



Revocable Living Trusts

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In a previous column, I mentioned trusts and their relationship to wills. In this column, I'll discuss revocable living trusts, how they relate to wills, and why these trusts have become so popular.

A revocable living trust is a trust that is created by someone, called the "Grantor," while the person is living. There are many types of trusts: testamentary trusts (trusts created under a will), life insurance trusts, irrevocable trusts, etc., but it's the revocable living trust that is most popular. Revocable living trusts can be amended or revoked by the Grantor.

Trusts serve three main functions, and it's these functions that have caused revocable living trusts to become popular: they keep assets out of probate after a person has died, they provide for orderly administration if someone becomes incapacitated, and they help spouses avoid estate taxes.

Trusts keep assets out of probate because when a trust is set up, assets are retitled in the name of the trust. The trust provides that the Grantor is trustee for as long as he or she lives and is able to act as trustee, which means the Grantor maintains control over the assets, the same as before the trust was set up. The trust names one or more successor trustees to manage trust affairs after the Grantor has died or become incapacitated. It's therefore unnecessary to involve a probate court in managing or re-titling assets, which is what happens if a person has only a will.

Trusts state a standard for incapacity. The Grantor chooses this standard when the trust is set up. That way, the Grantor has control over the determination of his or her incapacity. Most times the Grantor remains in control of the trust until death.

Trusts often contain provisions that help both spouses to use their estate tax credits. As the estate tax credit has risen over the years, the need to create a trust for this purpose has diminished.

Setting up a trust involves more time and expense than setting up a will, but it saves money in the long run because probate is avoided. Setting up a trust also forces the Grantor to take an inventory of his or her assets, which is a good thing to do from time to time. In the process of titling assets in the trust, the Grantor can focus on the allocation and performance of assets, and make adjustments as necessary.

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