

# CLIENT NEWSLETTER

A publication of:  
Robert A. Youngberg,  
Attorney & Counselor  
at Law, PLLC. Part of  
our ongoing effort to  
keep our valued  
clients and friends  
informed of  
important legal  
matters that affect  
their personal and  
business lives.



## answering your questions about living trusts

# Revocable Living Trusts

By Robert A. Youngberg

A revocable living trust is one of several estate-planning tools. Should one be part of your estate plan? No simple guidelines answer that question. People with various levels of wealth may or may not find one useful.

This newsletter gives you basic information to help you decide if a trust is right for you.

### **What is a Revocable Living Trust?**

A trust is a written agreement that names someone to be responsible for managing property for the benefit of others. A revocable living trust — also called a “living trust,” “family trust” or “inter vivos trust” — is one kind of trust.

It’s “revocable” because you can change or end it at any time, for any reason. It’s a “living”

trust because you create it while you’re alive. It becomes irrevocable — or not changeable — when you die.

Each revocable living trust has three parties:

1. The **grantor**, who creates and funds the trust (sometimes called the *settlor* or the *trustor*);
2. The **trustee**, who holds title to trust property and manages the trust; and
3. The **beneficiaries**, who receive income or principal from the trust.

The three parties are often the same person, just acting in different legal capacities.

After you create your trust, you transfer your property to the trustee. This is called

“funding” the trust.

### **How does a Revocable Living Trust Work?**

For a trust to work, it must hold title to property. This is done by transferring legal title to the trustee.

You — or you and your spouse — can be the primary trustee(s). As the trustee, you have full power to buy, sell, or transfer the property in the trust, just as you did before you transferred it to the trust.

**This newsletter uses the word “property” throughout. Sometimes people confuse “property” with “land.” However, property, as used here, refers to land, bank accounts, investments, money and personal possessions of every kind.**

For example, to transfer their bank account to their trust, John and Jane Smith would transfer it to "John and Jane Smith, as Trustees of the Smith Revocable Living Trust dated [month/day/year]."

The trust document names the person who will act as your *successor trustee*, usually a close relative, and gives that person the power to manage trust property after you die.

**What Does A Trust Do For My Estate After I Die?**

If you have funded your trust with all your property, the trust will own the property, not you. So, unless your estate receives more property after you die, probate will be unnecessary, because you will die without legal title to any property.

Your successor trustee will distribute the trust property according to your instructions in the trust document. After that, the trust can end, or it can continue to hold your property until your children reach a mature age, and then end.

**How is a Revocable Living Trust Created?**

First, the grantor and the trustee sign a "trust agreement." Then, the grantor transfers property to the trustee to be held for the benefit of the beneficiaries named in the trust agreement.

Again, the grantor, the trustee and



**“There are two steps in creating a trust: First, the grantor and the trustee sign a trust agreement. Second, the grantor transfers property to the trustee to be held for the benefit of the beneficiaries.”**

the beneficiary are often the same person, just acting in different capacities. For example, if the grantor, John Smith, is also the trustee, he transfers the property to “John Smith, Trustee of the Smith Revocable Living Trust dated [month/day/year].”

To make these transfers, it is necessary to prepare deeds, stock transfers, new bank accounts and other documents that transfer legal title to property.

**Can a Revocable Living Trust be Changed or Revoked?**

Yes, in the trust document the grantor reserves the right to amend or revoke the trust at any time during his or her lifetime. This enables the grantor to change the trust or even end it, to take into account any change of circumstances, such as marriage or divorce or even a simple change of mind. Upon the grantor’s death, no more changes are allowed.

**Is a Revocable Living Trust a Substitute for a Will?**

A certain type of will should accompany every revocable living trust.

This type of will, called a "pour over" will, acts as a safety net to capture any property that you overlooked or forgot to include in your trust. It “pours” your property “over” into the trust after you die. Thus, any property you fail to transfer to the trust during your lifetime is added to the trust upon your death and transferred to beneficiaries by the successor trustee according to the terms of the trust agreement.

Sometimes it’s not possible to include all of your property in a trust during your lifetime. For instance, the estate of a person who dies in an auto accident may be entitled to a settlement from an insurance company. Only a will can transfer this money from the estate to your trust.

Also, only in a will can you nominate a guardian for your minor children.

**Can a Revocable Living Trust Help My Property Avoid Probate?**

Property held in your trust when you die need not be probated, but property not held in the trust when you die may require probate.

For this reason, it’s important to carefully monitor your trust property to make sure it continues to be trust property, for example when buying or selling real estate or opening or closing a bank account.

**“Property held in your revocable living trust at the time you die is not subject to probate.”**



**What are Some Advantages of a Revocable Living Trust?**

Besides the avoidance of probate, a revocable living trust has other advantages. It is normally a private matter between the trustee and the beneficiaries. Unlike probate, there are few public records to reveal the types or amounts of trust property or the identity of any beneficiary.

With a trust, property can often be distributed to the beneficiaries shortly after the grantor's death, avoiding much of the delay of probate. Court approval is not necessary to sell trust property, avoiding further delay.

For those who own real estate in another state, a trust can be a significant advantage. By transferring the out-of-state property to the trust, probate administration in the other state can be avoided.

If illness or accident leave you

**Advantages and Disadvantages of a Trust versus Probate**

Advantages	Disadvantages
A revocable living trust can avoid probate	A probate personal representative can better deal with creditors' claims than a trustee of a trust
Privacy — unlike probate records, trust documents are not public records	If a bank or trust company is the trustee, trustee fees must be paid
Court approval is not necessary for trustees to sell trust property	Some people find trust administration difficult and time-consuming
If the grantor owns property in another state, out-of-state probate can be avoided	Setting up new bank accounts or buying or selling real estate in a trust can be more complicated
If you become incapacitated, court supervised guardianship or conservatorship can be avoided	If possible litigation is a concern, probate is the better alternative

unable to look after your own affairs before you die, your co-trustee or successor trustee can handle your finances without the need for a court appointed guardian or conservator.

**What are Some Disadvantages of a Revocable Living Trust?**

While the advantages of a revocable living trust receive most of the attention, you should also consider the disadvantages.

Since a trust is a complex legal document, it costs money to set up. Deeds and other transfer documents must be prepared to transfer your property to the trust.

A trust requires ongoing monitoring to ensure that property remains in the trust and that new property is titled in the trust. For example, if you transfer funds to a new bank — perhaps to obtain a better interest rate — you must remember to tell the new bank to title the new account in the trustee's name.

Although a trust agreement is not a public record, those who deal with the trustee, such as banks and title insurance companies, may want to review it to check on the trustee's powers and duties.

Sometimes it's not a good idea to avoid probate. A probate personal representative has special powers to deal with your creditors and can force them to file claims within a set period of time or lose their claims. A successor trustee of a revocable living trust



**“A revocable living trust requires ongoing monitoring to ensure that property remains in the trust and that new property is titled in the trust.”**

**“You can transfer all of your property to a revocable living trust and give your trustee instructions on how to handle it. That way, if you become incapacitated, there should be no need for a formal court-appointed guardian or conservator.”**



has no such powers. Also, if you are worried about litigation, a probate personal representative is usually better able to protect your property than a successor trustee.

Some income tax rules for trusts are not as liberal as those available to a probate estate. For example, a probate estate may elect to use a fiscal year as its tax year, while a trust must use the calendar year. After you die, your trust must pay estimated income taxes, while a probate estate is exempt from this requirement for the first two years.

### **Does a Revocable Living Trust Reduce Taxes?**

You should not set up a trust just to save taxes. By itself, a trust does not avoid income, estate or gift taxes. So long as you are the grantor and the trustee or co-trustee of the trust, you continue to report all income earned on trust property on your personal income tax return.

However, provisions for saving estate taxes can be added to a revocable living trust or a will.

### **Who Can be the Trustee?**

Any competent adult can be the trustee, even the grantor (the person

who creates and funds the trust). A grantor who wants to manage his or her own financial affairs and who is physically and mentally able, can, and ordinarily should, serve as trustee.

You can appoint more than one trustee, you can delegate different duties to each trustee, and you can keep the power to remove the trustee and appoint a new one. Two or more people may serve as co-trustees, or you may name a combination of individuals and a bank trustee to serve together.

A court does not ordinarily supervise a trustee, so you should carefully consider your selection of a successor trustee. If an individual is to serve as successor trustee, you should consider whether to bond the trustee. If you require a bond, the bond premium will be paid from the trust.

### **How can a Revocable Living Trust Help if I Become Incapacitated?**

Guardianship or conservatorship is the legal process — usually begun by your relatives with a petition to a court — for managing your property and providing for your personal needs when you become disabled, or “incapacitated.” It is court-supervised and it usually involves a formal determination by a

judge that you can no longer handle your own affairs.

If your assets are complicated and your family members cannot agree on how they should be managed, or if litigation is necessary to protect your property, guardianship or conservatorship may be the best way to manage your assets. If you have no such special needs, it can be unnecessarily complex and expensive.

On the other hand, you can transfer all of your property to a trust, giving your trustee instructions on how to handle it. That way, if you become incapacitated, there should be no need for a formal court-appointed guardian or conservator. □

**If you have more questions about trusts, don't hesitate to call or write Rob Youngberg at the phone number or address listed below.**



THIS IS ONE OF A SERIES OF ARTICLES MEANT TO PROVIDE A BRIEF AND INFORMATIVE SUMMARY OF CERTAIN UTAH LAWS FOR CLIENTS AND FRIENDS OF ROBERT A. YOUNGBERG ATTORNEY & COUNSELOR AT LAW, PLLC. THE ARTICLES ARE NOT INTENDED TO PROVIDE SPECIFIC LEGAL ADVICE. BEFORE RELYING ON ANY OF THE INFORMATION DISCUSSED IN THESE ARTICLES, CONSULT WITH AN ATTORNEY TO INSURE THAT YOUR USE OF THE INFORMATION IS APPROPRIATE IN YOUR SITUATION.

© COPYRIGHT 2012-21 ALL RIGHTS RESERVED