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RESULTS MATTER

DBYD – ESTATES, TRUSTS & ELDER LAW  
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### **A Word About Revocable Trusts...**

There is nothing new about Revocable Trusts but they have gained increasing and somewhat remarkable popularity in the last fifteen to twenty years. Why is that? The answer is very simple—it has been a matter of marketing.

If a stranger knocked on your door and said “I’m here to sell you insurance” or “Can I come in and ask you questions about your investments?”. You would immediately say “no thank you” and close the door. However, should that same stranger say something along the lines of “Are you concerned about the hassle and expense you are leaving for your children should you pass away without proper planning?” or “Do you have any idea how expensive probate is?” you may be very willing to have a conversation with him and perhaps even invite him into your home.

If permitted, the stranger will go on to tell you a story that goes something like this...

*Lawyers will tell you that you should have a Will but if you die with a Will your children must go through PROBATE (the stranger will use a deep, dark forbidding tone when he gets to this word) and costs will be as high as 25 percent (this is an example the stranger may say 30, 40, or even 50 percent). However, if you make use of a Revocable Trust you will avoid probate.*

Sounds very inviting doesn’t it? But look at the story again and notice what the stranger did not say. He did not say that if you use the Revocable Trust you will avoid the cost. He clearly created the impression that the cost was tied to probate but he didn’t actually say that, did he? Why not? Because he wants to sell you something and, in order to do so, it is very helpful to have you believe the following myths and misconceptions.

### **The Myths and Misconceptions Created by the Proponents of Revocable Trusts**

1. ***THE HORROR OF PROBATE!*** Most people are unfamiliar with probate or with the probate process so the stranger is able to rely upon this fear of the unknown when, in

reality, probate is very simple to understand. Most of our estate clients are very surprised to learn that probate on average takes about 15 minutes. Following death, the decedent's Last Will and Testament is taken to the Register of Wills Office in the county where the decedent last resided. The Executor (the person named in the Will) presents the Death Certificate and the Will to the Register who then grants "Letters Testamentary" to the Executor. It is this document which authorizes the Executor to move forward to administer the estate. The Register charges a fee for this service and the fee is based upon the estimated size of the estate. For example, the fee for an estate with a gross value between \$200,000 and \$300,000 would be \$175. That is probate and that is the probate fee. It is certainly not the horror that it has been made out to be.

2. ***THE COSTS OF DYING WITH A WILL ARE EXORBITANT!*** As we have just seen, the probate fee is, on average, a few hundred dollars. So where did the stranger come up with his estimate of 25 percent? Well, certainly not by being sincere.

For the vast majority of Pennsylvania estates, the single biggest cost is the payment of Inheritance Tax. Pennsylvania charges a tax on any wealth transferred as a result of death. This includes assets passing under the Will as well as jointly held assets passing to the survivor, accounts passing to a named beneficiary, etc. The Inheritance Tax imposed by Pennsylvania is at one of three rates determined by the status of the beneficiary:

4 ½ percent	Direct lineal descendants
12 percent	Siblings
15 percent	All other beneficiaries

As you can imagine, most people leave their estates to their children and/or grandchildren thus resulting in the imposition of the 4 ½ percent tax rate. Keep in mind that the stranger only said that costs "could be" as high as 25 percent. The beneficiary of the estate "could be" a sibling resulting in the higher tax rate. A real estate professional "could be" hired to help sell the real estate resulting in a commission of 6 percent of the real estate's value. An attorney and/or an accountant "could be" hired by the Executor to assist with the administration of the estate. If the fees charged by such professionals amount to \$2,500 it would not seem too onerous, but even such a reasonable sounding fee would be 10 percent of a \$25,000 estate. Thus, is it possible that taxes and costs "could be" as high as 25 percent. Yes, that is possible but, as you have seen, highly unlikely. As the stranger did not explain his calculation in this manner, he was hardly being forthright.

3. ***THESE "COSTS" ONLY APPLY SHOULD YOU DIE WITH A WILL!*** The stranger did not actually state this myth, but he certainly implied it. This is the sneakiest part of the stranger's pitch because he knows he has implied something which is completely and unquestionably false. You see, the costs which we have just mentioned including, most importantly the Inheritance Tax, apply regardless of whether you use a Will or a Revocable Trust. Whether your children inherit under a Will or inherit as a beneficiary of your Revocable Trust they will be required to pay the Pennsylvania Inheritance Tax. Should real

estate need to be sold, your loved ones may hire a real estate professional regardless of whether they are dealing with a Will or a trust. Your children may also seek the assistance of attorneys or accountants regardless of the use of a Revocable Trust.

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We have found that too often the proponents of the Revocable Trust have not fully explained the realities of estate planning and administration. They implicitly endorse belief in the myths in order to get the proverbial “foot in the door” hoping to then have a further discussion with you regarding your financial holdings in order to then turn the discussion either to the sale of management services or an insurance/annuity product.

The past twenty years has seen a “boom” in the use of Revocable Living Trusts but this has been fueled by strong and typically misleading marketing efforts. This does not mean that such a document should never be used. Revocable Living Trusts have been around for many years and can be a valuable tool in very particular and limited circumstances. The attorneys in the Estates, Trusts & Elder Law Department of DBYD, however, object strongly to the use of this tool or any other estate planning device when the client is not fully advised and knowledgeable about the use and application of the document which we are recommending.

Please contact our Estates, Trusts & Elder Law Department for assistance in preparing the appropriate documents for use in your estate plan. We look forward to serving you.

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