneficiaries and reduce costs and administrative burden.

5. IS MY ESTATE PLAN PRIVATE?

Yes, your revocable trust keeps your affairs confidential. Unlike a will, which becomes a public document upon death, your revocable trust remains private. The creation

of a “pourover” will, which appoints your executors and directs that all of your probate assets be distributed to your revocable trust, allows the details of your assets, beneficiaries, and distribution plan to remain private and not become part of the public record. “Probate assets” are assets in your sole name, other than assets that pass by beneficiary designation, such as life insurance and retirement accounts. Transferring these assets into your revocable trust during your lifetime allows them to bypass probate and remain private. Privacy can be especially important for families who wish to keep financial matters discreet or avoid potential disputes among heirs. Creating a revocable trust offers a more confidential and controlled way to pass on your legacy.

WHAT SHOULD YOU DO NEXT?

Whether you already have a revocable trust or are considering creating one, the most important step for many clients is funding it—transferring assets into the trust so it can function as intended. If your trust is unfunded, it may not provide the benefits outlined above. If you don’t yet have a revocable trust, now is a good time to speak with a qualified estate planning attorney to discuss your specific needs and circumstances.

Reach out to your Wiggin and Dana attorney with any questions or for assistance in creating, reviewing, or funding your revocable trust. We’re here to help ensure your estate plan reflects your goals and protects your legacy.

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