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What is a revocable living trust? Can I avoid Probate?

Living Trusts: Revocable Living Trusts are a commonly used estate planning tool. The primary reasons most people choose a Revocable Living Trust are to avoid probate and to provide for backup management of assets in the event of incapacity. However, a Revocable Living Trust is not always necessary. Once you understand the advantages and disadvantages of a Revocable Living Trust, you can decide if it is appropriate for you.

What Is A Revocable Living Trust?

A Revocable Living Trust is an estate planning document that allows your assets to be managed and distributed in the manner you desire, both during your lifetime and upon death. It is referred to as a 'living' trust because it is established during lifetime and, in most cases, goes into effect immediately. It is a 'revocable' trust because you are free to revoke or amend the trust at any time as your circumstances change.

How Does A Revocable Living Trust Work While I Am Able To Manage My Finances?

A Revocable Living Trust is created during your lifetime, and your assets are placed in the Trust while you are alive. You can name yourself as trustee of the Trust. This means that you can manage your own income and assets much the same as you have always done, and file individual tax returns like before. You can revoke or amend the Trust at any time, and the terms of the Trust are set entirely by you.

If you want help in managing your assets now, even though you still have mental capacity, the trust document allows you to name a trustee or co-trustee to handle the Trust. Further, you have an opportunity to appoint someone to serve as your trustee or co-trustee and then see if he or she handles things responsibly and according to your wishes. If you are dissatisfied with the way your trustee or co-trustee handles your Trust, you can take over as trustee yourself, name a new trustee, modify the powers you have given to the trustee, or revoke the Trust altogether.

What Happens If I Become Incapacitated?

In the Revocable Living Trust, you can specify under what circumstances a successor trustee takes over management of the Trust. This is usually when the person who created the Trust becomes incapacitated. You can spell out in the Trust how incapacity must be established. Typically, a determination of incapacity requires one or two letters from a physician. Once incapacity is established, the successor trustee, who has been named by you in the Trust, can take over management of the assets.



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What Happens If I Become Incapacitated? *(continued)*

A Revocable Living Trust avoids the need for a court order establishing a conservatorship if at some time in the future you become unable to manage your own financial affairs, either temporarily or permanently. While naming an agent in a Power of Attorney for Finances can often accomplish this, Powers of Attorney are not as reliably recognized by financial institutions.

How Do I Know My Trustee Will Pay For My Highest Quality of Life And Support My Values?

The Revocable Living Trust is flexible and can be tailored to your specific needs, desires, and financial resources. This includes the ability to make provisions for care and comfort. Specific instructions about care and comfort are particularly important when the successor trustee is an institution (bank or trust company), or when a family member is very busy or geographically remote. Examples of personal issues that can be included in your trust document are:

- Specifying that you prefer to be cared for at home (even if the cost of such care would be significantly greater than the cost of nursing or other long-term care);
- Authorizing the trustee to provide additional services and care monitoring if you become hospitalized or require placement in a long-term care facility; and
- The continuance of contributions to your Church or charitable organizations.

How Does The Revocable Living Trust Work At My Death?

Your successor trustee will have the authority to take over management of the Trust and follow your instructions as spelled out in the Trust. Assets that are owned by the Trust will avoid probate entirely, which, in turn, can avoid significant costs and delays at your death. People with real property in more than one state can avoid multiple probates with the use of a Trust.

Another advantage of a Trust is that your financial affairs are kept completely private. A Trust eliminates the need for a court proceeding, and other than tax returns, there is no public record.

Does A Revocable Living Trust Save On Taxes?

Spouses with large estates can incorporate a tax savings plan to eliminate or minimize estate taxes. A tax savings plan can also be incorporated into Wills, but in most cases, this ultimately requires a probate when each spouse dies. Therefore, use of a Joint Revocable Living Trust or separate Revocable Living Trusts for each spouse will avoid two probates instead of one.



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What Other Documents Will I Need?

In addition to the Revocable Living Trust, you will need a Pourover Will and Powers of Attorney for Finances. Also, typically the attorney who assists you will prepare deeds to transfer real property to the Trust and provide an Advance Directive for Health Care.

Who Should Be My Successor Trustee?

Your successor trustee should be someone who is trustworthy, responsible with investments, good with paperwork, and preferably a good communicator. This can be an adult child, other relative, friend, or professional fiduciary.

What Are the Disadvantages Of A Revocable Living Trust?

A Revocable Living Trust is not the best option for every situation. It typically costs \$800 to \$1,200 more for a Trust package than a comparable Will package. It may not be necessary to incur this additional cost for people who are younger, healthy, and do not have large estates. However, some people in these circumstances still choose a Trust because they want to make things easier for their families in the event of an untimely death.

There is more paperwork involved in finalizing a Revocable Living Trust than a Will because title to most of the assets is transferred into the Trust. Some people find this cumbersome and confusing.

In short, a Revocable Living Trust, while often very helpful and cost-effective, is not always necessary. An experienced attorney can help you decide if it meets your individual needs.

DISCLAIMER: The information contained in this document is based on Oregon law and is subject to change. It should be used for general purposes only and should not be construed as specific legal advice by Fitzwater Meyer Hollis & Marmion, LLP or its attorneys. Neither this website nor use of its information creates an attorney-client relationship. If you have specific legal questions, consult with your own attorney or call us for an appointment.