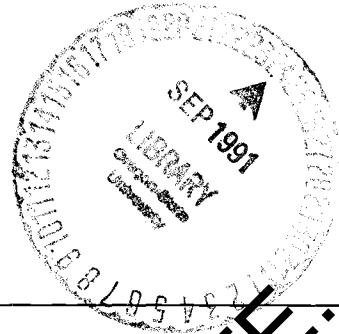


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Analysis



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. The living trust has advantages and disadvantages. Before deciding to have a living trust, you should 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*. 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 creating the trust or some other person, or 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 should 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.

A trust can be created by more than one person. A couple could set up the trust and be co-trustees and co-beneficiaries.

Advantages of a revocable living trust

Management in the event of an *incompetency*. Advanced age, serious illness, or an accident may render a person incapable of either supervising his or her investments and business, 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.¹

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.

Avoidance of probate. After death, the probate assets owned by the deceased go

¹Another tool for planning for incompetency is the Durable Power of Attorney. This is a document giving someone the power to manage assets in the event that you become incompetent. The power of attorney is not a tool to avoid probate.

through a court process called probate. Probate assets are those which are owned solely in your name or your share of tenant-in-common property. Property which is owned jointly with another person with rights of survivorship or assets for which you have named beneficiaries (such as life insurance or retirement plan benefits) 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. 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 the 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, you should consider how much of your property would be subject to probate, the cost of probate, and other methods available for avoiding probate.

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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 also be paid if you cease to be your own trustee. Before you decide on a 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. For the trust to work properly, you must transfer title to all your assets to the name of the trustee. As you acquire new assets, you must also title them in the trustee's name. If you are fairly young and your assets are changing, this may become burdensome.

If you are the trustee, you must function as a trustee. You may find it more difficult to deal with stockbrokers, life insurance companies, etc. You will have to spend time and effort learning to act as trustee. If you are not the trustee, you must be sure the trustee you choose will carry out the trustee's responsibilities.

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.

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 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. For real estate deeds will be 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 will need to be changed so they become trust assets.

Most likely you will still have a will. This is sometimes called a "pourover"

will, and it 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 the pourover will either will not be probated because all of your assets are properly titled in the name of the trustee and are nonprobate property or if a few items are probate property, they will go through a quick and inexpensive small estate proceeding.

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 you understand this.

This publication is not intended to be a substitute for legal advice.

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