# Estate Planning Using The Revocable Living Trust

The revocable living trust can provide significant advantages to you as the basic document of your estate plan. The revocable living trust works best when the grantor(s) also serve as the trustee with an organization, family member or loyal friend as the successor trustee. Instead of owning and managing the property in your own name, the trust owns the property and the trustee/grantor manages the assets as trustee for his own trust. In this way, the grantor still controls all aspects of the property placed in trust. All of the advantages listed below are available to you with the revocable living trust.

## Reduced Probate Cost

The revocable living trust is a separate legal entity that does not die when the grantor dies. Consequently, all of the assets which are in the trust avoid probate. Because the procedure is simplified and less property is subject to probate, the legal fees and other expenses at death will be reduced significantly. The chart below was taken from a recent issue of the Wall Street Journal. In most instances, 90% of the cost of probate could be saved with a revocable living trust.

## The Cost of Probate

California's probate fees - set by law - are about average among states. These fees to settle an estate in court don't include special fees for the sale of assets, tax preparation and litigation.

| ASSETS | MINIMUM FEES |
|---|---|
| $ 200,000 | $ 10,300 |
| 300,000 | 14,300 |
| 400,000 | 18,300 |
| 500,000 | 22,300 |
| 750,000 | 32,300 |
| 1,000,000 | 42,300 |

## Certainty

When a living trust is established and funded during a person's lifetime, it is very difficult to contest at the time of death. Because the decedent has been managing the trust, there is a strong presumption that the trust expresses the individual's desires. This may be compared with a will which must be proven to the court to be the desires of the deceased. This has led to many wills being contested by heirs or hopeful heirs.

## Estate Tax Saving Opportunity

Every individual has an estate tax exemption.  If special provisions are included in the trust, estates larger than the exemption can also avoid taxation at death through a credit shelter trust or portability can be used, which allows you to use the first spouse to die's unified credit at the second spouse's death. Estate tax has been called a voluntary tax: you choose to do your planning or you choose to pay the tax.

## No Time Delay

Because the assets in trust avoid probate, they can often be passed to heirs within days of the grantor's death. This can be compared with the probate process which normally takes nine months to two years, or longer, if the will is contested.

## Privacy

A will filed after death is a matter of public record and can be reviewed by anyone. Not only can the general public find out exactly what a person owned, but heirs can find out who received what from the estate. In contrast, property left in trust and distributed from the trust at the time of death is private and affords a greater possibility of confidentiality.

## Avoids Ancillary Probates

When an individual owns real property in more than one state and the property is left under a will, there must be an ancillary probate held in each of those states to transfer the property. If the property is in a revocable living trust, it continues to be managed by the trustee and the added time delay and expense are avoided.

## Management Of Assets

As an estate grows in complexity, proper management of assets becomes more and more a factor. A living trust allows you to plan in advance for disaster. If the spouse who has been involved with managing the assets dies, then a successor trustee can step in and manage the assets for the benefit of the surviving spouse or children.

## Competency

If a person should become incompetent during his life, the living trust avoids the problems inherent with a court appointed guardian or conservator. In a living trust, a person can specify in advance whom he or she wishes to manage his or her affairs if the person ever becomes disabled or incompetent.

## Unification Of Estate

The trust can be the beneficiary of life insurance and employee benefits, as well as the owner of the grantor's property. This insures that all the assets in the estate will be administered as a whole under the provisions included in the trust.

## Mobility

Another advantage of the living trust is its mobility. When a person moves from one state to another, his will is interpreted in accordance with the law of his state of residence. This means wills often must be changed each time a person moves. The trustee for a revocable living trust, however, can live in a different state from the grantor so a person can take advantage of the most favorable state laws.

## Allows For Growth

The funded revocable living trust is most common in larger estates; however, it does have benefits for smaller estates as well. One drawback of the trust is the higher cost of the initial legal document. This can be offset because the trust will rarely need updating as your estate grows. Amending the revocable living trust is also much simpler than amending a will and often can be done without legal expense. A will, on the other hand, may need to be redrafted every few years and is a much more formal document.

## Protection Of Estate

In most states, assets placed in a revocable living trust are reachable by the creditors of the grantor during his or her life and before the estate has been settled after death. The trust may also be held liable for taxes owed by the grantor.

There is a solution that many couples have chosen which can help when one spouse has a much higher degree of liability than the other. By setting up a "His and Hers" revocable living trust, assets can be segregated formally and placed in one spouse's trust beyond the reach of the other spouse's creditors. Care must be taken to substantiate that the primary purpose was not for the avoidance of creditors. Again, this is a complicated area which should be discussed further with competent, legal counsel. Special provisions can also be included which protect part of the estate for the well spouse when the other has extensive medical costs.

## Income Tax Consequences

There isn't an income tax benefit for placing your assets in a revocable living trust. Because the trust is revocable, the grantor is treated as the owner of the assets for income tax purposes regardless of who benefits. The good news is that, if the grantor is the trustee or co-trustee, the trust does not have to file a separate tax return.

## Charitable Interests

A charitable bequest in your revocable living trust can be a very appropriate way to provide for your family and the charities of your choice. There are four primary ways to include a charitable bequest in your trust:

1. **A General Bequest** - A general bequest may provide a specific sum of money or a designated percentage of your estate to go to a charity at your death. Specific items of property could also be used.

2. **A Residual Clause** - A residual clause may designate the remainder of your estate to go to charity after the needs of your loved ones have been met.

3. **A Contingent Bequest** - A contingent bequest enables you to name a charity as beneficiary should none of your heirs survive.

4. **A Bequest Providing An Income** - A bequest can be structured to provide an income for a loved one for a term of years or their lifetime with the remainder going to charity.