



Revocable Living Trusts

Living trusts have become a popular way of owning assets for some people. They can help address a number of important issues, but they are not for everyone.

What is a revocable living trust?

As the name implies, these trusts are established when the grantor is still alive and since they are revocable, the grantor retains the power to revoke or amend the trust as he or she wishes. A trust document establishes the trust, names the trustee (usually the grantor), names a successor trustee (someone to take control if the trustee becomes disabled), often a trusted family member, and describes how assets are to be managed and ultimately distributed from the trust.

After the trust is established, assets are transferred into the trust by the grantor and the grantor continues to manage them. The taxable income from those assets is reported by the grantor on their individual tax return. The assets are owned by the trust but there is no change in the control or tax treatment of the assets.

When the grantor dies, the assets in the trust are distributed under the terms of the trust document in a way similar to how a will describes how assets in an estate are distributed.

Why consider a living trust?

Using a living trust offers some benefits to be considered:

- *Avoids probate.* When a person dies, his or her assets are deemed to be passed into their estate. The distribution of the assets is then controlled by the terms of a will. Usually, there will be a court hearing about the estate and there can be costs associated with the “probate” of the will. With a living trust, the assets are transferred under the terms of the trust and do not enter the estate. If the assets are complex or the deceased lived in a state with high probate costs, the cost savings can be significant.
- *Preserves privacy.* Wills and estates end up being public matters while living trusts are not. For individuals that do not want their private matters potentially becoming visible to others, a living trust may be attractive.
- *Speed of asset distribution.* The distribution of assets of an estate under the terms of a will can take time, sometimes months or more. A living trust usually allows the assets to be distributed in just a few weeks.

What are the disadvantages?

- *Time and expenses.* Establishing a living trust properly can take some time and result in expenses. While there are examples of living trust documents available in many places, doing it right usually means getting expert legal advice and help. In addition, when assets are transferred into the trust, they must be “re-titled.” For a bank account or brokerage account, that is probably pretty easy. For real estate, it requires filling out forms, filing documents and potentially paying transfer fees.
- *Tax filings.* While the trust will not pay any income taxes, there must be a tax return prepared each year. The tax return shows the income of the trust and “distributes” that income to the grantor for reporting on his or her individual tax return.

- *Complicated asset ownership.* Sometimes the mere fact that a trust owns an asset can make dealing with it more difficult. One area where this is prevalent is with real estate mortgages. Some lenders are inexperienced in dealing with living trust ownership.

Summary

Living trusts can be powerful estate planning tools. If you are concerned about the costs and public nature of probate or wish to be less active in managing your financial affairs, you may want to consider a living trust. While a living trust may seem simple on the surface it can become quite complex in some cases. Consulting a qualified estate-planning attorney is a must.