



Is a Revocable Living Trust Right for You?

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We find that clients often have little understanding about their estate planning options, especially as they relate to the pros and cons of setting up a trust. The most common misunderstanding is that trusts are really only for very wealthy folks. While there are many kinds of trusts, a revocable living trust (RLT) is one of the commonly recommended estate planning tools.

Under the right circumstances, an RLT can be valuable even if you are not wealthy. In this Brief, we aim to help you decide if an RLT is right for you.

What is a Revocable Living Trust (RLT)?

A revocable living trust is a legal arrangement you make for the management and distribution of your property. It is usually funded during your lifetime, but it enables you to maintain full control and ownership of the assets in the trust while you are living. You can keep any or all of the income, act as trustee, change the trust's provisions, or terminate the trust. Assets in the trust are controlled by the trust agreement and are not subject to probate proceedings.

It is important to note that a revocable living trust is not a substitute for having a will. A will is still necessary because it is very unlikely that you will have all of your property in a living trust at the time of your death. As such, a will is the only way that you can designate a beneficiary for that property.

Reasons to Consider a Revocable Living Trust

1. **You have minor children.** Any assets earmarked for minor children that are not in a trust will be placed in a court-supervised guardianship for the benefit of the minor until the child reaches 18. With a trust, however, the trustee will be able to accept the funds instead of a court-supervised guardian. In addition, and very importantly, with a trust the parents can dictate when the children will receive their inheritance, such as age 25 or 30, instead of age 18. The other advantage is that having the RLT is much more efficient. At Artemis, we recently completed a court audit of assets owned by minor children that were not in a trust. The process was costly (in terms of attorney fees) and time-consuming.
2. **You want a disability plan.** With a revocable living trust, you can build disability planning right into the trust. The trust can specify how you should be taken care of if you become disabled and who will be allowed to manage your property. Once again, this will avoid an often-costly court-supervised guardianship.
3. **You want to avoid probate.** Probate is a court-supervised process for transferring your property when you die. A revocable living trust avoids the probate process because you collect your assets and transfer them to the trust before you die. If you fail to do so, you will not avoid probate. Moreover, while it is more expensive to set up a trust than to establish a will, this cost should be compared to the costs



your beneficiaries will incur to probate your estate. In Massachusetts, probate costs are typically 3% to 5% of the total gross estate. (An RTL is not the only way to avoid probate. For example, probate does not apply to any asset that already has a designated beneficiary. Life insurance policies, annuity contracts, retirement benefits and jointly-owned property all fall into this category.)

4. **You want privacy.** The other issue with probate is that it is a court-supervised process, so it's public. Probate requires the filing of all probate documents, including one's will, with the local probate court. The will is part of the public court record that anyone can read -- and so can examine the list of your beneficiaries and assets, as well as the breakdown of who's getting what, when and how. If you want to keep this information private — perhaps to avoid conflict amongst beneficiaries — a trust's privacy can reduce the potential for problems.
5. **You own a business.** If the living trust holds your business interest, your successor trustee can continue to manage the business if you become incapacitated or die. This is not true with a will, since a personal representative will have to be appointed by the probate court, which can take several weeks or even several months to accomplish.
6. **Time is of the essence.** Because the assets in the trust do not have to go through a court-supervised process, the trustee can deliver the assets to the beneficiaries without delay.
7. **You own real estate or other assets in more than one state.** If you own any assets outside of your state of domicile, then an ancillary probate will be required in the state where the assets are located. However, if that real estate is held in a living trust rather than your own name at

the time of your death, then an ancillary probate of those assets will not be required.

What a Living Trust Doesn't Accomplish

1. **Asset protection.** Revocable living trusts do not provide any form of asset protection during the grantor's lifetime since the grantor is still considered to be the owner. Even if the trust were irrevocable, creditors would still be able to reach the property if the debt was incurred prior to the property being transferred to the trust.
2. **Estate tax reduction.** A revocable living trust does not help to reduce estate taxes *per se*. Assets in a revocable living trust will be part of your taxable estate upon your death. This is because with a revocable living trust, you continue to own and have full control of your assets while you are alive. However, a living trust can be used as a vehicle to take advantage of certain estate tax-saving techniques available under current estate tax laws. Examples include the Generation-Skipping Trust to take advantage of the Generation Skipping Tax exemption, and the Q-Tip Trust to take advantage of the unlimited marital deduction while preserving the right to pass property on to children from a previous marriage.



Some of the above goals can also be accomplished by using a so-called Testamentary Trust (i.e., a trust that is specified in one's will but does not get formed until after death), but a living trust is generally a better planning tool because it brings all of other the benefits discussed earlier.

Bottom Line

The common myth that a revocable living trust is only for very wealthy people is not true. A revocable living trust should be a part of many folks' estate plan.

Moreover, RLTs are not overly expensive to set up and virtually costless to maintain. See an experienced estate attorney if you think a trust should be part of your plan, or call us for a referral if you don't already have an attorney who can help you.

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