

DO YOU NEED A REVOCABLE LIVING TRUST?

Exploring key concepts for this common estate planning tool
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I recently had a conversation with someone who had been told by a relative that they “need” a Revocable Living Trust (“RLT”). This person wanted to gather my opinion – and is often the case in this business (and life in general), the answer was “it depends.” We then went into the ins-and-outs of what a RLT is and the advantages and disadvantages that it presents. With this conversation fresh on my mind, I thought it might be a good topic to address in this month’s financial planning briefing.

Before we go too far, it’s important to note that we are not attorneys and cannot provide legal advice. What we’re doing here is introducing a key estate planning topic in the context of financial planning, and we encourage you to reach out to your legal professional for further guidance as it relates to your own circumstances. With that important disclaimer aside, let’s now dig in.

A Revocable Living Trust is one of two traditional ways that you can choose to anchor your estate plan, the other being a Last Will and Testament (“Will”). Hopefully all of you have one or both of these in place, though we know there are some that do not. Regardless, it’s important to know the difference, whether you are just getting docs put in place or are reviewing docs that have collected dust after being drafted a decade ago.

To help us understand the benefits and drawbacks, let’s first try to understand what it is by breaking down the name of this type of trust:



Revocable – This refers to the fact that you can place assets into the trust and remove them at any time. You can also choose to terminate the trust at your discretion. Because of these powers, the trust remains a part of your estate and you do not receive any special creditor or liability protection for assets within the trust (in contrast to an “Irrevocable Trust” where such protections may be afforded to you). Note that a revocable trust becomes irrevocable upon the death of the grantors (whether that be an individual or both members of a couple).





Living - This refers to the fact that the trust and all its contents are still considered “yours” for tax purposes and you will continue to pay taxes on these assets under your Social Security number.



Trust - This is an intimidating word to many, as their mind wanders to images of trust fund babies and tax avoidance for the ultra-wealthy. In reality, a trust can and is used by a much wider audience and simply refers to a legal arrangement/structure for holding property. While some trusts are complex and require separate tax returns, RLTs are generally straightforward and report under your own existing tax ID, as noted above.

So why are these utilized? The three main advantages of a RLT are:

1. Avoidance of probate
2. Privacy
3. Protection for you

Let's explore each of these in further detail.

Avoidance of probate

1

When your assets pass via an RLT at your death, your heirs can avoid the hassle and expense of probate. Here in Washington, probate is not costly compared to most other states, though some court and legal fees are still incurred. In addition, the time required to complete this process delays the distribution of assets to the intended beneficiaries. By contrast, a Will must pass through probate. For those of you residing in states like California, a RLT is essentially a “must-have,” given CA’s arduous and expensive probate process. We should also note that a trust is particularly beneficial if you own property in multiple states, as you would otherwise have to open probate in each state where property is held.

Privacy

2

When a Will is sent through probate, it not only takes time and money, it also becomes a public record. This means that all details of your estate plan and financial picture are there for inquiring eyes to peruse. On the contrary, the details of your RLT do not become public record given that the trust is not put through probate. Instead, assets simply pass in accordance with the terms of the trust, much like beneficiary designations on your retirement accounts and life insurance policies. Your designated trustee handles distributions in accordance with the terms of the trust. Reasons for wanting privacy vary, but we do find this is an appealing feature as we talk through the pros and cons with clients.

Protection for you

3

In reality, a RLT does not provide liability or creditor protection, much to the surprise (and chagrin) of many. This is because of the trust's revocable nature. However, it does provide protection by way of the following:

1. Ensuring your wishes are clearly stated and followed in the event of incapacitation or death.
2. Providing you flexibility to adjust these wishes as your circumstances evolve.
3. Providing privacy that helps protect the beneficiaries of your trust, who are typically those you care most about.

Back to the original question...

So do you “need” a RLT? If you are in a State like California or if you own property in multiple states, the likely answer is YES. If you are here in Washington, we come back to “it depends.” However, it does not depend on how rich you are or how complex your potential estate is. Instead, it depends on your desire for privacy and efficiency for your heirs as they administer your estate. For some, this is critical. For others, it really is not a concern. Our general recommendation is to have one, especially if you have not yet started your estate planning process and will soon be drafting all new docs. If you do have a well-considered plan already in place that centers around a Will, that's fine. Perhaps just revisit the idea of a RLT the next time you refresh your estate plan with your attorney.

Frequently Asked Questions

Does it cost more to have a RLT?

Some attorneys do not charge anything extra to include a RLT as part of your estate planning package. We prefer these attorneys, as this is a centerpiece document that really requires no more effort on their part than the drafting of a well-considered Will. On an ongoing basis, a RLT does not cost you one additional penny relative to not having one. You simply put your accounts in the name of the trust rather than your own name and then conduct business as usual. That said, you may encounter some nominal fees to transfer assets like your home into the trust, but this is a one-off expense.

Can I have a Will and a RLT?

Yes. In fact, many well-considered estate plans do contain both. In this case, the Will is typically structured as a “pour-over” Will. This has nothing to do with fancy coffee preparation techniques, but instead refers to the fact the Will simply states that any assets that are not in the name of the trust at the time of death automatically “pour over” into the trust at that time. This Will does not specify the ultimate beneficiaries, as that job is left to the trust (the named beneficiary of the pour-over Will). Through this, you maintain the privacy benefits afforded to the RLT, though you do still have to send the Will through probate.

You can also have a more detailed Will alongside a RLT, though this is less advisable in most cases. Why would you have both? The reality is that a RLT is useless if it is not “funded” (meaning you don’t place assets into it). The “pour over” Will, if you have one, will fund the trust upon death. However, you could theoretically decide to leave some assets to your heirs via a Will while dictating other aspects of your estate via the trust. This, in our opinion, is overkill and we rarely, if ever, see it...but it is possible, and you won’t get penalized in any way if this is your reality. You just may want to clean up this situation the next time you visit with your attorney.

Is funding a RLT difficult?

No. As alluded to above, you simply open an account in the name of the RLT and move the desired assets into it. This typically includes any non-retirement investment accounts, real estate, and possibly checking/savings accounts. You can even purchase cars and other assets in the name of the trust. Retirement accounts are typically left separate, as they pass through beneficiary designations anyway and typically receive the most favorable tax treatment for your heirs when left outside a trust.

Is there anything else I should know?

If you move insured assets into the name of the trust, be sure to notify your insurance provider. They may need or want to name the trust as the insured party or as an additional insured. We’ll leave further details on this to the insurance professionals. Speaking of professionals, we’ll provide one last reminder that this piece is intended as an intro to this important concept and should not be relied upon as legal advice. Consult your legal professional for further guidance as it relates to your needs.

Let’s chat!

Want to learn more about this or estate planning in general? Need a referral to a good estate planning attorney for your needs? Want to talk about something totally different from estate planning (we’d certainly understand!). Contact us and we’ll be glad to help in any way we can... but just remember, we’re not attorneys :)

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