

Revocable Living Trusts: What are they and do I need one?

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A revocable living trust is an estate planning document that dictates to whom and how much of your assets are distributed during your life and at your death. You would be the Grantor or Settlor of the trust, as you are the one providing the assets that will fund the trust. It is also likely that you would be the Trustee of the trust during your life. You should decide on Successor Trustees to fill your role when you are gone. It is the Trustee's job to ensure that the assets of the trust are held and distributed as outlined by the trust. Another essential component of a trust is the trust property. Of course, a trust serves no function if it is not controlling any assets. Many people think they have done all they need to do to set up their trust once they have signed the document. Alas, all that trouble is for naught if there are never any assets transferred to the name of the trust.

One of the best features of a revocable living trust is that it is revocable. This means that the language of the document can be changed at any time, or the Grantor can decide to revoke (i.e. cancel it) entirely. The document will only become irrevocable (i.e. unchangeable) when the Grantor dies. During the Grantor's life the trust will use the Grantor's social security number as its tax identification number and there will be no adverse income tax consequences as the income earned on the assets in the trust will be treated no differently than if the assets were still in the name of the Grantor. At death, however, when the trust becomes irrevocable, a new tax identification number will need to be obtained and the income earned by the trust will be subject to trust income tax rates.

It is important to keep in mind that a revocable living trust does not replace a Will. Even if someone is intent on transferring all of his or her assets to the trust during his or her life, there are bound to be forgotten or after-acquired assets that never make their way into the trust before death. The Will thus acts as a "catch all", directing all assets in the name of the individual to pass to the trust at his or her death. This is called a "pour over Will" as all of the individual's assets are "poured over" into the trust at his or her death. Sometimes people choose not to fund the trust until after death. In this instance, all of the individual's assets pass from his or her name to the estate and then on to the trust.

Many people like the idea of a revocable living trust because they think that it will allow them to avoid probate entirely. This is not so. First, more often than not, one or more assets are forgotten and not titled in the name of the trust during life. The probate process is then necessary to move the assets from the name of the decedent to the name of the trust, and ultimately, the beneficiaries of the trust. Second, even if the probate process is not necessary to transfer title of assets, a Connecticut estate tax return (whether it be a taxable or nontaxable return) must be filed with the probate court. At that time the probate court will assess its fee. Some are concerned about the severity of the fee, but most will find that it is quite modest when compared to the value of the entire estate. Overall, the probate process is nothing to be feared. In fact, the same culprit that can prolong a probate proceeding can also prolong the administration of a trust, and that is the sale of real estate. Further, the probate court can act as an overseer in the handling and distribution of the assets in an estate, much more so than with the administration of a trust.

Revocable living trusts are most useful when an individual owns property in two or more states. In establishing a revocable living trust and transferring one's real estate into the trust, he or she will avoid the need to have an ancillary probate proceeding opened in the state in which he or she has his or her second or third residence. This can save a fair amount of time and expense for one's beneficiaries.

As with any estate planning document, what works for one may not work for all. If you are interested in finding out if a revocable living trust makes sense for you, contact Attorney Paula Boa Sousa at (203) 744-2150.