

## Non-Tax Benefits of the Revocable “Living” Trust

Many who have served as an executor of an estate or as guardian or conservator for someone who is incapacitated have encountered some level of frustration, delay and unnecessary expense in their dealings with the court-administered system for supervision of fiduciaries. The funded Revocable Trust is designed to avoid these procedural requirements, along with the related costs and inefficiencies, for the sake of one’s fiduciary and family members.

According to state law, all assets “owned” by the Trust will not pass through the “probate estate” (those assets subject to the probate system) upon the death of the trust owner (the Grantor) because they are not owned by the individual. Moreover, if the Grantor becomes disabled or incapacitated while acting as the Trustee of his or her own Trust, the Successor Trustee named by the Grantor can easily step into the shoes of the Grantor as Trustee without court action. These are just two of the ways in which the Revocable Trust, along with the supporting documents, can save unnecessary expense for the family and reduce the stress and delay caused by compliance with court-supervised administration of your affairs.

The Revocable Trust, if properly drafted and funded, can provide the following benefits and advantages:

1. As compared to the probate process, the trust:
  1. Usually reduces the cost of estate settlement. Probate costs can range from 5% to 10% of the probate estate (assuming that there are no complications, such as title problems, liquidity issues or will contests); these costs generally are avoided with a fully funded revocable “living” trust.
  2. Reduces the time required to settle affairs after death. It typically takes 18 to 24 months to complete the process of estate administration through probate, while there is no set administration period that “ties up” assets which are held in a trust.
  3. Preserves privacy of personal information. In the probate process, the Will, the Inventory and the Accountings filed by the executor are made public by recording them at the local courthouse, whereas asset information for revocable trusts is not reported publicly; in fact, the trustee is required to keep all such information confidential.

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4. Avoids “ancillary” probate for out-of-state real property. Separate probate administration procedures are usually required by the jurisdiction in which out-of-state realty is located in order to transfer proper title to your heirs. If the real property is held in trust (by deed of gift during lifetime), then probate proceedings would not be required in that state to transfer title to the beneficiaries – only a deed of distribution.
  5. Eliminates extended post-probate court supervision. Unless the Will specifically states otherwise, the trustee of a trust established under a Will must file accountings with the court for as long as the trust is in effect (for a spouse or for minor children, for example). These are known as testamentary trusts. Of course, no such court supervision is required for the trust, since the entire estate in trust avoids probate.
  6. Allows for smoother transition in business management. The successor trustee named by the grantor steps into the shoes of the business owner without court involvement or supervision.
  7. May be less susceptible to attack from a disgruntled heir. Experience has shown that the revocable trust is more difficult to attack than a Will after death, given that it is not recorded with the court, and only proper trust beneficiaries need be notified of the administration and have standing to sue the trustee.
2. As compared to conservatorship, the trust:
1. Eliminates the legal costs of conservatorship. Court proceedings to determine incapacity can be costly, since multiple attorneys are required by statute and medical and other evidence must be requested, compiled and presented to the court. The terms of the trust allow a successor trustee to act on your behalf, without formal court proceedings.
  2. Protects privacy. Conservatorship proceedings are often held in open court and the pleadings are available to anyone who requests to review them. However, revocable “living” trusts can be handled without making private matters available

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to curiosity seekers or salesmen.

3. Avoids court involvement in decision-making. The successor trustee manages the assets and makes decisions in accordance with your directions and without the supervision of the court. By contrast, the Court often is directly involved in decisions by the conservator and always reviews them through a Commissioner of Accounts.
4. Allows for smooth transition of authority after recovery. If the Trust owner (the Grantor) recovers his capacity, he can easily return to the position of Trustee without court intervention. However, Court proceedings are required to limit or eliminate a court-appointed conservatorship, and accountings must be filed with the Commissioner of Accounts before that decree will be entered.

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