

Benefits of the Revocable Living Trust

A fully funded revocable living trust has numerous advantages over a Will-based plan administered in probate. These benefits are realized immediately after the trust's creation and by your loved ones after death.

Section 1.01 Placing Ultimate Control with the Trustor (who has Superior Knowledge)

More than any other individual, you know the nature and extent of your assets. You know where the assets are located and the details associated with each. Since you are alive and competent at the time the trust is created, you will decide how to handle the title transfers, beneficiary designations, and other administrative matters.

Conversely, where a person's assets are not retitled during lifetime, the full weight of marshalling and retitling assets is squarely on the shoulders of someone other than the decedent – namely the personal representative – who is left with the often arduous and protracted task of combing through the decedent's records to discover the information necessary to administer the estate.

Section 1.02 Comprehensive Incapacity Protection

It is difficult to imagine another estate planning vehicle that provides a more seamless plan for incapacity. As we discussed above, if you become incapacitated with no plan in place, a court-supervised conservatorship may need to be established to manage assets. Conservatorships are expensive, time consuming, and totally unnecessary.

A properly funded revocable living trust protects the assets transferred into trust from court involvement. If incapacity strikes, the "disability trustee" can manage the trust assets on your behalf.

The same sense of confidence cannot be placed in the Durable Power of Attorney. While, in theory, an attorney-in-fact under a properly drafted Durable Power of Attorney can act on behalf of the principal in virtually all financial, legal, and property-related matters, there are often obstacles to overcome. Third parties are often reluctant to rely on them. Financial institutions may assert that the power of attorney is "stale." They may also assert that they will only accept powers of attorney that are drafted in a form that is "pre-approved" or unique to that institution. Moreover, they may require substantial extraneous evidence of your current incapacity, or additional proof that you were competent at the time you signed the document.

With a revocable living trust, "legal title" to the asset is already vested in the trust and the trustee. In addition, a properly drafted revocable living trust will provide exceedingly clear provisions establishing the standard under which your successor trustee can act on behalf of the trust.

Section 1.03 Funneling Assets—Central Collection “Bucket” for Coordinated Distribution

A revocable living trust is one of the best ways to marshal assets into one place at death. Personal property, bank accounts, stocks, bonds, mutual funds, life insurance death benefits, real estate, and many other types of asset collect into a single receptacle for ultimate distribution.

The benefit of this “collection” into a single place is significant – particularly when you desire to divide the whole of your estate into shares. When the assets are collected this way, it becomes much easier to coordinate distribution. Conversely, if your estate will be distributed through a multitude of different vehicles (e.g., Joint Tenancy with Right of Survivorship, beneficiary designations, probated assets, PODs, and TODs), then coordinated distribution that is consistent with your overall game plan can be much more difficult to achieve – and will require constant monitoring over your lifetime in order to maintain.

Section 1.04 Heightened Privacy

Generally speaking, a revocable living trust is a private document, and will not be subject to public disclosure (unless subjected to litigation, or a statute provides otherwise).

Section 1.05 Probate Avoidance

A revocable living trust is not subject to court-supervised probate administration. Its assets will be administered according to the laws relating to trusts, and not the laws governing estates.

The extent to which this expedites the process of post death administration and reduces costs is dependent upon the local probate rules and your family dynamics. Nevertheless, most clients desire to avoid subjecting their estates to probate at death.

Section 1.06 Controlling Conflicts and Providing Clear Guidance for Dispute Resolution

One of the chief features of the probate process is an initial “invitation” to interested parties to object. Revocable living trusts typically do not contain similar invitations to objection. Instead, the trustee is immediately vested with all of the powers necessary to administer the trust at death. Properly drafted trusts will also include detailed provisions establishing a process of dealing with conflicts at death. Often, provisions are included within the trust providing for various forms of alternative dispute resolution, without resorting to court.