

What You Need to Know about Revocable Living Trusts

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What is a Revocable Living Trust?

A trust is a legal way of holding, managing and distributing property. Every trust must have four elements:

1. There must be someone who creates the trust, who is often called the "trustor" or the "grantor."
2. There must be assets, usually called the trust "corpus."
3. There must be someone who holds, manages and distributes the assets, who is called the "trustee."
4. The trust must have a purpose. The person for whose benefit the trust is created is called the "beneficiary."

A living trust is revocable. That means that even though the grantor transfers assets to a revocable living trust, the grantor can get his or her property back by revoking the trust. In most revocable living trusts created in the United States, the grantor, trustee, and beneficiary are all the same person.

Why Do People Create Revocable Living Trusts?

By creating a revocable living trust, people can avoid probate, thereby saving their families time, money, and aggravation. Revocable living trusts also avoid conservatorships because if you become disabled, a trustee is already in place to manage your trust assets for you.

Here are a few things that you should know about a revocable living trust.

The Baker's Dozen

1. A revocable living trust can keep your estate out of probate court if it is properly funded.
2. Revocable living trusts can be contested, just like a will, but it is less likely.

3. Administering a revocable living trust after your death is not cost-free. Even if probate is avoided, the successor trustee should usually seek help from a lawyer in making sure that your debts are paid, all the necessary tax forms filed, and the assets in your trust legally distributed to your beneficiaries.
4. After your death, your revocable living trust will not cut off the claims of your creditors against the trust corpus. For that reason, the successor trustee will occasionally need to open a probate estate anyway, to require your creditors to file claims within the time required by law or be barred from collecting their claims against your estate.
5. Probate can often be avoided without using a revocable living trust, by setting up "payable on death" accounts, making beneficiary designations, holding assets jointly, etc.
6. In many instances, the grantor has failed to transfer all his "probate assets" to his revocable living trust. Consequently, when the trustor dies, this probate asset becomes subject to probate. His estate winds up in probate court anyway. So the trustor pays twice: first, to set up his revocable living trust intending to avoid probate; and second, after his death, to go to probate court.
7. Revocable living trusts do not protect your assets from creditors and lawsuits.
8. Revocable living trusts are no more effective than wills in saving state and federal estate taxes.
9. Revocable living trusts can adversely affect your eligibility for Medicaid nursing home benefits.

When Should You Have a Revocable Living Trust?

They are useful and important tools in estate and tax planning, when used wisely and considerately. The most important reasons for having a revocable living trust include:

1. You own property in another state.
2. You are concerned that you might become disabled and that, as a result, you will be subject to undue influence.
3. You want to create other trusts inside your revocable living trust that do not require court supervision.
4. Beneficiaries of your estate are disabled.

5. You would like to make your estate administration easier and more orderly for your family and heirs.

Note: This document is not meant to give legal advice. You are not to rely on the limited information given here. Before acting on any information presented here, you are strongly urged to consult with an attorney who is competent in this area of the law.

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