DESCHENE: Avoid financial disaster with the four D's

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BY ROB DESCHENE

We live in a society that increasingly places us at high financial risk. The statistics are eye-opening.

Forty percent of first marriages end in divorce, as do 60 percent of second marriages. We continue to pile up enormous consumer debt, unable to repay about $22.5 billion of it. We spend about $310 billion a year suing each other, making us the most litigious country in the world. The number of persons with special needs has skyrocketed, with an estimated one in 50 children now diagnosed with autism and related disorders. About 30 percent of adults have an alcohol abuse disorder.

You cannot protect your family against all of these bad occurrences. But with proper planning, you can minimize the risks of financial harm.
Many people think that the only way you can leave property to your family is using a will. With a will, however, you are giving away your property to your children or other family members, no strings attached. As with all gifts, once your child gets your property, they can do with it whatever they want. Unfortunately, they can also lose it.

There is another - and safer - way to estate plan, and that is to leave your property to your family through a revocable living trust. Your living trust names a successor trustee, usually a trusted family member or financial institution, to continue managing your property when you die. Besides sparing your family the emotional burden of going through a long costly probate court proceeding to settle your affairs, a living trust can protect the property you leave your family from what I call the four D's: debt, divorce, disability and dissipation.

If you leave property outright to a child, and they pile up personal debt or get sued for damages, their creditors can go after your property to satisfy these debts. If your property is held in trust, however, these creditors cannot reach it because the trust owns your property, not your child. Your trustee can still use the property for your child's benefit, but cannot be forced to pay out to creditors. In many cases, your child can even act as his own trustee and still be protected.

If you leave your property to your child through a will, and he or she later gets divorced, his ex-spouse may get one-half or more in any divorce settlement. What property you hoped would be around for your grandchildren leaves the family, and if his ex-spouse then remarries, may never return. If you leave the property in trust, the ex-spouse gets none of it.

Leaving any property outright to a special needs family member may disqualify them from receiving governmental disability benefits. Sadly, some people think they have no choice but to disinherit their special needs child. The much better solution is to leave property to that child in a special needs trust. The child will not be disqualified from government benefits because they do not own the property, the trust does. Your trustee will not distribute money for anything that government benefits would pay for, but can use the trust property to improve your child's quality of life in other ways. Even if you don't currently have a special needs family members, your living trust can provide for creation of a trust if any such child or grandchild is diagnosed in the future.

The last D is dissipation. This covers a wide array of incidences including alcoholism, substance abuse and gambling addictions. Leaving property outright to these family members is like burning the money, since they may use it to finance addictions. For example, if they cash out your retirement account, one-third of its balance is lost to the IRS. The same risk applies to a spendthrift, that family member who cannot keep a nickel for five minutes without spending it. The bad choices are to either leave these family members property in your will or to disinherit them. A living trust is the safer choice. Your trustee will distribute money to your beneficiary only if assured it will be used wisely and productively.

By using a trustee to protect your property from the four D's, your living trust greatly increases the chances that your hard-earned life savings will not be squandered after your death, and will be around to benefit your family, not only for the next generation but beyond.

Robert Deschene is an attorney who does estate and elder law planning from his office in North Attleboro. The information provided in this in this column is for informative purposes only. Contact him at 508-316-3853.