

The Benefits of a Revocable Living Trust

As an estate planning attorney, I am frequently asked by my clients with young children to describe the benefits of a revocable living trust as opposed to a simple will. Many people think that trusts are only for highly sophisticated estate plans and that the benefits of a trust do not apply to them. Others believe that a trust is very complicated or expensive to create or manage. However, after meeting with me for only a short time, most of my clients with young children decide to incorporate a revocable living trust into their estate plan. Here are the reasons why:

TRUSTS ARE NOT COMPLICATED

A revocable living trust is essentially a simple agreement with yourself over which you maintain complete control during your lifetime, but whose instructions survive you after death. During your lifetime you are free to make changes to your revocable living trust as frequently as you like. In most cases, you are both the sole trustee and sole beneficiary of your trust during your lifetime. Thus, you do not need to report to anyone or satisfy anyone else's requirements. During your lifetime, your revocable living trust does not require a separate tax identification number nor does it require a separate tax return. In fact, once your assets are placed into your revocable trust, you should notice virtually no difference in your daily affairs.

You may simply think of your trust as a personal brief case for your assets. During your lifetime, you are free to take your things out anytime you like. (There are also irrevocable trusts which provide tax benefits for foregoing that freedom.) However, if something should happen to you, either death or incapacity, your trust comes with a very detailed set of instructions for your loved ones to follow. Your trust is not interrupted by your death – it survives you and provides a smooth transition of your affairs to your successor trustee.

MINOR CHILDREN AND PROTECTION OF CHILDREN FROM CREDITORS

Perhaps the most common reason that people decide to use a revocable living trust is because they have minor children or because they want to protect money for their family. A simple will often states only that if your children are minors at the time of your death, that your property will be held "in trust" for them (or that a conservator be appointed to manage the property for them). However, the details of how your assets are held "in trust" are often left for others to decide. Furthermore, your estate needs to go through the probate process before the assets reach such trust. By having a revocable living trust, you are the person establishing the rules at a time that you are alive, conscious and have time to reflect. You can create incentives or disincentives for your children in your trust. You can

instruct your trustee only to spend money on essentials for your children like housing, medical needs, or education. Or, you can give your trustee broader discretion to spend money on other things such as a wedding, a family trip, or a new car.

Your trust can also provide protection from your children's creditors or from themselves. During your lifetime a revocable living trust does not protect your assets against your creditors (because you are not giving up control of or giving away your assets). However, it is a very powerful protection for your children after your death. Most trusts include a "spendthrift" provision which states that your beneficiaries may not assign their interest in the trust to their creditors. Therefore, even if your children are in significant debt, your trustee will likely not be obligated to release any money to your children's creditors. In most cases, your trustee may continue to spend money on your children's needs without the funds being reachable by your children's creditors. A trust can also be drafted to protect trust assets in case of your child's divorce. Furthermore, your trustee can be given discretion to withhold or protect the money if your child has a drug, alcohol or gambling problem. These issues may not be known at the time of your death, but may arise several years later as your children become adults. The key is that you are designing these protections while you are alive and not leaving them for others to decide after your death. Your trustee will be very glad to have these instructions and protections built-in so that they can take comfort in knowing that they are honoring your wishes while protecting your assets for the beneficiaries.

TRUSTS AVOID PROBATE

One of the most attractive features of a trust is that it does not require approval from a court to pass your assets to your beneficiaries. Upon your death, a will must be entered into a Probate Court for approval and undergo the probate process. Your will becomes a public document and there is a waiting period to allow potential creditors and heirs (even disinherited heirs) to submit their claims or will contests to the court. Even if designated in your will, your Personal Representative must be approved by the Probate Court and their appointment may be contested by any of your heirs. The court must also approve the final distribution of your assets. In most cases this process takes at least a year (and often much longer). Furthermore, if you have moved during your lifetime or have assets in different states, it may be necessary to open probate cases in several states.

A trust however, remains private. It does not need to be entered into any court and it does not require the court's approval to transfer your assets. Your trustee does not need

to be approved or appointed by a court. Your beneficiaries have very limited ability to challenge your choice of trustee and those outside your trust have no standing to contest your choice of trustee. Your trustee is not required to reveal to your creditors, excluded heirs or family members any of the details of your trust. Only those to whom you have granted permission have a right to see your trust. Most importantly, your trustee is able to *immediately* access your assets to support your beneficiaries. The trust simply continues working for you and your beneficiaries without the need for court approval or supervision.

A TRUST WORKS IF YOU ARE INCAPACITATED – A WILL DOES NOT

A will is strictly a “testamentary” document. It does not assist you anytime during your life, even if you are incapacitated. If you are incapacitated or unable to manage your affairs, a will does not provide family members with access to your assets for your care. A general durable power of attorney may be useful for a short-term incapacity and is included in most estate plans. But, if you are incapacitated for a long period of time it can be very difficult for someone to use a power of attorney to manage your entire estate. Thus, your loved ones may need to apply to a court to assign a particular person to become conservator of your assets. With a trust, you have pre-selected a successor trustee who is authorized to immediately begin taking care of you and your family. That person does not require court approval and has authority to use assets for your benefit or for your family’s benefit.

TAX PLANNING

The estate tax laws and exemptions are frequently changing. A properly-drafted trust is designed to be flexible and to provide your trustee with the ability to make favorable tax elections even if the exemption amounts change. Certain provisions may also allow your trustee make different elections on the same asset for Massachusetts and federal estate tax purposes, thereby avoiding estate taxes at both levels. In each meeting, I give clients a detailed explanation of the estate tax planning advantages of their trust.

A will is certainly an important document and should be included every estate plan. However, as you can see, the addition of a trust to your estate plan provides significant

additional benefits without significant cost. The following page contains a summary of the benefits described above of a revocable living trust in comparison to a simple will.

SIMPLE WILLS	REVOCABLE LIVING TRUSTS
Are effective only after death.	Are effective during life and after death.
Must go through probate process.	Avoid probate process.
Become a public document.	Are private documents.
Are easier for disgruntled heirs to attack.	Are more difficult to attack.
Cause affairs to stop at your death while awaiting court approval.	Are effective immediately at death to distribute your assets.
Your Personal Representative must be approved by Probate Court and their appointment may be challenged.	Your appointed Trustee does not require approval and appointment is very difficult to challenge.
Are not viable interstate planning tools.	Can be used in all states.
Provide limited tax planning benefits.	Provide flexible tax planning .

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