

How To Amend Your Trust - The Dangers Of DIY

By Gary Altman

When you create a revocable trust, you reserve the right to amend your trust during your lifetime, giving you the flexibility to change your estate plan as your circumstances evolve. But special care must be taken when changing your revocable trust. If you make handwritten changes to your revocable trust or attempt to amend your trust without the guidance of legal counsel, you risk your changes not being valid. In addition, handwritten changes or informal amendments to your revocable trust can confuse your trustees and beneficiaries and, in the worst case, subject your estate to allegations of fraud.

A recent case in Michigan (Beaumont v. Parness (In re Storto), which has similar laws to Maryland, DC, and Virginia regarding trust amendments, highlighted the problems that can arise when a grantor tries to amend their trust on their own. There, the grantor had written various memos throughout his life, indicating to whom he wanted to receive certain items of property. After his death, there was a dispute among his family over these memos. The trustee claimed to have never received one memo that another family member said existed. The trustee also claimed that the memos needed confirmed amendments to the trust. The court ultimately determined that the memos were valid amendments to the trust because the terms of the trust provided for a relatively informal process of amending it.

If, in the case above, the grantor intended for his memos to amend his trust, he likely intended for something other than a debate among his family and the court about how his property should be distributed. If he did not intend for his memos to govern, or if they were made under the exercise of undue influence, the informal process for amendments in his trust allowed for a result contrary to his intentions. Informal notes and memos allow people to misunderstand, tamper with, "misplace," or contest them. They also may become outdated or conflict with one another, confusing the grantor's intent.

To prevent this, we carefully draft our trust documents with specific provisions on how to amend the trust. Amendments to our documents require certain formalities, reducing opportunities for fraud and allegations of fraud. Also, when amending a trust, we generally prefer to amend and restate the entire trust. The provisions are in one document, making the trust easier to read, interpret and administer.

Contact the estate team at Altman & Associates if you are considering changing your revocable trust. We can be reached at 301 468 3220.



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