

REVOCABLE LIVING TRUSTS

DEFINITION

A revocable living trust is an estate planning tool utilized by individuals and families for various reasons, including for their estate to avoid the probate process. This document resembles a will, in that it includes the details and instructions for how one wants their estate to be handled and distributed at their death. It can also be amended or cancelled at any point before one's death. However, unlike a will, assets held in a trust do not pass through probate and allow individuals greater control of the disposition of their assets.

HOW THEY WORK

TRUST PARTIES

There are three main parties to a trust, although the same person can serve all three roles:

- Grantor – Also called the settlor, donor, or trustor, this is the person who establishes and funds the trust.
- Trustee – The legal owners of the trust's property, in charge of administering, preserving, and distributing trust assets in accordance with the trust documents.
- Beneficiary – A spouse, child, charity, or any other entity that will inherit the trust's assets.

FUNDING

Funding a trust is accomplished by transferring the name on accounts or property to the name of the trust. No income taxes are due on this transfer, and it does not constitute a gift, so there are no gift tax consequences. If the grantor remains as trustee during their lifetime, he or she retains unlimited access to and full control of the assets during their lifetime. The trust is revocable in nature, which allows them to make changes to fit their personal situation.

TAXATION

Since a grantor retains control over trust assets and can revoke them at any time, state and federal governments view any income the trust earns as the grantor's income and is reported on their individual income tax return.

PROBATE

Trust assets are not subject to the probate process, which allows heirs to save considerable estate settlement and probate costs. These include the attorney and court costs associated with taking inventory and distributing trust assets. In addition, distribution of trust assets will most likely occur quicker if it is able to bypass the probate process.



ADVANTAGES

- Avoidance of Probate – The process of establishing a living trust requires the grantor to transfer ownership of his property to a trustee. Because of this, no property remains at death to pass through probate, since probate only pertains to individually-owned assets.
- Amendable or Revocable – By its nature, a revocable living trust allows you to make amendments to the trust document while the grantor is still alive, allowing the grantor to avoid relinquishing
- Privacy – By using a revocable living trust, one is able to hide the nature and beneficiaries of their estate and avoid the publicity that may result from exposure of the probate file.
- Elimination of Estate Challenges – A revocable living trust allows specific disposition of assets and avoidance of challenges to the estate.
- Assignment of Durable Power of Attorney/Guardianship - A living trust can be used to help control a guardian's spending habits for the benefit of your minor children. It can also authorize another person to act on your behalf if one's become incapacitated and need someone else to make medical decisions for him or her.

DISADVANTAGES

- Upfront Costs – The trust grantor incurs upfront costs in the drafting of the trust document, and potentially for transferring and re-titling of assets to the trust. Depending on the complexity of one's situation, these costs can typically be between \$1,500 and \$5,000.
- Bookkeeping – Detailed bookkeeping is required for a trust in order to ensure that all assets are owned by the trust, and that accounts are maintained in trust title.
- Tax Consequences - Unless the grantor is the sole trustee or a co-trustee, a fiduciary income tax return may have to be prepared, thereby incurring extra accounting fees. In addition, although assets placed in a living trust avoid probate, the trust will not reduce either income or estate taxes. Because the grantor has the right to revoke or amend the trust at any time, the property in the trust is still counted as owned by the grantor for tax purposes.

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