

EXECUTORSHIP AND ESTATE PLANNING MADE EASY: PART II –REVOCABLE LIVING TRUSTS

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A second and revised edition was released by the publisher, Graylake Publishing, in January, 2015.

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Estate Planning & Administration Made Easy: Part II

Course Description: The first part of this course covered the basics of estate planning including drafting a Will and navigating the Probate process. This second part of the course will focus on the function and uses of Revocable Living Trusts as an Estate Planning strategy and a way to avoid the Probate Process.

REVOCAABLE LIVING TRUSTS

- Revocable Living Trusts can be revoked, amended, modified or even terminated by the Grantor at any time during his/her lifetime;
- Revocable Living Trusts are funded by the transfer of items of the Grantor's property to the Trustee(s);
- Property held in the trust is called the "corpus" of the Revocable Living Trust;

REVOCAABLE LIVING TRUSTS

- Revocable Living Trusts provide that the Trustee, not the Grantor, has authority to manage the corpus of the Trust; and
- Revocable Living Trusts provide that the corpus is held, managed and administered for the benefit of the Beneficiaries.

LEGAL REQUIREMENTS

- Every person over the age of 18 years of age may establish a Revocable Living Trust;
- Revocable Living Trusts must be in writing;
- Revocable Living Trusts must be signed by the Grantor and the Trustee ; and
- Revocable Living Trusts must state they are revocable.

LEGAL REQUIREMENTS

- Revocable Living Trusts must be notarized in the same manner a deed is acknowledged for recording in the County Clerk's Office;

-or-

- Revocable Living Trusts must be witnessed by two Witnesses who must also sign the Revocable Living Trust.

FUNDING THE TRUST

- To be valid, a trust must have a corpus. “Corpus” of a trust is the property transferred to the trust by the Grantor.
- Funding of a Revocable Living Trust *is not* accomplished by attaching a schedule of property to the end of the Trust Document. . . MORE is REQUIRED!!

FUNDING THE TRUST

- It is “best practice” to re-title and re-register into the name of the Trustee all property which is subject to title or registration; for example:

automobiles, trailers and boats

stocks and bonds

bank and brokerage accounts

the family home

Funding the Trust

It is essential to prepare and record a deed transferring the family home into the Revocable Living Trust; otherwise, the home will not be part of the trust or subject to its direction on disposition upon the death of the Grantor(s).

- A transfer of the home into the Revocable Living Trust will not lose the “STAR” real property tax exemption; provided the grantor is also the lifetime beneficiary of the Revocable Living Trust.
- A transfer of the home into the Revocable Living Trust will still result in a “step-up” of basis (to the date of death value) of the home on the death of the Grantor(s).

FUNDING THE TRUST

- It is “best practice” to prepare and sign a written document which assigns to the Trustee title to other property and which describes the property in detail.
- This other property includes assets which are not subject to title or registration requirements, such as furniture and equipment.

TITLE TO PROPERTY

Title to property placed in the Revocable Living Trust
can be taken as:

*“Thomas Trustee, as Trustee of
the Betty Beneficiary Revocable Trust”*

“POUR-OVER” WILL

- Many times the Grantor of a Revocable Living Trust will not or cannot transfer all of his property to the trust. Some assets may be overlooked and others may be difficult to transfer.
- It is “best practice” to prepare and sign a “pour-over” Will to provide that property not titled in the name of the Trustee of the Revocable Living Trust will pass as part of the probate estate to the Trustees of the Revocable Living Trust to be disposed of according to the terms of the trust.

COMMON MISCONCEPTIONS

- **Will Work if not Funded:** to be an effective estate planning tool, property must actually be transferred to the Trustee of the Revocable Living Trust to be part of the trust's corpus.
- **Is the only Way to Avoid Probate:** There are many other ways which property passes other than through the Probate Process; for example, under a beneficiary designation related to a life insurance policy, retirement plan or account registered as a TOD account.

COMMON MISCONCEPTIONS

- **Will Avoid Estate Tax:** Any property in a Revocable Living Trust is part of your “gross taxable estate” and will be taxed if the Estate is large enough to incur an Estate Tax. Remember; however, that the “unified credit” amount removes most Estates from the reach of an Estate Tax.
- **Is a Medicaid Planning Device:** Any property titled in a Revocable Living Trust is considered an “available resource” and is counted against the resource limit (\$14,850 in 2016) for purposes of eligibility for Medicaid. The only trust which is an effective Medicaid planning device is an “irrevocable” trust established five years before an individual applies for Medicaid.

ADVANTAGES

- **Avoids Probate:** If properly drafted and funded, a Revocable Living Trust will pass property in the trust outside the Probate process
- **Avoids Ancillary Probate:** If the Grantor owns real property in another State, the Grantor's Executor must initiate Probate proceedings in the other State to transfer title to the real property (called "ancillary probate"). If, instead, the Grantor places the real property located in another State in a Revocable Living Trust during his or her lifetime, the real property will pass according to the trust thereby avoiding ancillary probate.

ADVANTAGES

- **Avoids a Will Contest:** It is far easier for a disgruntled relative to challenge a Will in Probate Court than it is for them to challenge the validity of a Revocable Living Trust.
- **Avoids need to locate Relatives:** In order to initiate the Probate Process, the Executor of the Estate must locate and serve a class of blood relatives of the decedent (called “distributees”) with notice of the Probate proceeding. It is often times difficult, if not impossible, to locate these distributees. If the decedent’s property passes according to a Revocable Living Trust, there is no need to locate these distributees.

ADVANTAGES

- **Provides Continuity of Asset Management:** If property is in a Revocable Living Trust, the Trustee owns the property. If the Grantor (Beneficiary) becomes incapacitated, the Trustee will continue to manage the property for the benefit of the Grantor (Beneficiary), uninterrupted.
- **Provides Privacy:** The Probate process is a Court proceeding and is therefore open to public view. A Revocable Living Trust is a private arrangement among the Grantor(s), the Trustees and the Beneficiaries. As such, it is beyond the view of the public.

THANK YOU