



IS A REVOCABLE TRUST RIGHT FOR YOU?

A Private Clients Group Article

The Revocable Trust (often referred to as a “Living Trust”) is a popular and effective estate planning technique. It can provide an excellent way to manage, protect and distribute your assets during your lifetime, in the event of incapacity, and after your death. It isn’t appropriate in every case, but it’s often rejected or misused as an estate planning tool because of misinformation about its benefits and limitations. Is a revocable trust right for you? Here are some considerations.

Benefits of a Revocable Trust:

1. Control during your lifetime

While you are alive and capable of managing your affairs, you generally will be the sole Beneficiary and the sole Trustee or a co-Trustee of your Revocable Trust. That means you control and use the trust property much the same way you would without the trust.

If you become incapacitated (e.g., by illness or injury), your named successor Trustee immediately steps in to manage the trust assets on your behalf with no delay. There is no need to apply to the probate court for the appointment of a conservator or guardian for you. You also remain the trust Beneficiary and trust assets remain available for your use and care.

2. Fast and efficient disposition after your death

After your death, your Revocable Trust acts like a Will by disposing of the trust funds to or for the benefit of your named successor Beneficiaries. Unlike with probating a will, the probate court does not oversee management and transfer of your assets.

If a Revocable Trust is established and funded before death, the Trustees of the trust can immediately manage your assets at death rather than awaiting court appointment as Executors to do so. This allows the Trustees to respond to market and other economic factors to preserve and safeguard assets.

3. Cost savings

Cost is both a pro and con. Legal fees, court costs and Executor’s commissions at your death can be reduced through the use of a Revocable Trust, although not dramatically in many cases. At the same time, there also may be an increase in the cost of preparing your estate plan. If you wish to implement a Revocable Trust, there will be a legal fee for drafting the necessary Revocable Trust Agreement and the companion pourover Will. In nearly every case, however, the existence of a Revocable Trust will sufficiently streamline the management of your affairs to more than recoup the initial setup costs.

4. Lack of court supervision

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This is also both a benefit and a limitation. The fact that a Revocable Trust is not subject to the same court supervision as are Guardianships, Conservatorships and Wills (and thus does not incur the costs associated with court proceedings) is often the greatest benefit of a Revocable Trust. However, in certain family situations, the lack of judicial supervision can prove to be a disadvantage if you are worried about your family members or selected Fiduciaries abusing their positions of trust or otherwise wasting trust assets. In such a situation, the Renewable Trust can be prepared to require greater court oversight.

Limitations of a Revocable Trust:

1. Need for a Will

Few people will want to (or be able to) transfer all of their assets into a Revocable Trust. Accordingly, if you have a Revocable Trust you will still need a very simple Will (a “pourover Will”), that will serve to add to your Revocable Trust at death any property not added during your lifetime. A Will also is necessary to appoint an Executor, as in most cases the Trustee of your Revocable Trust will not be authorized to handle all matters relating to the settlement of your estate. If you have minor children, you will wish to name a guardian for those children in your Will.

2. Taxes

Since the Grantor retains the power to terminate a Revocable Trust at any time, the assets of the trust will be fully includable in the Grantor’s estate at death. Accordingly, while a Revocable Trust can be used as the vehicle for tax efficient estate planning, its existence in and of itself does not save estate, gift or income taxes.

3. Problems of transferring property

If you intend to transfer property to your Revocable Trust during your lifetime (which is not necessary to achieve many of the advantages of having a Revocable Trust), doing so can occasionally prove to be cumbersome and time consuming, and sometimes there are costs involved in transferring certain assets to the Trust.

4. Business issues

Despite the popularity of the Revocable Trust, many persons and businesses are unfamiliar with them and may hesitate to get involved in business transactions involving a Trust. For example, refinancing a home or obtaining a home equity loan may be more difficult if the property is owned by a Trustee. Insurance companies and brokerage firms, especially the smaller or more cautious ones, can be difficult to deal with when real estate is owned by a Trustee.

These are just some of the considerations to be considered when deciding whether a Revocable Trust is right for you. To learn more, contact a Cummings & Lockwood trusts and estates attorney to discuss your individual situation.

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