



Revocable Living Trusts

Many times I have had clients come into my office with a Will based estate plan, when a Revocable Living Trust would be more appropriate. The reasons for this are many, but often it is because they just did not know about the option of a Revocable Living Trust and the benefits of this type of Trust.

Congratulations. If you are reading this you are likely trying to figure out what estate plan is best for you and your loved ones. I have created this article specifically to help you do that. In this handout I will be discussing what a Revocable Living Trust (hereinafter referred to as “RLT” or “Trust”) is, the benefits of using an RLT, who should consider using an RLT and some other important information about RLT's. Please note that this is not a comprehensive guide to Trusts. In fact there are volumes of books dedicated to that. Here I am focusing on what I (and many of my clients) believe to be the most important things that you may want to consider to determine if you should use a Revocable Living Trust in your estate plan.

What is a Revocable Living Trust?

I have heard and read many different descriptions of what a Revocable Living Trust is - such as "a Will Substitute", "a Power of Attorney that still works after you die", "it's like your own personal corporation", and many others. While all of these describe some aspect, they don't exactly fit.

I personally like to keep things simple (the “KISS” principle as my mother would say) so I often describe it as a bucket to hold your “stuff” (i.e. your assets) with a set of instructions for how you want your stuff managed if you are not able to do it yourself (because of disability or death).

Every trust has at least three distinct positions. The Grantor or Settlor is the person who sets up the trust. The Trustee is the person who manages the trust. The beneficiary is the person who the trust assets are meant to benefit. When most people set up an RLT, they usually occupy all three positions. If they become disabled, often another will replace them as Trustee, but they remain as the beneficiary. After they die, the Trust indicates who the beneficiary of the Trust is after the Grantor's death.



What are the some of the benefits of using a Revocable Living Trust?

Probate Avoidance. One of the biggest benefits of using an RLT is the ability to avoid probate. Probate is the process after you pass away of "proving" your Will and appointing an Executor whose job is to collect assets, pay your valid bills, prepare and file reports and taxes, and ultimately distribute the remaining balance of your assets to your named beneficiaries. Probate is supervised by the Surrogate's Court and in many cases can be costly and time consuming. (In New York an estate must remain open for a minimum of seven (7) months beginning not with your death, but instead from when the Executor is appointed by the Court.) Using a Revocable Living Trust can often reduce the time and expense associated with Probate.

Asset Management. With an RLT, you get to write the rules. You can decide how you want your disability to be determined. For example, do you want that to be decided by your primary physician, two independent physicians, or maybe even a private determination by your closest family. You also get to write the instructions for how you want your things to be managed while you are disabled as well as who the trust will benefit (i.e. - can assets be used just for you, for you and your spouse, dependent children or parents, etc.).

Privacy. In New York, Probate is not private. Although I don't see it happen often, anyone can go to the courthouse and get copies of the paperwork filed with the Court. This paperwork contains detailed information about you and your family, as well as information on your assets. If you have a Revocable Living Trust and it is fully funded, by avoiding Probate you can help prevent this information from becoming public.

Harder to Contest than a Will. Using a Revocable Living Trust can also make it harder to contest (or overturn) your wishes than if you use a Will. The reason for this is twofold. When you have to Probate a Will, your Executor has to notify certain family members and they must sign Waiver and Consent forms (basically stating they have seen the Will and are not contesting it or who is nominated as your Executor). With a Trust, it shifts the burden. The Trustee only needs to deal directly with the beneficiaries meaning if someone wants to contest the Trust, they will have to "drag" it into Court. Also, with a Trust, you don't just sign it and set it aside until you die, you act on it now and are using it every time you sign a check or take a similar action.

Uninterrupted Management of Assets. With a Trust, in case of either disability or death, there is often very little or no interruption of the management of your assets. With disability, if you do not have proper documents in place your family may have to bring a



guardianship proceeding to appoint someone to manage your assets if you are not able to yourself. This can often take weeks or longer to get in place. Also, after you pass away, it can often take weeks or longer just to get the Executor appointed so he or she can act.

With a Trust depending upon how you set up the trust there may be no delay at all for someone to manage the Trust once you are unable. Even if not set up to have no delay, it often only takes hours to have the Successor Trustee appointed to continue the Trust management.

No Separate Tax Return Required. With a Revocable Living Trust, while the Grantor (i.e. you) is living, there is no need for separate tax returns. Any income is simply reported on your personal income tax returns (1040 and NYS IT-201).

You Can Change It. With a Revocable Living Trust you can change or amend it any time you like. As long as you are alive and mentally competent you can change your Trust and any of its provisions. You can change the beneficiaries, you can change who the Trustee is, you can basically change anything you want any time you want. You could even revoke (or cancel) the Trust altogether if you wanted to.

Better Protection than a Power of Attorney. You may have heard about banks or other financial institutions not accepting a Power of Attorney because of how old it was (or that may have even happened to you). With the Trust, the Trust is the legal owner of the property in it and as such you won't run into that problem. Also, you can be more flexible with a Trust than you can with a Power of Attorney. For example, only the Trustee can sign checks and manage the Trust property. If you start to have diminished mental capacity, a Trust can have provisions that can better protect you than what can be done with a Power of Attorney form.

Avoid Ancillary Probate. If you own real estate or assets in more than one state, you may have to do an Ancillary Probate proceeding. You often have to do a normal Probate in the state you reside in and an Ancillary Probate in any other state that you own property in.

This generally means additional Court costs and Attorney fees. If you have a Revocable Living Trust, you can avoid probate in all of the states by placing the property in your Trust.

Who Should Consider Using a Revocable Living Trust?

A Revocable Living Trust is not for everyone as everyone has different goals and desires when it comes to their estate plan. Following however are some of the more common



triggers that may lead you to wanting to use a Trust based estate plan rather than a Will based estate plan:

Larger Estates (to reduce time and costs associated with Probate).

If you own property in more than one state (avoid the need for Ancillary Probate).

If you have limited or no immediate family.

If you are treating heirs differently or disinheriting someone.

If you have minor or disabled beneficiaries.

If you are concerned over your privacy (Probate records are public).

If you own illiquid assets or a business.

If you own assets that could fluctuate in value over a short period of time.

If you have a family history of certain diseases (like Alzheimer's or Dementia).

Other Considerations for Revocable Living Trusts

Cost. One of the biggest “knocks” I hear about Trusts is that they cost more. While it is true that the initial cost for a Revocable Living Trust is generally more than that of a Will, that only looks at the upfront cost of the documents. Although the upfront cost is more of an investment, often the overall cost of a Trust is less, because most comparisons don't factor in the higher cost of Probate and administration of an estate after death. At our office we charge half or less to do a Trust administration versus a Probate Administration.

Funding. If you set up a Revocable Living Trust, you need to make sure you fund it. Funding is the process of transferring your assets from your name to that of your Trust. A trust only controls what you put into it, so for your Trust to work, you will need to put your assets into it. If you set up a Trust but don't fund it, you won't get most of the benefits that I have mentioned above. Basically if you set up a Trust but don't fund it, you have just paid for a more expensive Will.

Nursing Home Protection. A Revocable Living Trust does not provide any asset protection from Nursing Home costs. Because you still have control and full access to



the assets in your Trust, they are also fully available to be used to pay for Nursing Home or other Long Term Care costs. There are some provisions we can put in your Revocable Trust to help in an emergency situation, but if you are really interested in asset protection, you generally have to use an irrevocable trust (which we can also do for you).

Conclusion.

As you can see, there are can be many benefits of using a Revocable Living Trust instead of just a Will. Overall a Trust is often a better planning option verses a Will. If you are planning your estate and truly trying to make things as easy as possible for the loved ones that you leave behind, a Revocable Living Trust may just be the option that will work best for you.

One final warning - all attorneys and legal forms are not created equally. I am often asked why not just use an online form (I doubt the attorneys who are selling those services use those forms themselves). Or they ask how much something costs, as if every Will or Trust were the same. Unfortunately not all forms are not the same, and who you select as an attorney can have a huge impact on how (or even if) your plan works. Because everyone and every family is unique I have often seen families with similar family structure and similar assets have completely different plans in the end based on their individual goals and desires. Also I have yet to find one form that fits everyone (just like you don't wear one size fits all clothes). When you are hiring an attorney you are not just paying for a form, you are paying for the expertise and experience to help you create a plan that is right for you. Sadly, I could share with you many instances of a form document that caused more harm than good. (I have even witnessed this with forms prepared by other attorneys.)

If you are ready to move forward with a Revocable Living Trust (or your estate plan) - call me. I would be happy to help. I can be reached at 607-962-6162 or info@rothelderlaw.com.