

REVOCABLE LIVING TRUSTS

Revocable Living Trusts (Living Trusts) are popular estate planning tools. The purpose of this article is not to provide a legal treatise on the subject of Living Trusts, but rather to introduce how they work, some of their benefits and drawbacks, and some important considerations when creating a Living Trust.



Living Trust Basics

A Living Trust is a written legal agreement involving three parties: the *Trustmaker* (also known as a Grantor, Trustor or Settlor), the *Trustee* and the *Beneficiary*. Initially, upon its creation, the Trustmaker, Trustee and Beneficiary are one in the same person. Moreover, there can be, and often are, more than one Trustmaker, Trustee and Beneficiary at any given time. [Note: Depending on the law of their jurisdiction and their unique circumstances, a married couple may share one joint Living Trust or each spouse may have a separate Living Trust.]

After the Trustmaker and Trustee sign the Living Trust legal agreement, the Trustmaker *funds* the Living Trust (i.e., retitles assets into the name of the Living Trust). This is a critical step, much like putting fuel into a brand new automobile. Once the Living Trust is signed and funded, the Trustee manages and distributes the Living Trust assets for the Beneficiary according to the instructions in the written legal agreement.

Later, if the Trustmaker/Trustee becomes incapacitated, as defined in the Living Trust agreement, then the successor Trustee appointed in the Living Trust seamlessly manages and

INSIDE

Revocable Living Trusts are popular estate planning tools, especially when probate avoidance is an objective. Our front-page article reviews how they work, their benefits and drawbacks, and some of the important matters to consider in their creation.

On page three we summarize one of the most important aspects of ensuring the success of any Living Trust-based estate plan: *Trust Funding*. Without careful attention to this detail, probate may not be avoided as intended.

distributes Living Trust assets for the Trustmaker/Beneficiary. Since the Trustee holds legal title to the Living Trust assets for the Beneficiary, no Probate Court need interfere in the financial affairs of the incapacitated Trustmaker/Beneficiary.

Finally, upon the death of the Trustmaker/Trustee/Beneficiary the Living Trust becomes *irrevocable* and the successor Trustee seamlessly manages and distributes Living Trust assets for the successor Beneficiary. In most jurisdictions, no Probate Court need interfere in this process of

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transferring assets to the Living Trust successor Beneficiary(ies).

Living Trust Benefits

While the benefits of Living Trust-based planning vary from jurisdiction to jurisdiction, the most commonly cited benefit is Probate Court avoidance.

There are three primary drawbacks to Probate. First, the process can cause unnecessary delays in the transfer of assets to beneficiaries. Second, in some jurisdictions, Probate Court expenses are quite high, and minimizing those costs will help preserve estate assets. Finally, the probate process can make all of your personal affairs quite public. Given the choice, most people choose to avoid Probate if possible.

Living Trust Drawbacks

As noted above, for a Living Trust to operate as designed it must be *funded*. If you are not meticulous in ensuring that your Living Trust has either present title to your assets or will have future title to them (e.g., life insurance proceeds), then your estate may not avoid Probate

Court. Also, legal fees to create Living Trusts often are higher than the fees to create Will-based estate plans. Accordingly, in some jurisdictions the benefits of avoiding Probate Court are greater than in other jurisdictions.

Living Trust Considerations

The selection of your successor Trustee is one of the key decisions you must make. Common options include appointing a trusted family member or friend, a professional fiduciary, or even a combination of the two. There is no right answer, just the one that is right for you.

Make sure your Living Trust incorporates flexible federal estate tax planning. Your Living Trust should be drafted to provide maximum protection from this form of taxation. Even if the estate tax is repealed, it can always be reinstated. Warning: Some states may impose their own inheritance or estate taxes, too!

Finally, only you know the strengths and weaknesses of your loved ones. Ensure that your Living Trust contains special planning to protect the inheritance both *for* and *from* your loved ones, as may be necessary.



Ask Yourself ...

These Questions Regarding "Revocable Living Trusts."

- | | | | |
|--|-----|----|----------|
| 1. I understand the basics of how a Revocable Living Trust works. | Yes | No | Not Sure |
| 2. I understand that, like most things in life, Revocable Living Trusts have benefits and drawbacks. | Yes | No | Not Sure |
| 3. I understand that selecting successor Trustees, maximizing protection from estate taxes and protecting the inheritance both <i>for</i> and <i>from</i> my loved ones are important considerations when creating a Revocable Living Trust. | Yes | No | Not Sure |
| 4. I understand that appropriate legal counsel should be sought when considering whether a Revocable Living Trust-based estate plan is appropriate for me. | Yes | No | Not Sure |
| 5. (If you have a Revocable Living Trust) My Revocable Living Trust is funded with all of my assets or will be upon my death (e.g., life insurance proceeds). | Yes | No | Not Sure |

TRUST FUNDING

Trust funding (also known as *asset-titling*) is the process of placing your assets under the ownership and control of your Revocable Living Trust (Living Trust). It is a vital component of any Living Trust-based estate planning process. Only those assets that are titled in the name of your Living Trust (or that designate your Living Trust as beneficiary, where appropriate) will be controlled by the terms of your Living Trust. Otherwise your assets may be subject to Probate Court, may lose valuable protection from taxes and may not pass to your beneficiaries as specified in your estate plan.

There are three fundamental steps in the Trust Funding process:

Identify all of your assets by:

Type: For example, is this asset a bond certificate, a certificate of deposit, or a publicly-traded stock certificate?

Value: How much is it worth and is it encumbered by debt?

Ownership: Do you own it individually or jointly with a spouse or others?

Transfer ownership to your Living Trust:

Once you have identified your assets, you can begin transferring ownership to your Living Trust by sending written notice to the various institutions involved. In that notice you identify the asset, the name of your Living Trust and then request the change of ownership or beneficiary designation. *Note: Do not be surprised if they respond with a request for completion of their own in-house form.*

Maintain your Trust Funding:

As you acquire additional assets, be sure to title them in the name of your Living Trust or use the appropriate beneficiary designation from the outset.

Here is a review of some assets requiring special attention:

Real Estate

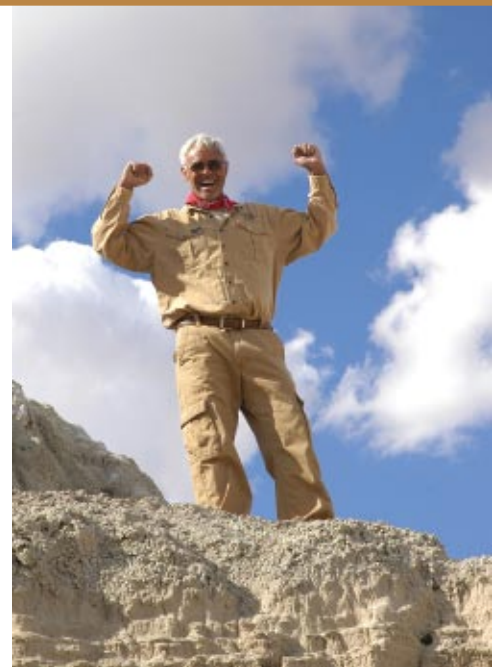
Your Personal Residence:

Even if there is a mortgage against your residence, federal law (The Garn-St. Germain Depository Institutions Act of 1982) allows you to transfer your residence to your Living Trust when the loan is federally-backed.

Other Real Estate: If you have debt against any other type of real estate, first contact the lender to obtain permission to transfer ownership to your Living Trust. The federal law protecting transfer of your personal residence does not extend to your investment real estate. Failure to obtain prior approval could result in an acceleration of payments.

Beneficiary Designations

Life Insurance: If you name your Living Trust as the beneficiary of all of your existing and future life insurance policies, then the proceeds will be administered and distributed according to the terms of your Living Trust.



[Note: Because the death proceeds will be included in the value of your estate, consider establishing an *Irrevocable Trust* as owner and beneficiary.]

Qualified Retirement Plans:

There are many complex tax and non-tax consequences attending any beneficiary designation option you may select.

Bottom line: Make no decision without appropriate legal counsel. One mistake could spell disaster!

POCKET PROTECTORS

Tips to help you protect your pocket!

Is it Time to Review Your Plan?

Proper estate planning is a *process*, not simply a one-time event. Therefore, it only makes sense to periodically review your planning goals and legal instruments. Review this list of life changes that could alter your estate-planning needs. If you notice some areas that might apply to you or your family, it may be time for an estate plan check-up.

1. Marriage, remarriage or divorce
2. Death of a spouse
3. Substantial change in estate size
4. Death or incapacity of an executor, trustee or guardian
5. Move to another state
6. Acquisition of property in another state
7. Birth or adoption of a child or grandchild
8. Serious illness of a family member
9. Change in business interest or retirement
10. Change in insurability for life insurance
11. Marriage or divorce of a beneficiary
12. Change in beneficiary attitudes
13. Financial irresponsibility of a child
14. Change in tax law
15. More than two years since review of plan with attorney

“If one begins
all deeds well,
it is likely
that they will
end well too.”
— Sophocles

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