

Avoiding Probate with a Revocable Living Trust

The Concept

- A revocable living trust is a legal device created to hold and distribute assets during life and after death.
- These trusts have become a popular estate planning tool because they preserve privacy and avoid the costs and potential complications of probate.

Some Definitions

- Probate is a legal process that validates a will and provides for the administration of a decedent's estate.
- A grantor is a person who forms a trust.
- A trustee is a person or entity responsible for administering the trust.

The Process

- A grantor who creates a revocable living trust maintains full control over the trust, with the ability to alter, amend or revoke it at any time.
- The trustee takes legal title to the trust property and manages it according to the grantor's instructions.
- A revocable living trust is designed to ease administrative concerns at the grantor's death by removing probate assets from the grantor's estate.
- When the grantor dies, the trust either becomes irrevocable or terminates, and the trust property is distributed, either immediately or in the future, according to the trust agreement.

Revocable Living Trust Objectives

- Avoid probate by transferring assets to the trust during the grantor's life.
- Manage trust assets if the grantor becomes incapacitated.
- Receive life insurance proceeds on the grantor's life when the grantor dies.
- Receive probate assets pouring over into the trust at the grantor's death under the terms of the grantor's will.
- Control the disposition of trust assets through the terms of the trust.
- Keep the terms of the grantor's disposition of property private (unlike a will in probate).

Funding Methods

- Transfer specific assets when the trust is established.
- Name the trust as beneficiary of the insured grantor's life insurance policy or policies.

- Arrange the transfer of other assets later, such as when there's an increasing risk of death, disability or incapacity.
- Name the trust as beneficiary of certain assets or of the entire net probate estate in a will.

Getting Started

- An attorney well versed in estate planning prepares the trust agreement to meet the grantor's objectives.
- The trust agreement:
 - Establishes who will receive the income, how long payouts will last, or how long income will be accumulated.
 - Specifies who will receive distributions of the trust principal and when the distributions are to be made.
 - Indicates when the trust will terminate.

Other Considerations

- Since the trust is revocable, the grantor may amend it at any time.
- Unlike a testamentary trust, which becomes public when a will is filed for probate, a revocable living trust remains private.
- In a "pourover" trust, insurance death benefits on the grantor's life are paid into the trust, along with assets passing under the will after probate.
- A pourover trust becomes irrevocable when the grantor dies.
- A trust may be a "shell"—inactive during the grantor's lifetime, but prescribing what will happen when the grantor dies.
- The trust may also be active during the grantor's lifetime, with the trustee managing investment decisions, tax payments and other administrative functions.

Some Disadvantages

- The grantor receives no federal income tax or estate tax benefits from the trust.
- A trust can be more expensive to establish than a will, requiring legal fees to draft the trust and, in some cases, additional administration fees.
- Trust assets are subject to estate creditor claims when the grantor dies.

The Bottom Line

With a single document, a revocable living trust enables a grantor to bypass probate, ensure privacy and create an efficient estate distribution process.

Summary

What Is It?

A revocable living trust is created to hold assets that a trustee will manage and ultimately distribute according to the grantor's wishes. Because the trust is revocable, the grantor can alter, amend or revoke it at any time. At the grantor's death, the trust becomes irrevocable or terminates.

What Is Its Purpose?

One reason to establish a revocable trust is to avoid the costs and publicity associated with probate. The trust can remain private, unlike assets that are subject to the public probate process. These trusts can also provide asset management should a grantor become disabled.

How Does It Work?

An attorney prepares a written trust agreement incorporating the grantor's wishes. The trust agreement typically specifies who will receive income generated by the trust, who will receive the principal, when distributions will be made and when the trust will terminate.

The trustee manages and administers the trust according to the terms of the trust agreement.

A revocable living trust may be a "shell" or "pourover" trust, which means the trust will receive certain assets upon the grantor's death. For example, the trust might receive the proceeds of life insurance policies and other assets that "pour over" into the trust after the will is probated. At that point, the trustee administers the trust according to the terms of the agreement.

What Are the Benefits?

The trust avoids probate, along with the associated costs and publicity.

The trustee manages the trust assets. The trustee can be the grantor or a chosen professional who can relieve the grantor of management and administrative duties.

The trust can receive life insurance proceeds and any estate assets directed to the trust when the grantor dies, which are then distributed according to the trust terms.

What Are the Disadvantages?

A revocable living trust is typically more costly to establish and maintain than a will.

Trust assets remain subject to the claims of the estate creditors when the grantor dies.

The grantor receives no federal income tax benefits from the trust, and must pay current taxes on trust income whether the income is paid to the grantor or not.

The trust assets cannot avoid inclusion in the grantor's gross estate for estate tax purposes.

The Bottom Line

When the advantages and disadvantages are compared, it becomes apparent that a revocable living trust is an efficient way to secure professional asset management, bypass the probate process, create efficient estate distribution and ensure privacy—all in a single document.

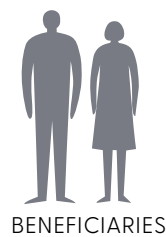
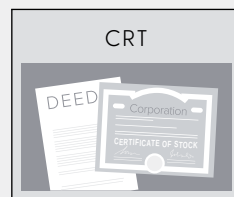
AVOIDING PROBATE WITH A REVOCABLE LIVING TRUST

1

To avoid the delay, expense and publicity of probate, a grantor establishes a revocable living trust and transfers legal title to specific property to the trust. The grantor retains control of the assets during life.



GRANTOR



BENEFICIARIES

2

The grantor may instead leave the trust inactive during life, only to receive assets at death from life insurance proceeds or property passing under the will (a testamentary or "pourover" trust).

WILL

INSURANCE
POLICY
ON
GRANTOR'S
LIFE

3

At the grantor's death, the trust terms control the distribution of assets.



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