

# **The Revocable Trust: An Overview**

## **What is a Revocable Trust?**

A Revocable Trust is a trust that you create during your lifetime. Other names for a Revocable Trust include “Intervivos Trust” or “Living Trust.” The trust is revocable so it may be changed or terminated at your wish, as long as you are competent at the time you make the changes.

## **How does my Revocable Trust function?**

During your lifetime, you have access to all of the assets in the trust and may do whatever you want with those assets. The assets are titled in the name of the trust, but you are the ultimate owner of the assets. Upon your incapacity, your Successor Trustee distributes any assets to you that you request or require. Upon your death, the Revocable Trust will be distributed pursuant to your distribution plan.

## **What are the benefits of a Revocable Trust?**

The use of a Revocable Trust allows property to be managed uninterrupted by incapacity. If you became incompetent, your Successor Trustee will be able to step in and manage all your financial affairs for any items that are in the trust. By doing this planning you can avoid the painful and very expensive process of having a guardian appointed. Another major benefit of the Revocable Trust is that it avoids probate. The Revocable Trust acts similarly to a Will in that the trust assets are distributed at your death according to your wishes. However, a Will is subject to the probate process at the county court. These probates are not private, can be lengthy, and the fees are becoming increasingly more expensive.

Please note that by creating a Revocable Trust you will not avoid all costs, as you will still have to pay legal fees for the drafting of the trust and your trust will need to pay some expenses related to transferring assets, filing tax returns, etc. after you die. However, the use of the trust will allow you to avoid much of the time delays and aggravations that are associated with the probate process. This is especially important if you have property in multiple states as a Revocable Trust allows you to avoid probate in those states as well. Finally, some people like that a Revocable Trust provides privacy versus the probate process.

## **Are there disadvantages to a Revocable Trust?**

One of the disadvantages of the Revocable Trust is that it is more expensive to set up on the front-end. The Revocable Trust also needs upkeep. To make sure the Revocable Trust works appropriately, the assets need to be retitled into the name of your trust. As you change accounts or acquire additional assets, you will need to make sure those assets are titled appropriately otherwise you may lose some of the benefits of having a Revocable Trust.

## **How important is the titling of property with respect to my plan?**

Retitling property into the trust is a very important part of your estate plan. Without retitling the assets properly into the trust, you will not be able to avoid probate. In addition, if property

is not titled correctly your estate plan may not function correctly. For example, if you intend for a certain account to be distributed through the trust and it was still owned in joint name when you pass away, that property will not be distributed pursuant to the trust and will instead pass directly to the joint owner of the account.

### **What are the tax consequences of having a Revocable Trust?**

During your lifetime, all of the items that you place into the trust will be taxed using your social security number. Therefore, you will not see any change at all tax wise. You will report all income on your normal income tax return as it was before you set up the trust. Also, note the trust will not have an effect on estate or gift taxes because when you pass away any assets that are in the Revocable Trust will be considered in your taxable estate for estate tax purposes. However, proper planning with your Revocable Trust will allow you to minimize your estate taxes especially between a married couple taking advantage of the exemptions allowed by law.

### **If I want to change or revoke the Revocable Trust, how do I go about doing this?**

Generally to amend or change your Revocable Trust or to revoke it you must have proper papers prepared to reflect any changes. If you decide that you want to change or revoke your trust you should get in touch with your attorney in order to make the changes or to properly revoke it.

### **What happens to my Revocable Trust upon my death?**

Upon your death, your trust will become irrevocable and can no longer be amended or changed. Your Successor Trustee takes over and distributes the assets according to your particular estate plan. Please note the trust may also be responsible for some expenses, such as insuring that final tax returns are prepared and, upon distribution of the trust, that a final accounting has been done. It is a good idea for the Trustee to contact your attorney to ensure that all things are properly concluded at your death.

### **If I have a Revocable Trust, do I still need other estate planning documents?**

A Revocable Trust is only a part of your estate plan. You will still need a Will, which is generally a Pour-Over Will that acts as a safety net to pour anything that was not properly titled into the trust. A Power of Attorney is still a very important document as well. A Power of Attorney allows continued planning if you become incapacitated, especially for funding the trust if it is only partially funded when you become incapacitated. Finally, documents for health care decisions such as the Health Care Power of Attorney and HIPAA Authorizations are still important, as they are needed in to handle your health care type decisions.

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