

EDUCATIONAL: REVOCABLE LIVING TRUST

District IV Leadership
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A Revocable Living Trust, also simply called a Living Trust, is a legal document that is created by an individual, called a Trustmaker, to hold and own the Trustmaker's assets, which are in turn invested and spent for the benefit of the Trustmaker as the Beneficiary by a Trustee. In most cases, the Trustmaker will also be the Trustee, although some individuals may choose to have an institution manage their trust property.

A Revocable Living Trust covers three phases of the Trustmaker's life – while the Trustmaker is alive and well, if the Trustmaker becomes mentally incapacitated, and after the Trustmaker dies.

Phase One of a Revocable Living Trust: The Trustmaker is Alive and Well – While the Trustmaker is alive and well, the trust agreement will have specific provisions allowing the Trustmaker to manage, invest and spend the trust assets for his or her own benefit. Thus, the Trustmaker will go about business as usual with regard to assets that have been funded into the trust, except that the Trustmaker will sign as the “Trustee” instead of as an individual. The Trustmaker will also be able to use his or her own Social Security number as the taxpayer identification number for the trust and file income taxes on IRS form 1040 instead of form 1041.

Phase Two of a Revocable Living Trust: The Trustmaker Becomes Mentally Incapacitated – The trust agreement will also specify one or more procedures to be followed if the Trustmaker becomes mentally incapacitated. If the Trustmaker is determined to be mentally incompetent and can no longer properly serve as Trustee, then the trust agreement will name a successor “Disability Trustee” to take over the management and investment of the trust funds from the Trustmaker. The Disability Trustee will then be able to take care of and manage all of the Trustmaker's finances (assuming all of the Trustmaker's assets have been funded into the trust) and pay the Trustmaker's bills.

Phase Three of a Revocable Living Trust: The Trustmaker Dies – When the Trustmaker dies, the “Administrative” or “Successor Trustee” will be able to step in and pay the Trustmaker's final bills, debts and taxes. The trust agreement will then contain instructions about who will receive the balance of the trust funds after all of the bills have been paid and the Administrative Trustee will distribute the balance accordingly.

As with anything, it is important to understand the pros and cons of using a trust instead of a Last Will and Testament.

The Pros of using a Revocable Living Trust

Avoiding Probate – This is probably the biggest advantage. Probate can be avoided with the use of a fully funded Revocable Living Trust. This is real important if you own real estate in more than one state because your loved ones could be faced with two or more probate proceedings. It will also give your loved ones almost immediate access to cash during difficult time.

Avoiding Guardianship or Conservatorship – After following the trust provisions for determining your incapacity, your loved ones will be able to take over control of your trust assets without interference by a judge. Probate will only last a fixed period of time (usually a year or two at the most), but guardianship can last for five, ten or even twenty years.

Keeping things private – As required by state law, probate is a public proceeding. This means anyone can go to the courthouse, look at your file and make copies. Anyone can read a Last Will and Testament that has been admitted to probate. A Revocable Living Trust doesn't need to be filed with the court, so it won't become public record.

Forcing you to get organized – Many people don't really know what they own or how their property is titled. When you set up the trust, you will be required to fund your assets into it and this will force you to find account statements, stock certificates, car and boat titles and deeds to real estate.

The Cons of using a Revocable Living Trust

Up front costs are high – In general, it will cost more time and money to set up and fund a Revocable Living Trust than it will to simply write a Last Will and Testament.

Funding a Trust is a pain – Once your trust has been signed, you are not finished – you'll need to contact your banks, investment and insurance companies, and transfer agents to change account and stock ownership and update beneficiaries; issue new stock certificates or assign partnership or LLC interests for closely held businesses; re-title cars and boats; and sign and record new deeds for real estate. For many people, this is the major drawback to using a Revocable Living Trust – if it is not fully funded, then it is really not worth any of the money spent on it. The type of assets that you own and what will need to be done to get them funded into a Revocable Living Trust should be carefully considered before you decide to use a trust.

You will still need a Last Will and Testament – If your trust is only partially funded when you die, then you will need a special type of Will called a "Pour over Will" to catch your unfunded assets and pour them into your trust. Your "Pour over Will" must be probated.

There is a longer time limit allowed for contesting a Trust vs. contesting a Will –
Usually 30-90 days is allowed to challenge a Will and some states allow 1-5 years, sometimes longer to contest a trust. Some states are deciding to close this gap by enacting certain laws that severely restrict the time frame for challenging a trust.

I hope this information encourages you to explore you options to protect yourself, your assets and your family.

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