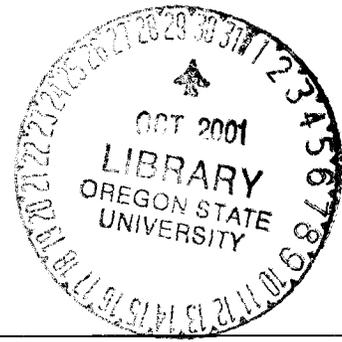


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● Revocable Living Trusts

A.M. Morrow

Revocable living trusts have become increasingly popular and are promoted as the ideal solution for a variety of financial and estate planning objectives. However, a living trust is not the only planning tool and may not be the best planning tool for every situation. The living trust has advantages and disadvantages. Before deciding to have a living trust, be sure it is the best tool for your situation and your objectives.

What is a revocable living trust?

A *revocable living trust* is a trust that is created during your life (living) and which you can change or terminate at any time (revocable). It is a legal arrangement by which you transfer assets to a trustee who manages the assets for the beneficiaries designated in the trust agreement. A living trust is sometimes called an *inter vivos* trust.

The person creating the trust is called the *grantor*, *trustor*, or *settlor*. A trust can be created by more than one person. A couple—*co-grantors*—may set up a trust.

The assets are transferred to the *trustee*, who manages the assets according to the directions in the trust agreement. The trustee may be the person(s) creating the trust, some other person, a corporate entity such as a bank or trust company, or a combination of these.

The *trust agreement* is a document containing instructions to the trustee as to how trust assets are to be invested and managed, who is to receive income from the trust, and what happens to the trust if the person creating the trust becomes incompetent or dies. The trustee can do only what the trust agreement says the trustee can do.

The *beneficiary* or *beneficiaries* named in the trust agreement may be the individual who created the trust, other individuals, or organizations. Most often in a revocable living trust, the grantor is

the beneficiary and after grantor's death either someone else becomes the beneficiary, or the trust terminates and the assets are distributed to the people or organizations named in the trust agreement.

Advantages of a revocable living trust

Financial management in the event of incompetency. Advanced age, serious illness, or an accident may render a person incapable of either supervising his or her investments, or making necessary payments for his or her well-being. A living trust is an effective tool for handling your financial affairs if you become incompetent.

In the trust agreement, you may name yourself as trustee and also name a successor trustee. The successor trustee handles your financial affairs if you are unable to do your own financial management. The trust agreement tells how and who is to determine you are incompetent, and directs how your financial affairs are to be managed by the successor trustee.

A successor trustee does not have the power to make your health care decisions. To appoint someone to make your health care decisions if ever you are unable to speak for yourself, and to give instructions for health care providers to follow if you are unable to direct your health care, you must complete an Oregon Advanced Directive.

Another tool for planning for financial management in the event of incompetency is the Durable Power of Attorney. This is a document giving someone the power to manage your finances in the event that you become incompetent. The Durable Power of Attorney is not a tool to avoid probate.

Avoidance of probate. After death, the probate assets owned by the deceased go through a court process called probate. Probate assets are those owned

solely in your name or your share of tenant-in-common property. Property owned jointly with another person with rights of survivorship, or assets for which you have named beneficiaries (such as life insurance, retirement plan benefits, or assets in a revocable living trust), are not probate assets and therefore are not subject to probate.

Small probate estates can be settled quickly and inexpensively in a *small estates proceeding*. In Oregon, the small estates proceeding may be used when the probate estate consists of personal property valued at not more than \$25,000 and/or real estate valued at not more than \$60,000.

If you have substantial probate assets, a living trust allows your estate to avoid the time and expense of probate. Assets owned by a revocable living trust are non-probate assets. The trustee already has legal title to the trust assets and can transfer title, without probate, to the beneficiaries you named in the trust agreement. In addition to avoiding the time and expense of probate, the use of a living trust reduces the risk of a will contest and provides privacy of your financial affairs at death.

Before deciding on a revocable living trust to avoid probate, consider how much of your property would be subject to probate, the cost of probate, and other methods available for avoiding probate.

Disadvantages of a revocable living trust

Cost of the trust. It costs more and takes more time to set up a living trust than it does to prepare a will. Trustee fees must be paid if you cease to be your own trustee. Before you decide on a

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trust, know the cost of setting up and managing the trust and the estimated cost of distributing trust assets after the grantor's death.

Management more complicated. A revocable living trust makes managing your financial affairs more complicated. If you are the trustee, you must function as a trustee. It will take time and effort learning to act as trustee.

For the trust to work properly, you must transfer title of all your assets to the name of the trustee. As you acquire new assets, you must title them in the trustee's name. If you buy and sell assets frequently, this may become burdensome.

As trustee, you may find it more difficult to deal with stockbrokers, life insurance companies, etc. When transferring assets into the trust, financial institutions—brokerages, mutual funds, life insurance companies, credit union—need to know who has what powers under the trust agreement. Some companies have a form on which you provide them the necessary information, some ask for a summary of the trust agreement, and some require a copy of the entire trust agreement.

Many financial institutions will not loan money to a trust. For example, to refinance your home mortgage when the home is owned by the trust, you might have to transfer the house out of the trust, complete the refinancing, and then transfer the house back into the trust. If you have real estate that is used for collateral on business loans, the additional paper work due to the trust ownership of the property may be cumbersome.

No significant tax advantages. A revocable living trust has no significant tax advantages. Usually, the grantor retains the right to amend the trust, change the beneficiary, change the trustee, and revoke the trust. Therefore, for tax purposes, the grantor has all the rights of ownership. For income tax

purposes, income generated by the trust assets is income to you, the grantor, and is reported on your personal state and federal income tax returns.

For death tax purposes, you own the property in the trust and at your death it is included in your taxable estate. In general, estate taxes are an issue when the value of your estate, or you and your spouse's combined estates, exceeds \$600,000. There are planning techniques to minimize estate taxes.

Setting up a revocable living trust

If you decide to set up a revocable living trust, you must (1) have a trust agreement prepared, (2) transfer your assets from your name to the trustee's name, and (3) have a *pourover will* (described below) prepared.

The trust agreement is a very important document. It requires that you carefully think through how you want your finances managed, how you want income distributed, and who should eventually receive your property.

When you create a living trust, your assets are transferred to the trustee. New real estate deeds are needed to transfer the real estate from the grantor to the trustee. This is true even if you are both the grantor and trustee. Likewise, the titles on bank accounts and stocks need to be changed so they become trust assets.

Most likely you will still have a will. This is sometimes called a pourover will, which says anything you own at death passes to the trust. This is to take care of assets that may not have been transferred to the trust. It is likely that this pourover will will not be probated at your death, because all of your assets were properly titled in the name of the trustee.

Summary

Before establishing a revocable living trust, think about your financial and estate planning objectives. Discuss ways to meet your objectives with estate

planning professionals. There may be several planning alternatives. Know the advantages and disadvantages of alternatives before making a decision.

If you decide a revocable living trust is appropriate for you, consult with an attorney. Costs for setting up the trust vary. Before selecting an attorney, you may want to talk with more than one attorney and compare costs.

If you have a revocable living trust prepared, ask your attorney how new assets—bank accounts, certificates of deposit, mutual funds—should be titled. Be sure as new assets are acquired they are properly titled and become part of the trust assets.

For further reading

Estate Planning: Your Will, EC 1421.

50¢

Estate Planning for Families with Minor Children, FS 313. No charge.

Planning in Advance for Health Care Decisions, EC 1375. 50¢

Talking to Your Family and Doctor About Difficult Health Care Decisions, EC 1386. \$1.25

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