

Revocable Living Trusts

You may have heard about revocable living trusts (“RLTs”) for estate planning purposes, but are not sure what this type of trust is. RLTs are a very common estate planning technique used for individuals and families that may have certain concerns. As the name implies, the trust can be revoked, amended or modified by you at any time during your life. Not everyone needs a revocable trust, but it may be helpful in your overall estate plan. Let’s review what they are.

In a revocable living trust, you are the grantor and the initial trustee of the trust, so you control the trust during your life. “Grantor” is the term used for the person creating the trust. The “trustee” is the person or financial institution designated to carry out the terms of the trust. Upon your death or incapacity, a successor trustee that you provide for in the trust document would step in to manage the trust.

The trust is funded by your transfer of your assets into the trust so that the trust is the legal owner of the assets. Remember, you retain the power as trustee to control those assets, as well as the power to amend or revoke the trust. Many people view a RLT as a substitute for a Last Will and Testament (“Will”). However, when you create a RLT, you should also execute a “pour-over Will”, which is basically a Will that leaves your assets that are not already owned by the RLT to the RLT so that the trust document will control the disposition of all your assets upon your death. It is important to note that RLTs do not reduce your estate tax exposure because all the assets owned by the trust are includible in your gross estate. After all, you control the trust and the trust remains revocable until your death, at which time it becomes irrevocable.

Here are some ways that a revocable trust may be beneficial for you.

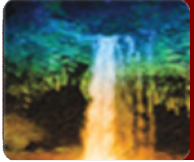
Probate Avoidance

The main goal when creating a RLT is often to avoid probate. Under certain circumstances and in some states, probating a Will can be a costly and timely process. So, avoiding probate at your death can save money and headaches for your estate and family. Probate is avoided for the assets owned by a RLT because the trust document will determine how trust assets will be distributed, not a Will.

A revocable trust is not the only way to avoid probate for many types of assets, so you may want to consider other options as well. For example, a joint bank account, transfer-on-death account, and accounts with beneficiary designations would avoid probate, assuming that the designated beneficiary survives the owner. But not all types of assets allow for these automatic transfers upon death, such as real estate that you have complete ownership of at your death. Also, if you own real estate in more than one state, ancillary probate may need to be completed in the non-domiciliary state to determine how that property will be distributed, generally according to the terms of your Will. This can lead to a probate proceeding in two or more states (i.e., your home state and other states where you own real estate). Creating a RLT and transferring real property to the trust may be less expensive than ancillary probate in another state (e.g., fees for court filings, attorneys, appraisals, etc.).

Privacy

When a Will is filed with the probate court, the Will becomes public record. Revocable trusts, however, are private documents and remain private upon the grantor’s death. For example, there has been a lot of media attention around celebrity deaths and their Wills becoming public information, such as James Gandolfini and Philip Seymour Hoffman. Even if you are not a public figure, you



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may still want some privacy and not want the world to know your business. If most or all of your assets are held in a RLT, there will be little information for strangers to discover by looking through the probate court file.

Incapacity

A RLT may have a co-trustee or provide for a successor trustee upon the grantor's incapacity. The co-trustee or successor trustee can manage your assets during your incapacity without having to get court approval because your assets are held in the trust and the trustee has the power to manage the trust assets. The trust is managed for your benefit during your incapacity, so you would still get the benefits of the trust assets. Basically, the trust holds your assets during your life and gives another trustee seamless access to assets should you become too ill to manage your finances. This is a great feature for those who may own commercial real estate or a closely held business.

Note that a durable financial power of attorney can provide someone of your choosing with the power to manage your personal assets upon your incapacity. But your attorney may advise you that a funded revocable trust may be a better option for you. However, even if you have a revocable trust, you should also have a durable financial power of

attorney, which may be required for other purposes, such as dealing with life insurance policies, retirement accounts, and other assets that may not be owned by your trust.

Special Needs Children

For parents who have a special needs child, a revocable trust can be drafted to contain the necessary provisions to create a special needs trust to care for the child. A child who receives government benefits could be disqualified from getting benefits if the child is left an inheritance. But, with a special needs trust, assets can be left to a special needs child in trust without disqualifying the child from government benefits. Note that a Will can also create a special needs trust, but remember that the Will must be probated before the trust is established and funded.

As you can see, a RLT serves many useful estate planning purposes. You should consult with an attorney to discuss if a revocable living trust is something that should be part of your estate plan. You should also make sure that any trusts you create are integrated into your overall estate plan.

Please consult with your Guardian Financial Representative if you have any questions concerning this document.

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