

## Estate Planning: Revocable Living Trusts<sup>1</sup>

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Although revocable living trusts have been around for many years, recently they have become popular and are being promoted as the solution to a variety of financial and estate planning objectives. Numerous free educational seminars promoting the advantages of using a living trust are being sponsored by financial planners, attorneys, and trust officers as the best solution to estate planning problems.

A revocable living trust can be an excellent tool for handling some types of financial affairs, but it is not an appropriate choice for everyone. Before deciding to set up a living trust, be sure it is the best tool for your situation and your objectives.

### What is a Revocable Living Trust?

A revocable living trust is a legal arrangement by which legal title to property is transferred from personal ownership into the legal ownership of the trust. The revocable living trust is just what the name implies: a trust that can be changed or terminated at any time during the individual's life.

The person creating the trust is called **the grantor, settler, or trustor**. The grantor must actually change the title of ownership for each asset that will be placed in the trust from his or her name to

that of the trust. All too often individuals go to the expense of setting up a trust but fail to change the title of assets. Only assets that are solely owned can be placed in the trust. That is, assets held as joint tenants and rights of survivorship (non-probate assets) cannot be owned by the trust unless the joint ownership is severed.

The **trustee** manages the assets according to the directions of the trust document for beneficiaries identified in the trust agreement. The trustee can be the person setting up the trust (the grantor), a family member, friend, a corporate entity (such as a bank or trust company), or a combination of these. As the trustee, the grantor can maintain full control of the trust until his or her death or incapacity. When the grantor dies or becomes incompetent, legally incapacitated, or resigns, a successor trustee identified in the trust agreement takes over. The successor trustee has legal responsibility for administering the trust prudently and for the beneficiaries. The trustee keeps the beneficiaries reasonably informed. It is advisable to name more than one successor trustee in such event that the first successor may die or become incapacitated. The successor trustee should be some one you trust and someone with financial management expertise.

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**The trust agreement** is a legal document that contains instructions to the trustee regarding (1) management of the trust assets, (2) who is to receive distributions from the trust, and (3) what happens to the trust if the person creating the trust becomes incompetent or dies. The trust agreement provides instructions for the termination of the trust and the distribution of assets to the beneficiaries. The trustee can do only what the trust agreement specifies.

**Beneficiaries** of the trust are named by the grantor and can be the individual who formed the trust, friends, family members, and charities such as religious organizations, colleges, universities, or hospitals. To determine whether or not a living trust would fit into your financial planning goals, consider the advantages and disadvantages of a living trust.

### Advantages of a Living Trust

**A living trust is an effective tool for handling your financial affairs if you become incompetent.** In the trust agreement, you may name yourself as trustee and also name a successor trustee. The successor trustee handles your financial affairs if you are unable to do so. The trust agreement tells how and who is to determine that you are incompetent and gives directions for the management of financial affairs, which the successor trustee must follow. Please notice that the successor trustee deals only with finances. *A successor trustee does not have the power to make your health care decisions.* In accordance with Florida Statutes Chapter 765, you may also designate a health-care surrogate who will make those decisions if you are unable to do so.

**A living trust avoids probate.** Assets held in a living trust do not go through probate. The trustee already has legal title to the trust assets and can transfer title, without probate, to the beneficiaries named in the trust agreement. In addition to avoiding the time and expense of probate, the use of a living trust may reduce the risk of a will contest, and provides privacy of your financial affairs at death.

### Disadvantages of a Revocable Living Trust

**Cost.** It costs more and takes more time to set up and fund a living trust than it does to prepare a will. Fees usually must be paid to the trustee if you cease to be your own trustee.

**There are no significant tax advantages to a revocable living trust.** For death-tax purposes, you own the property in the trust and at your death it is included in your taxable estate. In general, under current law estate taxes are an issue when the value of your estate exceeds the following amounts.

Year	Amount
2005	\$1.5 million
2006	\$2 million
2007	\$2 million
2008	\$2 million
2009	\$3.5 million
2010	Estate tax repealed
2011	1 million

The tax bite is big for estates in excess of the exclusion amount - 47%. If the current tax law continues in 2011 the exclusion amount will drop back to \$1 million and the excess will be subject to a 50% tax rate.

### Setting up a Revocable Living Trust

If after reviewing the advantages and disadvantages, you decide a revocable living trust will meet your needs, have a trust agreement prepared. The trust agreement is a very important document. It requires that you carefully think through how you want your finances managed, how you want your property distributed during your life and who is to receive it following your death.

Transfer your assets from your name to the trust's name. When you create a living trust, your assets are transferred to the trust. New real estate deeds are needed to transfer the real estate from the grantor to the trust. (*In the state of Florida there are both advantages and disadvantages to transferring your homestead to a living trust, which your attorney will discuss with you.*) In addition, new titles are required on bank accounts, stocks, bonds, and other property so they become trust assets.

**Have a pour-over will prepared.** Even with a revocable living trust you still need a will. A pour-over will, says that anything you own at death passes to the trust. This will take care of any assets that may not have been titled to the trust.

## Summary

Before establishing a revocable living trust, think about your objectives. Discuss ways to meet these objectives with your estate-planning professionals. There are several planning alternatives that you may be able to use to accomplish your objectives.

If you decide a revocable living trust is appropriate for you, consult with an attorney specializing in estate planning and trusts. Remember, costs for setting up a trust varies. Before selecting an attorney talk to more than one and compare credentials and cost. Be sure that all new assets are properly titled and become part of the trust. And, remember, you may revoke your living trust at any time.

## Disclaimer

This publication is not intended to be a substitute for legal advice. Rather, it is designed to create an awareness of the need for estate planning and to help families become better acquainted with some of the devices involved. Further changes in laws cannot be predicted, and statements in this publication are based solely upon the laws in force on the date of publication.

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## Reference

Berteau, John T. 1998. *Estate Planning in Florida 2<sup>nd</sup> Edition*. Sarasota, Florida: Pineapple Press, Inc.

Garman, E. Thomas and Forgue, Raymond E. 2006. *Personal Finance 8<sup>th</sup> Edition*. New York: Houghton Mifflin Co.

Morrow, A. M. 1998. "Revocable Living Trusts." Oregon. Corvallis, OR: Oregon State University Extension Service.

Schlesinger, Sanford J. March 2002. "Planning Today for the Estate Tax Repeal in 2010." Greenwood Village, Colorado: College for Financial Planning.

<http://www.montana.edu/wwwpb/pubs/mt9508.html>

Chapter 732 and 733 State Statues  
<http://www.leg.state.fl.us/Statues>