

## Revocable Living Trust

The revocable living trust is a tool used in estate planning to achieve several important objectives. Its advantages include avoidance of probate, protection in case of incapacity, professional investment management, privacy, and simplicity of operation.

### Avoidance of Probate

Any assets owned by the trust when the person creating the trust (the settlor) dies is disposed of in accordance with the terms of the trust and will therefore not be subject to probate administration. Thus, an elderly individual may transfer all or virtually all of his assets into a revocable living trust, which will become irrevocable at his death and serve as a will substitute. This avoids subjecting those assets to probate administration. Even in situations in which it is not desirable to transfer the bulk of the individual's assets into a revocable living trust, it may nonetheless be desirable to transfer those assets that would require ancillary administration in a nondomiciliary state into such a trust to eliminate the need for that ancillary administration.

### Protection in the Event of Incapacity

Generally, a revocable living trust provides that any individual, corporation, or combination thereof will serve as trustee of the trust. It also provides for successor trustees in case of the death, disability, or resignation of a trustee who is then serving. Thus, it guarantees a succession of persons to administer trust assets as required.

The settlor may serve as the initial trustee of his own revocable living trust while he is physically able. If the settlor becomes incapacitated, the successor trustee automatically steps into his shoes and handles his affairs without interruption or disruption. The trust could give the successor trustee powers that are as broad as desired and could provide the same protection in the event of the settlor's incapacity that the durable power of attorney provides.

### Investment Management

Although the settlor of a revocable living trust is free to serve as the trustee of the trust during his lifetime, he may find it beneficial to appoint a corporate fiduciary to gain the benefits of professional investment management. Use of a corporate fiduciary makes it more likely that the individual affairs will be handled effectively and that adequate records documenting the trust transactions will be maintained.

By participating in the consolidated investments of a trust department, an individual may also get investment returns significantly higher than he could get by investing as a single individual. For elderly individuals or those not proficient in handling investment decisions, the use of a corporate fiduciary to provide professional investment management can be invaluable.

### Privacy

One of the by-products of the revocable living trust is that all assets in the trust are disposed of in accordance with the provisions of the trust and are not subject to the scrutiny of the probate court. Much of the information given to the probate court becomes a matter of public record, so when assets are disposed of in accordance with the provisions of a will and not a revocable living trust, those assets, as well as valuations and dispositive terms, can become widely known

throughout the community. The revocable living trust, therefore, provides persons affairs with a measure of privacy not available to probate dispositions.

### **Flexibility in Choosing Trustee**

Another major advantage of the revocable living trust is that it gives a person more flexibility in selecting the individual or corporate fiduciary that will be responsible for the handling of his affairs. Generally, there are a few, if any, limitations on who can serve as trustee of a revocable living trust after the death of the settlor, whereas many states have very restrictive rules as to who can serve as the executor of an estate. Therefore, when the revocable living trust is used as a will substitute (with virtually all of an individuals assets transferred during life to the trust, and that trust providing for the disposition of the assets), many of the functions generally viewed as being within the domain of the executor become the duty of the trustee of the trust.

### **Other Advantages**

The revocable living trust may have other advantages as well.

- Create psychological barriers against contesting the settlers dispositive scheme
- Avoid problems created by mortmain statutes
- Reduce the impact of a spousal election against the estate

### **Mechanics of the Revocable Living Trust**

Notwithstanding the other considerable advantages of the revocable living trust, its real beauty lies in its simplicity and flexibility. It can be set up at any time during the life of the settlor and can be added to, depleted, amended, or revoked at any time and, unlike a will, can be amended without testamentary formality. It simply collects those assets that are transferred to it and provides for their disposition in accordance with the wishes of the settlor.

A living trust can exist in either a funded or an unfunded state. A funded trust is created if the settlor transfers significant amounts of assets to the trust during his life in order to have those assets cared for and administered by the trustee. In these cases, while the settlor realizes that virtually all the advantages described above, the maintenance of the trust may involve some administrative expense.

Alternatively, an individual may simply create the revocable living trust to serve as a will substitute providing for the ultimate disposition of his assets. In those cases, the individual assets pay any liabilities of the estate, and transfer all the remaining assets to the living trust that had previously been created. When the unfunded revocable living trust is created it owns very few assets, or may simply be named as the beneficiary of one or more of the decedent insurance policies or employee benefit plans.

Not insured by the FDIC  
Not insured by any Federal Government Agency  
Not a bank deposit, bank obligation, or guaranteed by the bank.  
Subject to investment risk, including potential principal loss.