

What many should know about revocable living trusts

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The revocable living trust protects assets from probate and various challenges to your estate. Not only after you die, but while you live -- while incapacitated due to a serious accident or illness such as Alzheimer's.

During your lifetime, many states allow you to name yourself as the sole "trustee" of your revocable living trust, or "RLT." This designation gives you full control of the assets within the trust (some states require a "co-trustee"). And as a designated trustee of your RLT, this kind of trust may be changed, amended or revoked by you at any time.

The RLT's most important function is to pass on your specific instructions to a surviving trustee -- in order to avoid the four evils of probate -- or to a temporary "co-trustee" if you are alive but unable to handle your own affairs. Your co-trustee would have the ability to manage the trust assets on your behalf, according to your instructions.

Such instructions might include handling your bills, medical expenses, insurance, taxes and the maintenance of your home. If your incapacity leads to death, your RLT trustee would be able to administer the distribution of your assets to your designated heirs.

Again, with an RLT in place, this would be allowed without interference from probate.

Without a revocable living trust in place, your family might be forced to accept a costly, court appointed guardian, or, "conservator," for your property. During this process, the court also may demand detailed proof of your mental incompetence. Not only are most court proceedings open to the public, such a humiliating experience could lead to the loss of virtually every legal right you currently have.

Even the most basic court proceedings tend to drag on. During this indefinite period and lacking a revocable living trust to speak for you, your family may not be able to access a single dollar of your money to pay your ordinary monthly bills. This situation is not just an inconvenience, it may ruin your credit rating. It could also mean the loss of important business opportunities. All of the above could do great damage to your finances, even your entire estate.

That's why the time-honored revocable living trust can be a valuable tool for your most critical needs. Often more effective than a will -- which can be a one-way ticket to probate -- the RLT is a far more comprehensive weapon against the high costs and disastrous delays often associated with probate proceedings.

Did you know that probate costs in some states include court fees based on a hefty percentage of the total value of your estate? That's a major reason to consider the RLT. After your death, a revocable living trust also cuts costs for your spouse and heirs because your estate inventory is taken in advance, along with asset transfers -- at a cost determined by you, not probate proceedings.

It is therefore wise to avoid leaving such matters up to someone arbitrarily appointed by the court. Many families have watched in helpless frustration while very costly, court-appointed officials took months or years to perform these simple functions.

RLTs accordingly sped up the distribution of your assets to your dependents and heirs, particularly if no federal estate tax is due.

Finally, probate records are public. RLT records are private, preventing access to your personal financial information by business competitors and non-family opportunists. And, trusts are simply harder to contest. Your trustee can distribute RLT assets almost immediately, forcing disgruntled heirs to individually file cost-prohibitive lawsuits against other beneficiaries.

If you anticipate any contention amongst your estate beneficiaries, the RLT is certainly an excellent tool for you to have in place.

A Revocable Living Trust is not designed to prevent estate or income taxation. However, various tax-saving provisions could be built into your RLT, perhaps involving certain types of tax-deferred annuities and life insurance policies. For more details on the latter, and other valuable financial instruments, please see your nearest certified elder planning specialist or elder law specialist.

As for wills, even though you've done your best to carefully protect your assets within a revocable living trust, you should have a properly drawn will (included with the trust). Your estate may acquire probate assets you may be unaware of. For example, you may be the unknowing beneficiary of someone else's estate; or, someone pays you a debt you have forgotten or overlooked; or, if you die in or after an accident, the incident may result in a negligence lawsuit against the responsible party.

How to set up your revocable living trust

Setting up an RLT is fairly simple, although you should always work with a financial or legal professional to ensure proper attention to every detail.

First, you would appoint yourself as the RLT's trustee. Then, you appoint one or several co-trustees. Also, you should appoint co-trustee alternatives, in case a favored co-trustee dies or is unable to handle the administration of your RLT. In fact, many people select a trusted financial institution or bank trust department as a last resort. After you select your co-trustees, it's time to put some assets in the trust. In order to exist, an RLT must have assets.

Actual properties or assets might include anything from bank accounts to real estate, stocks and bonds to insurance products. Any of these must be properly transferred, therefore you may need assistance from a financial professional.

Life insurance is another matter. Normally, life insurance benefits would be included in your overall estate, outside the trust. However, a CEPS can help you set up an Irrevocable Life Insurance Trust, which would own the insurance so proceeds could be excluded from your estate (and probate). The same would apply to IRAs and other retirement accounts, yet these can also be changed to name your RLT as beneficiary.

What about jointly-owned property?

Property owned jointly by two people usually means it automatically goes to the surviving owner, or beneficiary. This could be a friend, business partner or spouse. However, if you transfer property to anyone other than a spouse, you may face federal gift taxes. Or, you may lose control over your property if, for example, you want to sell and your joint-owner has other ideas.

Other costly tax consequences could apply as well. Consult your CEPS to get the right advice about the drawbacks of joint ownership as a stand-alone estate transfer plan.

How a will's assets "pour-over" to RLTs

Maybe they should call it "pour into." Either way, a will can be designed by your elder law attorney professional to let assets outside your trust "pour over" (or into) your RLT. A "pour-over will" comes in handy for those of us who forget to re-title assets in the name of the trust before we die.

A pour-over will essentially captures such assets for transfer into the RLT.

Although these assets may have to endure probate, they would eventually go to the trust for distribution.

With the RLT Look at the revocable living trust as a contract with yourself. The RLT allows you to have better control of your property and control of your own affairs while you're incapacitated. It also allows the after-death distribution of your own estate to be handled as if you were present.

Even more vital, you would no longer worry about the sometimes disastrous effects of probate delays -- frozen funds and unpaid bills -- all of which you would face while painfully recovering from some incapacitating illness or injury. This is of particular concern to many single and widowed seniors.

In order to avoid the four evils of probate, some time and expense may be necessary. Additionally, you still need to contact a CEPS about tax-deferred investments and other tax-saving methods not included in the many benefits of a revocable living trust.

After all is said and done, the RLT and other parts of a solid estate planning strategy achieve the ultimate goal: your lifelong peace of mind.