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A QUICK GUIDE TO REVOCABLE LIVING TRUSTS

The following are questions and answers on revocable living trusts. This popular estate-planning tool can be very useful in a wide variety of situations. Whether a living trust can benefit you and your family or estate is a matter to discuss with our offices.

What is a revocable living trust?

A Revocable Living Trust ("RLT") is one of many estate planning tools that can benefit you and your family in the event of death or incapacity. The RLT is an agreement you create for your own benefit during your lifetime. With a revocable trust, you maintain complete control over the trust and may amend, revoke or terminate the trust at any time. Thus, the person establishing the trust essentially owns the assets while maintaining the ability to change the trust at any time prior to death.

The revocable living trust (RLT) has three roles that you should be familiar with:

- **Settlor:** The person establishing the trust who has the power to revoke and amend same. Also known as the Grantor.
- **Trustee:** The person in charge of the trust. You are typically the trustee when the trust is initially established. Upon your death, resignation or incapacity, the successor trustee will assume this duty.
- **Beneficiary:** The person(s) receiving the benefit of the trust.

Upon the Settlor's death, the trust becomes irrevocable and the beneficiary changes from the Settlor to the Settlor's beneficiaries of choice.

What are the benefits of a living trust?

Some of the potential benefits of creating a RLT are as follows:

Probate Avoidance. Assets held in trust will not be subject to the probate process, thereby reducing time delays, publicity and expenses. Probate is the process where the

personal representative petitions the probate court to open your estate, proves your will, pay your creditors and distribute the remaining assets to your heirs. We have a separate handout that discusses the probate process in great detail.

Privacy. A probated Will is part of the public record. Therefore, anyone can know the general size of your estate and know of such as specific gifts and other personal matters. A living trust is not probated and is not subject to public scrutiny.

Protection during Incapacity. A living trust is an efficient way for a successor trustee to manage your assets in the event you become incapacitated. Upon the Settlor's incapacity, a successor trustee can step in and manage the trust's assets for the Settlor. This is either done by the resigning in writing, or if this has not been done, removing the trustee with written authorization from two physicians. Appointing a successor allows you to handpick your trustee, who can have a more intimate knowledge of your estate, can know your beneficiaries personally and can have greater financial expertise than a lay person.

Possible Tax Savings. While an RLT may not help most people with estate tax savings, an incredible amount of money can be saved with an "A/B" trust for married couples. This technique can potentially save hundreds of thousands of dollars and every couple with a gross estate exceeding the Unified Credit (\$3,500,000 in 2009) should consider a living trust for this reason alone.

Avoidance of Multiple Probates. A living trust is particularly useful when you own real property (land) in more than one state. Transferring real property into a trust will avoid probate in both states, saving additional time and money.

Some potential negatives of a revocable trust can include:

Failure to Transfer Property into the Trust. The Settlor(s) need(s) to understand that if the trust is not funded correctly, the property not transferred into the trust will more than likely be probated. The failure to completely fund your trust is a major problem for clients.

Lack of Court Supervision. While trust assets avoid probate, this also means that an independent judiciary does not supervise the process. Thus, if there are potential problems or conflicts with the intended heirs, it may be advisable to have a judge review the distribution process.

Creditors. A living trust does not mean that your heirs do not have to pay your creditors upon your death. Thus, an attorney may need to be hired to help in this process.

Is a Revocable Living Trust only for the rich?

No. A living trust can help most anyone who wants to avoid the probate process and prepare for incapacity, but as explained below, not everyone needs a living trust.

Can a husband and wife create a joint trust?

Yes. A husband and wife can typically create a joint trust agreement, naming themselves as co-trustees. Under this arrangement, the surviving spouse will retain control of all of the trust assets during his or her life and also have the ability to change the trust's final distribution. A joint marital trust is not advisable for every situation, such as for those in second marriages and those with separate assets, but it can be useful for more simple estates.

If my spouse and myself own all of our assets jointly, why should we create a living trust?

While jointly held assets avoid probate upon the first spouse's death, a trust would still be advisable upon the death of the second spouse. Potential problems then arise if the surviving spouse is incapacitated and could not establish a trust. Additionally, a joint trust eliminates the possibility of a probate upon a simultaneous death.

What are the income tax consequences to establishing a living trust?

A revocable living trust is "income tax transparent" as long as the Settlor(s) are alive. The trust is disregarded for federal income tax purposes because the Settlor has retained control of the beneficial enjoyment of the trust property.

Are there any estate tax savings from establishing a trust?

Maybe. Since the Settlor receives or can arrange to receive trust income and principal, trust assets are included in the Settlor's estate, and thus the trust has no positive effect. But a considerable amount of money can be saved if a husband and wife set up trusts to take advantage of the first spouse to die's Unified Credit, commonly known as a "Bypass Trust" or "A/B" Trust.

What assets are transferred into a living trust?

Typically, most probate assets are transferred into the trust, including stocks, bonds, real property, etc. Assets such as life insurance policies and annuities typically are paid to the trust as the remainder beneficiary. You would have to make this change yourself once the trust is signed. IRAs should not be re-titled in the name of the trust and care needs to be followed with this particular asset. We have an additional handout fully explaining the trust funding process.

Do I transfer my homestead into the trust?

Yes. Also, if you transfer your homestead to your trust, you will be able to maintain your current homestead exemption for tax purposes.

Does transferring my assets to my trust protect them from my creditors?

No. Your assets that are transferred to your trust are still subject to your own creditors as if you did not have a trust. Similarly, a revocable trust will not protect your assets if you go into a nursing home.

Will I have to consult an attorney every time I buy new assets?

No. Once your current assets are transferred to your living trust, you would want to take title to all new assets in the name of the Trust. For new assets such as bank accounts, brokerage accounts, etc., you will need to correctly place those in the trust's name.

Why do I have a will if I have a Trust?

We generally create a "Pour-Over" will for you, replacing your old will. This will directs any probated assets to your living trust for final distribution under the terms therein.

What other documents should I have besides a living trust?

Everyone should have a living will, a health care surrogate and a durable power of attorney. A living will is your "dying declaration", which provides directions on removing life support should you be in a persistent vegetative state, end-stage condition or terminal condition. A designation of health care surrogate appoints an individual to make your health care decisions should you be unable to communicate with your physician. Finally, every one should have a durable power of attorney. This gives your agent the authority to manage your non-trust assets on your behalf.

Who should act as my Successor Trustee?

This is one of the more important questions you can ask when creating a trust. Your successor trustee should have many qualities in order to properly settle your estate. The trustee must be completely trustworthy and honest. There is no better way to cause expense, delay and problems than to appoint an untrustworthy individual. The trustee should be knowledgeable about your heirs and assets. Personal knowledge of your assets and the beneficiaries and their personal situation can be extremely valuable. Other possible qualities include location, financial expertise and someone with the time to properly act as trustee. Finally, the successor should consent to the appointment, be aware of his or her duties and responsibilities and be prepared to act as trustee.

You may also want to consider nominating a professional trustee. If your estate is taxable, your final distributions are complicated or you have possible disgruntled heirs, you may, in

particular, need an independent professional to act as the successor trustee. We will be happy to discuss the many options available in this area.

Does everyone need a Living Trust?

No. While a trust can have significant advantages, not everyone needs one. In our opinion, many people have been “oversold” on its benefits. Avoidance of probate is a worthwhile objective in many cases, but probate may not be the horrible process many believe, especially for small estates with simple distributions. Also, a trust mostly benefits your heirs. You must be willing to make the investment in your estate to save money for your heirs.

Finally, professional advice is needed to properly settle a trust. Florida law sets out some necessary steps that a trustee must follow. Thus, attorney’s fees should be much less than those incurred in probate, but the avoidance of probate does not mean that you avoid all attorney’s fees upon death.

Conclusion.

In conclusion, a revocable living trust is versatile and helpful in many situations and can save your heirs time and money upon your death. We will be glad to discuss your financial situation, the costs involved and other important matters to determine if a trust could benefit your heirs, among other important matters.

LEGAL DISCLAIMER: This handout is provided for informational purposes only. It is not to be considered or construed as rendering legal advice and it does not constitute a binding legal opinion. The reader should consult an experienced estate-planning attorney to review his or her own specific situation.