

What is a revocable living trust?

A revocable living trust is usually a written document signed by the person (the "trustor") creating the trust naming a person to manage assets to be held in the trust (the "trustee") for a "beneficiary" on the terms and for the purposes the trustor specifies. A living revocable trust is revocable at any time during the trustor's lifetime if the trustor is competent.

Revocable living trusts are usually created by a declaration of the owner of the property that the owner holds some property or assets as trustee, or by a transfer of these assets by the owner during the owner's lifetime in trust to the trustee (called "living trusts") or by a transfer property by the owner by will or by other instrument taking effect upon the death of the owner (called "testamentary trusts") to another person as trustee. All trusts must be funded by transferring the trust assets to the trustee of the trust to make your trust effective.

You can be the initial trustee of your revocable living trust. If you cannot act as trustee, a person whom you appoint can then act as successor trustee. The successor trustee could be your spouse who could also be your co trustee. If you or your spouse become incapacitated, the successor's trustee assumes responsibility to manage your trust without any court action. At your death, the then trustee inventories your assets, pays your debts and taxes and your assets distributed as you direct in the trust. The trustee functions like an executor would in a probate of your estate but there is no probate action or court supervision.

These are many types of trusts and some of the trusts commonly used in estate planning are living trust and testamentary trusts. There are also a irrevocable life insurance trusts which are designed to hold and then distribute of life insurance proceeds in order remove the proceeds from your gross estate and eliminate estate taxes on the policies' proceeds.

Why should you consider a living trust?

In order to figure out if a trust is for you, you have to understand what a trust does. A living trust is much like a will in that both instruments ensure your estate is distributed to your beneficiaries in the manner you choose, appoint managers (called trustees and executors) and are revocable. However, unlike a will, a living trust:

- avoids probate
- is confidential
- controls in and out of state assets
- controls assets even if you become incapacitated.
- minimizes taxes and expenses

Like anything else, a living trust can appear to be complicated at first but it is quite simple. The trust will own your property and you will own the trust. When you create a living trust, you transfer your assets to your trust which you control so there is no danger of losing the property you placed in your trust. Further, since you don't own the property

you transferred to the trust, there is no property for the courts to probate after you die. A revocable living trust avoids the probate of assets located out of state. A trust also allows you to keep control of your assets while you are living even if you become incapacitated through a successor trustee you appoint. Following your death, your desires for the distribution of the trust are carried out by person you designate as your successor trustee and no probate is required for this change of trustees.

A surviving spouse can be put in charge of the trust, and to be able to use the trust for the spouse's own health, education, maintenance and support, as well as to be able to make payments to others.

A so-called "living trust" is made during your life and it can be fully amendable or revocable prior to the death of the first spouse to die. It will allow your heirs to avoid probating your assets and allow you to manage these assets in much the same manner as you currently has been. Your management duties and authority as Trustees will be essentially the same as they were before you establish the Trust. It is not necessary to obtain any special tax I.D. numbers or keep special types of accounting records other than careful records such as a prudent person would generally maintain regarding the management of his or her property. You are not required to file any special tax forms.

Since your date of death is unknown, all these confusing tax rules mean you should assume the most likely worse case scenario that your estate taxes and, if estate taxes may be reduced or eliminated by a trust, you should consider such a trust. If there are no potential estate taxes to reduce, you need to determine whether it makes sense to put your home in trust to avoid probate or consider the other alternatives discussed on this site.

What does a trust cost?

Obviously, there are legal expenses to create a trust but, compared to the possible tax and probate costs, it can be very cost and time effective for the heirs.

The cost of having a trust drawn up professionally usually depends on the size and complexity of your estate. More comprehensive estate planning and preparation of other documents are usually charged at an hourly rate. However, if you have a simple estate, the cost may be modest, and you will have the benefit of professional assistance to ensure that your trust meets the standards for validity with one of our TRUST packages.

Call to make a complimentary No-Obligation 30 Minute initial estate planning consultation. Then, download and complete the worksheet which will provide the information needed for our initial consultation.

Should everyone have a living trust?

The more there is a risk of probate or estate taxes for your estate, the more likely you need a trust. However, living trusts are not court supervised and a trustee who breaches your trust may be able to cause more harm as a result. A trust will cost more than a will but the difference in cost may be usually be insignificant if a probate is required.