

Is a Revocable Living Trust Right for You?

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“Revocable Living Trusts” have become very popular estate planning tools. A living trust may benefit you greatly, or it could conceivably make you and your heirs worse off.

A living trust is a trust that you set up during your lifetime, to which you transfer most or all of your assets. You receive all of the income from the trust, and also have the right to withdraw any or all of the assets in the trust at any time. You can revoke or cancel the trust at any time during your life. At death the trust becomes irrevocable and its income and assets are disposed of under terms specified in the trust document. Very simply, it is designed to act as your will upon your death.



Why would you do this? The main advantage of a living trust is that its assets are distributed without going through the court probate process. This avoids a filing fee in the probate court (2% in Wisconsin: \$200.00 on \$100,000 of assets). Also, trustee fees generally are lower than executor or personal representative fees. However, even if probate is avoided, there will be the expenses of preparing estate income tax returns, trust income tax returns, valuing and transferring assets, and making a formal accounting and settlement to trust beneficiaries. In order to totally avoid probate, all probate assets must be “owned” by the living trust. If some are omitted, a probate proceeding may be necessary. As a result, those with living trusts usually have a “pour over” will to direct any extra property into the trust.

Some of the other benefits and pitfalls to consider are:

- Quicker distributions: Probating a will and gathering assets into the estate for distribution can take quite a bit of time. By contrast, with a living trust all assets already are gathered together enabling the trustee to make immediate distributions and pay bills as usual.
- Protecting minors: Living trusts can help avoid the need to appoint a guardian to represent the interests of children, which can also cause delay and add to administration costs. This benefit also exists for adults who may need the appointment of a guardian.
- Privacy protection: Since probate records are public, the size of your estate, the names of beneficiaries, and the amounts each received can come into the possession of anyone. The size and terms of a living trust, by contrast, are not public.
- Multiple residences: Those with real estate in more than one state can avoid the problems and expenses of out-of-state ancillary probate proceedings by putting the out-of-state real estate in a living trust.
- Income taxes: If you create a living trust, you will be taxed on its income in much the same way as if you own the property outright.
- Oversight: If you are concerned about how your assets are administered after your death, having a register-in-probate involved will ensure that some level of oversight is maintained over the assembly of your assets, payment of bills and distribution of the net assets to your designated beneficiaries. This may be important if minors or other parties requiring legal guardianship are involved or if the person preparing his or her estate is aware of beneficiary conflicts that already exist. The probate register

can also be very helpful in keeping the process moving once the probate has been formally opened with the court.

- Estate taxes: It's a fairly common misconception that living trusts save estate taxes, but that's not necessarily the case. The trust assets will be subject to estate tax just as if you continued to own them outright. Therefore, estate planning techniques, such as dividing a married couple's assets to ensure that they each receive the benefit of the unified credit exemption equivalent amounts, remain important in the context of living trusts as well as transfers by will.

As mentioned earlier, living trusts make a lot of sense for some people but not for others. You have to consider all pluses and minuses as they relate to your particular situation to make an informed choice concerning a living trust. We would be happy to assist you in making the decision that's right for you. Please call if we can be of assistance.

