

# Professional Portfolio

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## What You Need To Know About Revocable Living Trusts

It seems everywhere you turn these days you see someone touting the advantages of Revocable Living Trusts. Claims are made that inheritance, estate and income tax benefits can be realized through a Revocable Living Trust. Avoidance of the probate process is also held up as a reason to have a Revocable Living Trust.

Often times you will see Revocable Living Trusts seminars advertised in the newspaper or on television promising tax advantages for your estate and ease of distribution of your property to your heirs. What these Revocable Trust peddlers do not tell you however, is that the tax advantages they tout for the Revocable Living Trust can be just as easily achieved through the use of a simple Will at a significantly reduced cost to you.

A Revocable Living Trust is a document that allows you to provide for the management and distribution of your property. Just as with a Will, the Trust is “revocable”, so that you may modify it or terminate it at any time during your life. The Trust is a writing that appoints a trustee to administer your property and gives that trustee instructions on how the property is to be managed during your lifetime and distributed at your death. A Revocable Living Trust document is typically longer, more expensive and more complicated than a Will. In addition, your property will need to be transferred and re-titled in the name of the Trust during your lifetime for the Trust to be effective. On the other hand, a Will can be created typically for much less cost than a Revocable Trust. The same provisions for the distribution of your property at your death that are in your Revocable Trust can also be in your Will. Finally, with a Will there is no need for you to reregister or re-title any of your assets but they can remain in your name until the time of your death.

Promoters of Revocable Trusts also like to say that there are estate, inheritance and income tax advantages to utilizing a Revocable Living Trust. While this statement is true, what the Revocable Trust promoters do not tell you is, again, that whatever tax benefits that can be achieved through utilizing a Revocable Living Trust, those same tax benefits can be achieved utilizing a Will. There is nothing that makes a Revocable Trust a more tax efficient device than a Will. In most cases all you achieve through utilizing a Revocable Trust is increased cost and complexity. A Will can achieve the same result with much less aggravation and expense. You should not set up a Revocable Living Trust for the sole purpose of saving taxes.

A Revocable Living Trust will allow property of the Trust to pass to your heirs free of probate. Probate is the legal process for transferring your property when you die. It is a Court supervised process and usually involves validation of your Will and appointment of an Executor or Administrator. After going through probate, your property is then distributed to the beneficiaries under your Will. A Revocable Living Trust does avoid the probate process because your assets have been transferred prior to your death to the Trustee of your Trust. If however, all of your assets are not transferred into the Trust before you die, then that untransferred property will still need to go through the probate process. While avoidance of probate in some states such as New York or California, is to be desired, the probate process in Pennsylvania is not so burdensome or expensive that using a Revocable Living Trust just to avoid probate in most cases is not warranted.

Supporters of the Revocable Living Trust also point out that with all of your assets being held by the Trust in the name of your Trustee, if you ever became incapacitated and unable to handle your own affairs the existence of the Trust would avoid having to appoint a guardian to safeguard your assets. While this aspect of the Revocable Trust is true, again, many of the Revocable Trust salesman out there fail to point out that a Durable General Power of Attorney is a simple and inexpensive way to avoid guardianship. This brief inexpensive document appoints another individual as your “Agent” to handle your assets and additionally can also empower that same person to make medical decisions on your behalf if you become incapacitated. The Power of Attorney is less detailed than a Revocable Living Trust Agreement but is also less expensive because it is brief and does not involve any transfer of assets as does the Revocable Living Trust.

All of this is not to say that the Revocable Living Trust doesn't have a place in some individuals Estate and Wealth Transfer planning. There are many times very legitimate reasons why a Revocable Trust is the best choice for an individual and their family in certain circumstances. What needs to be understood however (and is not always conveyed by the proponents of Revocable Living Trusts) is that many individuals do not require the expense and complexity of a Revocable Trust and that virtually all of the perceived advantages of the Revocable Living Trust can be achieved through the use of a Will and Durable General Power of Attorney.



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