

An Introduction to the Revocable Living Trust

Avoid the Probate Process

Save Taxes

Protect Your Assets

What is Probate?

Probate is a court-supervised, legal process by which a deceased person's estate is administered and distributed. There are several key items to be aware of: The process can take up to 24 months. All the debts are paid from the estate first, and then the assets are distributed - in accordance with a Will (if one exists), or in accordance with state law if there is no Will. A general rule of thumb is that 10% to 15% of the estate value will be spent on court costs, legal fees, appraisal fees and various other costs. And because probate is a legal process that involves the interests of the entire social community, all matters become public knowledge.

What is Living Probate?

Living Probate is a court-supervised, legal process through which the court grants legal authority to a Guardian (an individual or, an institution) to make legally-binding decisions about the administration of a person's estate and/or, their physical person who owns the estate during periods of mental, emotional and physical incapacitation (where the party is either in a coma, affected by dementia etc.). The significant difference between Probate (for the deceased); and, Living Probate (for the incapacitated) is that in the case of Living Probate a number of *on-going costs* are incurred beyond the typical \$6000-\$10,000 or more that's involved in securing both Financial Power of Attorney and Healthcare Power of Attorney rights from the court. Issues to be aware of during the multiple phases of moving through a Guardianship legal process include: the selection and appointment of an attorney to represent the economic interests of the incapacitated person in addition to the attorney already retained to

represent the interests of any other parties who may be affected by the incapacitation, all at the costs of the estate; the maintenance of formal accounting records documenting the separated expenses of each previously co-habituating partner in an intimate relationship; and, the periodic reviewed by the court for all financial matters involving the affairs of the incapacitated person. All of which must become public knowledge, since decision here can be deemed to affect the entire social community, as well.

What is a Revocable Living Trust; and, Why would anyone want to establish such an arrangement?

A Revocable Living Trust is a contract drawn between you and other specified parties that establishes in writing how your financial and legal affairs are to be handled in the inevitability of your death AND in the arising of contingent conditions that can have an adverse impact on intimate partners ability to manage their own personal financial and legal affairs and to make decisions regarding their physical person, where the individual who establishes the Trust is otherwise unable to carry out these routine actions of daily living due to their own incapacitation.

The parties to “the contract” include:

- the Grantors
the individuals who establish the Trust.
- the Trustees
the individuals selected to act in the fiduciary capacity of protecting the interests of the Grantor(s).
- the Named Beneficiaries
the parties for whom the estate is to be administrated, while living (the Grantors), as well as administered and distributed, at the inevitability of the death of the Grantors
- the Government
(at the state and federal level), since the payment of taxes due (on income while living; on appreciated assets, at death, as well as, for the repayment of any required Government Services rendered for the incapacitation of the government prior to the death of the Grantor), even though both: the Government’s interests

and the interest of the social community are redirected to and addressed by the Trustees, who the Grantor selects prior to incapacitation or death; and, names in the Trust Document.

Because The Revocable Living Trust is a contract that is handled under the federal rules of Contract Law— it bypasses The Probate Process and hands the authority for addressing the interests of the Government and the Social Community over to the Trustees of the estate of the Grantor.

And while this brief discussion The Revocable Living Trust might seem like a complex process, in the vast majority of cases, establishing a Revocable Living Trust is no more complex than drafting a properly prepared Will. Most importantly, this type of Trust allows you to pass inheritances to your named Heirs and Beneficiaries- outside the formal, court-supervised probate process; and, without the attendant cost that you'd expect to find in a formal bureaucratic process. As a result, the assets of the estate can be distributed as you desire, usually more quickly - and at a significantly lower cost.

You would create this Trust during your lifetime and thereafter be entitled to change the terms of the Trust, as needed (through a process called Restating The Trust. In addition, if it makes sense to do so because of radically changed life circumstances such as a betrayal of your trust— you maintain the ability to even revoke the trust in its entirety.

As the Grantor (or the Creator) of your Revocable Living Trust— each of the Assets retitled from your name as an individual in the name of your Trust are transferred to your Heirs and Beneficiaries according to the instructions in the Trust Document, as you being the Grantor specify, rather than being passed to your heirs under the terms of a Will. And while the Revocable Living Trust does include what is called a Pour Over Will to transfer any items that failed to get properly retitled to the Revocable Living Trust - the Pour Over Will transfers items that escaped retitling to The Revocable Living Trust so that they too are transferred according to the instructions in the Trust Document.

Simply put, with a Revocable Living Trust, you live your life in the exact

same manner as you presently do. This means that you maintain total control of the Trust AND all of the income and the assets that together constitute your estate. And at your death, the assets are transferred to your designated heirs and Beneficiaries- without any of the costs that are normally associated with the probate process, except for those items of property that you failed to retitle to the Trust and place under the direction and control of your named Trustees. Your family maintains total control and the process is remains completely private, save the filing of a simple document called a Declaration of Trust with the county clerk. The Declaration of Trust lets the entire social community know that your affairs are being handled via the Revocable Living Trust, rather than by The Probate Court and it contain no private information about the terms of you specific Revocable Living Trust, as such.

Is it difficult to transfer my assets into a Trust?

The process is fairly simple. There are some required documents and instead of the assets being named to an individual or individuals— they are re-titled to the Trust. In most cases letters are sent to financial institutions to complete this step and the creator of the Trust won't have very much work to do in this regard.

Can I lose control of my assets in a Revocable Living Trust?

NO! You retain complete control. You simply become the current named "Trustee" of your Trust, which allows you to continue doing everything with the income and assets of the Trust, as you were doing before. Only now, you sign legal transactions as the Trustee, rather than as you currently do as an individual or partner in an intimate relationship. And because you are still the Grantor (or the Creator of The Revocable Living Trust, you continue to maintain the ability to revoke the Trust, hence the name "Revocable Living Trust".

Should I be concerned with Estate Planning if my estate is valued at

less than the Federal exemption?

The short answer is Yes. You need to understand where you are - and how your estate may grow - and compare that with the estate tax trend-line (it changes over time). There are effective methods that can be utilized to ensure you are not subjected to excess taxation in the future, as well as, even in the present, provided that the Revocable Living Trust you establish is handled by a firm that takes a systems approach to estate planning that addresses all of **The Six Estate Threats®**

- Death
- Disability
- Hospitalization
- Taxes
- Civil Lawsuits
- Criminal Acts Against Us.

Because Performance Consultants of America, Inc. and The PCA Companies take a systems approach to all that we do— we are uniquely qualified to assist clients with all aspects of planning, including estate planning.

And because our systems approach is coupled with a fiduciary approach that makes your agenda our agenda, you can rest assured that the solutions we provide are complete solution that address all that needs to be considered. And we do so from your point of view.

Are there any disadvantages to Not Implementing a Revocable Living Trust beyond the time and money costs of simply relying on the probate court system?

Most definitely. Three major disadvantages stand out prominently. Joint Tenancy, relying exclusively on a Will and the Probate Court System; and, doing nothing.

Creating Joint Tenancy by simply adding the names of your Heirs and Beneficiaries as co-owners of income and assets that you wish them to

ultimately receive at your death can be a dangerous, marginally thought through strategy. If the co-owners become involved in a Civil Lawsuit prior to your death, a Judgment Creditor could end up taking your assets and income, while you are still living and relying on them for your own personal economic well-being. In short, Joint Tenancy could subject your assets to the personal liabilities of your children. Quit Claim Deeds can be used to transfer real property to your children while you hold the deeds until your demise. In addition to being illegal in many states, these premature transfers may have severe tax consequences, as well.

Relying exclusively on a Will and the Probate Court System opens your estate to the Contesting of Your Will by anyone who disagrees with what you have decided to do. And while your Contested Will may ultimately prevail, every hour spent in legal contests to your Will drains off assets of the estate to defend against what you decided you want to have happen.

Doing Nothing is perhaps the worst of all. It combines the unlimited contesting of your will where there is Nothing in Writing about your thoughts and feelings; and, a continuation of every conflict in your life while living with every bit of acrimony that existed between potential Heirs and Beneficiaries, as well as, with the wants of potential creditors known or unknown to you in a situation that could be likened to a feeding frenzy for sharks immediately after bait has been thrown in the water. This is an almost certainty in situations where there are blended families or heirs and Beneficiaries from multiple past relationships where or not marriage was even ever a consideration. DNA tests today can unravel a 'do nothing' situation in ways that are only limited by the creative imaginations of parties that come in the room.

Benefits and Advantages of a Revocable Living Trust?

- No first death probate
- No second death probate
- No multi-state probate
- No Guardianship
- Completely Private

- Difficult to contest
- Two estate credits
- Immediate distribution
- No settlement costs

According to the AARP Report on Probate:

"90% of all estates of widows and widowers, age 60 and above, will go through probate!"

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The PCA Companies
6464 Savoy Drive
Suite 777
Houston, TX 77036

Phone: (844) 722-6664
Fax: (844) 533-1180
Email: pcacompanies.com