

Trusts – Part I

By

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To trust or not to trust, that is today's question. In this first in a series of articles that will address common estate planning techniques, we will examine when it is, and when it may not be, advantageous to create a Revocable Living Trust as a tool to pass wealth. What is a Revocable Living Trust? It is a written agreement, created by a grantor or settlor, established during the life of that person, which designates a succession of individuals or institutions to manage the grantor's property, for the benefit of the named beneficiaries. The one so designated is the trustee. Usually, the grantor serves as the initial trustee, granting him or her complete power over their assets. Persons whom the grantor trusts, usually a spouse or children, serve as successor trustees. The two critical attributes of any trustee are competency and trustworthiness. The trustee's powers are generally guided by state law.

A Revocable Living Trust, like a Will, sets forth who, upon the death of the grantor, will inherit what, and when and how they will inherit the property. So if a Will accomplishes the same objectives, why create this trust? Essentially, there are four or five reasons to consider a Revocable Living Trust. If you become ill, disabled, or mentally incompetent, the named successor trustee can take over the management of your assets in the trust seamlessly, without the need for a court proceeding for the appointment of a guardian ad litem. Additionally, a properly funded trust avoids probate. Probate may be expensive, is a public record, can be time consuming, and requires the court's appointment of a personal representative to administer the probate assets. Additionally, the trust can be worded in such a way that your assets can pass to your heirs immediately, or in further trust to be distributed to your heirs in such a way that makes sense to you. These sub-trusts can be asset protection trusts, income only trusts, and may distribute principal over time. In large estates, the use of a tax savings clause may help to reduce estate and transfer taxes.

What can't a Revocable Living Trust do? It will not serve to provide asset protection for the grantor. Since the revocability gives the grantor control of his or her assets, it will not remove assets from the estate of the grantor. Also, it will not protect your estate from a disgruntled heir. Such an heir can challenge a trust, just as they could a Will.

You must fund the Revocable Living Trust. Once a trust is established it is critical to move all assets that do not have separate beneficiary designations (such as IRA's, 401Ks, pension plan assets, life insurance policies, and annuities) into the trust. This requires a change in title to the assets. While a separate Will frequently provides that all assets not titled to the trust

be treated as if so titled at death, those assets must be probated to accomplish that objective. Also, when you acquire new assets, they should be appropriately titled to the trust. The failure to place assets in a Revocable Living Trust is one of the most common mistakes that we see.

In relatively simple estates, creating joint accounts and/or proper beneficiary designations may avoid probate, perhaps making a Revocable Living Trust, and the additional cost to create it, unnecessary. A good estate planning attorney can help you to select what is appropriate for you given all your concerns and circumstances.

Experts agree that a Revocable Living Trust, while fitting the need for many, is not for everyone. At Platinum Peak Advisors, we will assist you and work with your attorney to determine what is best for you.

	Will	Living Trust
Probate	<p>Subject to probate proceedings. Out-of-state property requires probate proceedings in that state, as well.</p> <p>Provides court supervision for handling beneficiary challenges and creditor disputes.</p> <p>Becomes public record at the time of your death.</p>	<p>Not subject to probate proceedings.</p> <p>Avoids the cost of a second-state probate proceeding where there is out-of-state property.</p> <p>No automatic court supervision to deal with disputes.</p> <p>Remains private.</p>
Tax Savings	Same tax saving provisions available as are available in a Trust.	Same tax saving provisions available as are available in a Will.
Management of your Assets	In addition to the Will, must use a Power of Attorney or Conservatorship to manage assets.	Allows you as the grantor to manage the Trust assets as long as you are willing and able. Makes provisions for a successor trustee to take over in your place.
Costs	Costs less to prepare a Will than a Trust. Cost to probate a Will can be substantial.	Costs more to prepare, fund and manage a Trust than to prepare a Will. But avoids probate costs if all assets were held by the Trust

