

# UNDERSTANDING REVOCABLE LIVING TRUSTS

A revocable living trust is an effective estate planning tool and frequently-used supplement to a will. The following are questions many of our clients have about trusts:

## WHAT IS A REVOCABLE LIVING TRUST?

A revocable living trust is a legal document designed to protect both you and your assets. A trust allows you to direct a trustee to manage and distribute your assets the way you decide is right for you and your family. With a properly funded trust, your estate does not have to go through probate and your finances will not become a matter of public record.

## HOW DOES A TRUST DIFFER FROM A WILL?

A will is a legal document containing instructions on how to distribute your assets at your death. A will must go through probate and does not give anyone else authority to act on your behalf or manage your assets during your lifetime, even if you become incapacitated.

## WHAT IS PROBATE?

Probate is a legal process requiring court administration of a person's assets, ensuring that their debts are paid and assets distributed according to the terms of his or her will.

## DOESN'T JOINT OWNERSHIP AVOID PROBATE?

It usually just postpones probate. When one owner of a jointly-owned asset dies, full ownership normally does transfer to the surviving joint owner without probate. But if that owner dies without adding a new joint owner, or if both owners die at the same time, the asset must go through probate before it can be distributed. Other problems of joint ownership include loss of control and an increased chance of losing the asset to a creditor of a joint owner.

## HOW DOES A TRUST AVOID PROBATE?

When you set up a revocable living trust, assets may be transferred from your name to the name of your trust. This activity is known as "funding" your trust. It is not necessary for trust assets to go through the probate process in court.

## DOES HAVING A TRUST RESULT IN LOWER ESTATE TAXES?

A trust can be an important part of an integrated plan for estate tax savings, depending on the individual's situation.

## IS A LIVING TRUST EXPENSIVE?

Not when compared to all the costs of court procedures if necessary at your incapacity and/or death. The cost of trust preparation will depend on your circumstances and the nature of your estate plan. It's a good idea to get an estimate from the attorney of the total cost before he or she begins drafting the trust.

## WHAT ARE SOME ADVANTAGES OF A REVOCABLE LIVING TRUST?

**Time:** Court approval is not required for payment or distribution.

**Expense:** No filing fees and typically less expenses for estate administration.

**Privacy:** A trust is not filed with the court as a matter of public record.

**Control:** Your assets can continue to be held in trust for minor descendants or charity as long as you direct, rather than being immediately distributed at the conclusion of the probate process. You can be the trustee of your own trust during your lifetime. The trust will be managed by a successor trustee upon your incapacity or death.

**Revocability:** You can change your trust provisions whenever you want.

## DO I STILL NEED A WILL IF I HAVE A REVOCABLE LIVING TRUST?

Yes, a will is still necessary for a couple of reasons. First, a will is required to name the guardian of any minor children. Second, you will need a will to act as a safety net if you forget to transfer an asset into your trust. This document is called a "pour-over" will and it covers any assets that were not owned in your trust, providing for their transfer into the trust as part of the probate process.

## WHAT HAPPENS TO MY TRUST WHEN I DIE OR BECOME INCAPACITATED?

Your designated successor trustee steps in and manages the trust assets for you, using your assets to pay expenses as necessary. If you recover from incapacity, then you resume control. Upon your death, your successor trustee distributes your assets in accord with your direction.

## WHO CAN SERVE AS A TRUSTEE OR A SUCCESSOR TRUSTEE?

You can serve as your own trustee or name another individual to do so. Many people decide to name a corporate trustee, such as a bank or trust company, as trustee or successor trustee, especially if they do not have the time, ability, or inclination to manage their assets.



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