

REVOCABLE TRUSTS

What are they and why use them?

So what are the best reasons to set up a revocable trust? First, remember the obvious -- a will is only effective upon death, so it is of no use before then.

A revocable trust, in contrast, can be used as a lifetime holding tank to own property strictly for your benefit, but under the control of a trustee -- which can be you if you're willing and able.

The trust should have a provision for a bank or highly trusted individual to take over if you become disabled. In the way, the revocable trust is used for lifetime property management. That's a real plus for some families, although not everyone becomes disabled.

Everyone dies, however, and the revocable trust -- unlike a Will -- can be continued for many years, providing management of both the investment and distribution of trust assets according to your wishes. Do you have a child who is grown but doesn't act like it? Do you have small children who would be beneficiaries of a large life insurance policy if you and your spouse died together?

A revocable trust provides a means of lifetime asset management and post-death control over the investment and distribution of family wealth.

This cannot be realized with a Will alone.

Testamentary versus Revocable Trusts

These common scenarios and almost any other can be properly addressed with a revocable trust, even after you are gone. You can draft the trust document to give a personalized combination of specific instructions, as well as discretion to your trustee, so that money is given to whom you want, when, and for the purposes you specify. There is simply no way to do this with a Will alone.

This is why many Wills provide for the establishment of a trust after death; these are called "testamentary," rather than "living" or "revocable" trusts. Testamentary trusts allow the same kind

of post-death planning, but are created only after the Will itself is brought to probate court. This involves more of a hassle than probating just a Will alone, so it is at least a minor disadvantage. Therefore, if you have decided on a trust at all, there is generally no reason to choose a testamentary over a revocable trust.

Revocable trusts can be revised or amended during your lifetime. And because the trust is revocable and really yours, the IRS does not treat it as a separate tax entity. You include the income and losses of the trust on your own 1040 tax return.

Avoiding the outright distribution of assets to minor children may be the greatest advantage of a revocable trust over a simple Will -- one that does not set up a trust. Many simple Wills call for everything to go to the surviving spouse -- which might be fine, if there is a survivor. The potential problem is that most of these documents name the children as secondary beneficiaries, upon the death of the second parent, or in the event of a simultaneous death.

If both parents die while the children are minors, a guardian must be appointed over the children's inherited assets -- and over the kids themselves. But remember that guardianship usually ends at age 18, and assets must then be turned over to the teenager with no strings attached at all.

Real Estate and Life Insurance

The revocable trust is of great benefit to those with real estate in multiple states. If a deceased person owns real estate directly, that property must pass through the local probate court. Several states mean several different probates. If the decedent's trust has title to the property, however, no probate is necessary, because the trust is not a person and has not died. If the decedent had been serving as his/her own trustee, the designated successor takes over, but ownership of the property is unchanged.

As you plan and ponder Wills and living trusts, be mindful that both these documents cover only property the is owned in a certain way. Please be sure you understand this concept, if nothing else: A Will covers only that property you own in your own name alone and that does not have a beneficiary already designated for it as, for example, a life insurance policy does. A revocable trust only covers property that has been formally transferred and re-titled in the name of the trust.

For example, with life insurance, the money goes to whomever you name, with no obligation to share it, no matter what your Will or trust says. It's the same for all your retirement accounts, 401(k)s and pension plans. Some clients make their policies or retirement accounts payable to "My Estate," in which case the cash does go into your asset pot, to be distributed according to the Will. Likewise, the policy or account can be payable to "My revocable trust," so that the proceeds are available for use according to the terms of the trust.

With joint accounts or a jointly owned house, the surviving joint owner (tenant) takes the decedent's share and becomes 100 percent owner at the moment of his/her death. Again, your Will or living trust has no effect. This issue is a big source of trouble in families where it is not recognized, as when a newly widowed mother, for example, makes everything payable to one of several children, or

puts that child's name on the deed to the house, "for convenience." The mother's Will might express her intent that the property be split among all her children, but there would, in fact, be no legal obligation whatsoever for the child to do so.

A trust is not "the easy way out"

Be realistic; when a person dies, certain matters have to be taken care of by somebody -- paid or not - whether there's a Will, revocable trust, or neither one. Final bills have to be paid, personal business and insurance matters must be concluded. One last income tax and maybe a Maryland estate tax return must be filed, as well as federal estate tax return, if necessary. All sorts of property must be accounted for, secured, divided appropriately, and formally transferred as required.

These chores are unavoidable "grunt work"; they don't disappear just because the decedent had even the best drafted revocable trust. Yet even after sizing up the revocable trust with a dose of reality, it still offers compelling advantages for many families. It provides a means of lifetime asset management and post-death control over the investment and distribution of family wealth without the delay and cost of probate administration.

The information contained in this document is not intended to constitute legal advice. You should contact an attorney to discuss your particular situation to decide which type of trust, if any, is right for you.

We would welcome the opportunity to assist you with all of your estate planning and other legal needs.

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