

Revocable Living Trusts



What is a Revocable Living Trust?

A trust is an agreement that determines how a person's property is to be managed and distributed during his or her lifetime and also upon death.

A revocable living trust normally involves three parties:

The Grantor - This is the person who creates the trust, and usually the only person who provides funding for the trust. More than one person can be the grantors of a trust, such as when a husband and wife join together to create a family trust.

The Trustee - This is the person who holds title to the trust property and manages it according to the terms of the trust. The grantor often serves as trustee during his or her lifetime, and another person or a corporate trust company is named to serve as successor trustee after the grantor's death or in the event the grantor is unable to continue serving for any reason.

The Beneficiary - This is the person or persons who will receive the income or principal from the trust. This can be the grantor (and the grantor's spouse) during his or her lifetime and the grantor's children (or anyone else the grantor chooses to name) after the grantor's death.

A trust is classified as a "living" trust when it is established during the grantor's lifetime and as a "revocable" trust when the grantor has reserved the right to amend or revoke the trust during his or her lifetime.

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How is a Revocable Living Trust Created?

There are two basic steps in creating a revocable living trust. First, an attorney prepares a legal document called a "trust agreement" or a "declaration of trust" or an "indenture of trust" which is signed by the grantor and the trustee. Secondly, the grantor transfers property to the Trustee to be held for the benefit of the beneficiary named in the trust document.

Can a Revocable Living Trust be Changed or Revoked?

Yes. The grantor ordinarily reserves the right in the trust document to amend or revoke the trust at any time during his or her lifetime. This enables the grantor to revise the trust (or even terminate the trust) to take into account any change of circumstances such as marriage, divorce, death, disability or even a "change of mind." It also affords the grantor the peace of mind that he can "undo" what he has done. Upon the death of the grantor, most revocable living trusts become irrevocable and no changes are then allowed.

Is a Revocable Living Trust an Adequate Substitute for a Will?

No! Even though a revocable living trust may be considered the principal document in an estate plan, a will should accompany a revocable living trust. This type of will, referred to as a "pour over" will, names the revocable living trust as the principal beneficiary. Thus, any property which the grantor failed to transfer to the trust during his or her lifetime is added to the trust upon the grantor's death and distributed to (or held for the benefit of) the beneficiary in accordance with the terms of the revocable living trust.

There cannot be an absolute assurance that all property will be transferred to a revocable living trust during the grantor's lifetime. For instance, the probate estate of a person who dies as a result of an auto accident may be entitled to any insurance settlement proceeds. These settlement proceeds can only be transferred from the estate to the trust pursuant to the terms of a will. Without a will, the proceeds would be distributed to the heirs under the Missouri laws of descent and distribution.

Also, a parent cannot appoint a guardian for minor children in a revocable living trust. This can be accomplished only in the will.

Will a Revocable Living Trust Avoid Probate Expenses?

Property held in a revocable living trust at the time of the grantor's death is not subject to probate administration. Thus, the value of the property is not considered when computing the statutory fee for the personal representative or the estate attorney. Also, the amount of any required bond for the personal representative will be reduced to the extent the property is held in the trust and not subject to probate administration.

Nevertheless, certain expenses associated with the death of a person are not eliminated. Deeds to real estate transferring the property from the trust to the beneficiaries must be prepared. Estate tax returns must be filed when the total value of the property owned at death (including assets in a revocable living trust) exceeds \$600,000 in value (or a lesser value in certain cases). The decedent's final income tax returns must still be filed and income tax returns for the trust must also be filed.

What are Some of the Advantage of a Revocable Living Trust?

In addition to the savings in probate expenses, the avoidance of probate administration has other advantages. The administration of a revocable living trust at the grantor's death is normally a private matter between the Trustee and the beneficiaries. Unlike probate, there are few public records to reveal the nature or amount of assets or the identity of any beneficiary.

Property can often be distributed to the beneficiaries shortly after the grantor's death, avoiding much

of the delay encountered with probate administration. Also, probate court approval is not necessary to sell an asset in a trust, thus avoiding further delay.

In addition to the avoidance of probate administration in Missouri, "ancillary" probate administration in other states where real estate is owned can be avoided by transferring the out-of-state real estate to a revocable living trust. For those owning real estate in several states, this can be a significant advantage.

If the grantor becomes physically or mentally incapacitated, property held in this trust remains available to the grantor without the requirement of a court supervised guardianship or conservatorship. The successor trustee named in the trust document takes charge to manage the assets in the trust and pay the grantor's bills.

The successor trustee can be a trusted relative or friend, or can be a professional trustee such as a trust company or a trust department of a bank. Missouri law does not require an individual serving as successor trustee to be a Missouri resident. However, certain restrictions apply to banks or trust companies whose principal place of business is located outside the state of Missouri. Since the activities of the successor trustee are not ordinarily supervised by a court or other independent third party, the selection of the successor trustee should be carefully considered.

The grantor is not limited to naming only one trustee. Two or more individuals may be named to serve as co-trustees or a combination of individuals and a corporate trustee may be named.

If an individual is to serve as successor trustee, the grantor should consider whether the trustee is to be bonded. The grantor's decision should be clearly stated in the trust document. If a bond is required, the bond premium is normally paid by the trustee from the assets in the trust.

Under a recent change in Missouri law, professional corporation stock may be owned by a trust.

Is a General Durable Power of Attorney or a Living Will Still Needed?

Although the function of a general durable power of attorney is beyond the scope of this brochure, a grantor of a revocable living trust should also consider establishing a general durable power of attorney to accomplish objectives which cannot be attained with a trust and to complement what is accomplished by a trust.

A "living will" has an entirely different function from a revocable living trust and the two should not be confused. Whether a person has a trust ordinarily has no bearing on the decision to have (or not to have) a living will.

Other Considerations in the Use of a Revocable Living Trust

Certain legal issues regarding the use of a revocable living trust have not been answered under Missouri law. For instance, it is not clear whether an individual can disinherit his or her spouse by transferring all assets into a revocable living trust. Also, while a divorce automatically disqualifies a divorced spouse under a will that was signed prior to the divorce, the same may not be true with a trust.

A revocable living trust may not be appropriate for certain assets. If stock is owned in a subchapter S corporation, the trust must comply with certain technical income tax requirements to avoid terminating the subchapter S status. Also, if the trust is named as the primary beneficiary of a qualified pension or retirement plan, or an IRA account, a surviving spouse will be precluded from completing a "spousal rollover" and deferring the income tax until later.

Who Can Advise You About a Revocable Living Trust?

You should never sign a revocable living trust document without the advice of a Missouri attorney who practices in this field of law. He or she will be able to advise if a revocable living trust is right for you.

What are Some of the Disadvantages of a Revocable Living Trust?

While the advantages of a revocable living trust receive most of the public attention, the disadvantages should also be considered.

Since a revocable living trust is a more complex legal document, it is often more costly to establish. Also, deeds and other transfer documents must be prepared transferring the grantor's assets to the trust, a process which can require a substantial investment of the grantor's time.

The use of a revocable living trust requires more ongoing monitoring to ensure that assets remain in the trust and that newly purchased assets are titled in the trust. For instance, a grantor who transfers funds to a second financial institution (perhaps to obtain a better interest rate) must remember to advise the new institution to title the new account in the trust.

After the grantor's death, some of the income tax rules applicable to a trust are not as liberal as those available to a probate estate. For example, a probate estate may elect to use a fiscal year as its tax year, while a trust is restricted to the calendar year. Trusts must pay estimated income tax payments while a probate estate is exempt from this requirement for the first two years. Trusts are also subject to other tax rules that do not apply to probate estates.

Does the Revocable Living Trust Reduce Income Taxes or Estate Taxes?

During the grantor's lifetime, the revocable living trust has **no** effect on the income tax which the grantor will owe. In fact, if the grantor is the trustee or a co-trustee, all income earned on assets held in the trust is reported directly on the grantor's income tax return and the trust is not required to file a return. After the grantor's death, the trust is taxed at the same rate as a probate estate. However, as mentioned above, a probate estate may enjoy certain relatively minor income tax

advantages.

Regarding the estate tax, proper planning can often reduce the amount of tax payable upon the grantor's death. For the most part, estate tax planning can be equally accomplished through proper drafting in either a will or a revocable living trust. However, there are minor differences. For instance, under current tax rules a lifetime gift directly from a living trust to a donee will be subject to estate tax if the grantor dies within three years of making the gift. This three-year rule does not apply to gifts made directly from an individual to a donee.

Who Can be the Trustee?

A grantor who desires to manage his or her own financial affairs and who is physically and mentally able can (and ordinarily should) serve as trustee. But provisions should be made in the trust for a successor trustee to take charge in the event the grantor becomes unable to continue for any reason or in the event of the grantor's death. Or, the grantor may simply desire to be relieved of asset management responsibilities, whether temporarily or permanently.