



What is a Revocable or Living Trust?


As in most planning concepts, a competent team of advisors, including an estate attorney, an accountant, and a financial advisor, is your best source of information on trusts.

This book is only really intended to provide basic ideas and concepts on the topic. As such, there is no way I could possibly do justice to trusts here. Nevertheless, I hope the basics will suffice.

A trust starts off as a document that establishes a legal entity known as a trust. If this sounds odd, it is. The “trust document” - the paper that you sign - creates a legal entity that then stands as a unique “being” until it is dissolved either by the creator (you) or by an expiration of a specified timetable that you define.

Not always, but in most cases, a trust is executed in estate planning to handle what I call the Four Horsemen of the Estate Planning Apocalypse: Creditors, Predators, Outlaws, and In-Laws. I am being a bit flippant here, but the idea is solid. Trusts are meant to protect against creditors who would take your assets against your wishes, against predators who could “dupe” and manipulate your heirs, against your former in-laws in the case of divorce or business disputes and against current in-laws in the case of future action against your heirs.

In all instances, a trust has at least one trustee. This is the person who is responsible for executing the terms of the trust. Most of our clients prefer to have their most personal issues overseen by a trusted member of the family who knows the family dynamics. However, it is often difficult to choose such a person who is competent, strong of character, and willing to act as trustee. There are responsibilities and commitments that a trustee must take on now and in the future. These responsibilities and commitments last as long as the trust does. Consequently, it is often difficult for a trust creator to make the decision to “burden” a family member, no matter how strong a person, to be a lone trustee (see the appendix for Considerations for an Individual Trustee which outlines the role of a trustee).



Thus, many of our clients prefer to add a corporate trustee as a co-trustee.

In this capacity, the corporate trustee is expected to handle all the technical, tax, and administrative tasks, and bear the fiduciary liability. In tandem then, the family member carries out the wishes of the trust maker while the corporate co-trustee takes responsibility for the details.

Frequently, a trusted family member is named the Power of Attorney (POA) and executor of the will while a corporate trustee is named to invest, make the appropriate tax filings and, when absolutely necessary, referee difficult family situations. As mentioned above, the POA is a legal document that appoints someone to speak for you when you cannot. A trust can serve the same purpose if need be.



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As cited earlier, there are four phases of your economic life to manage from here on. From the standpoint of legal intervention by another party on your behalf, the situations look like this:

1. While you have your health and your wits, you run the show. No need for anyone's assistance.
2. If you live a long time and simply need some help to run the show along the way, you can delegate a family member to assist you.
3. If you become incapacitated, either permanently or temporarily, your business and financial affairs can continue to be managed by someone looking out for your best interest.
4. When you die, your wishes can be carried out.

In the case of situation one, you need nothing more than your own signature to conduct business. A well drafted general POA handles situation number two. A Durable POA is useful in either circumstance two or three, but only a Revocable Living Trust (RLT) handles all four circumstances.

If you have followed this discussion, you may now find yourself asking why I rebuffed RLTs earlier only to now appear to advocate for them. Good question. RLTs have mostly a bad reputation in the popular press because they are over marketed. In fact, just as puppies can be "milled", there is a phenomenon called "RLT mills" where unscrupulous attorneys churn out "customized" trusts sold by salespeople who do not know anything about you or the estate planning they promise to provide. These firms are out there, and they are the ones that sully the concept of a living trust.

As in anything, RLT's are neither the silver bullet solution to everything nor are they the pariah of the journalistic tirades one occasionally sees in the local or national press. They are simply an instrument that, when used properly, can offer excellent options for a client who has particular needs and goals.

Where I find RLT's to make the most sense is when you have an elderly family member who does not have a competent spouse to act on his/her behalf. In most cases, a competent spouse is more than capable of handling matters for a couple without resorting to an RLT. But whether by widowhood or by mental infirmity, when a person loses their competent spouse, an RLT begins to make sense for a variety of reasons. Simplicity, ease of management, and avoidance of multiple probates - e. g., ownership of real property in multiple states, like a beach house in one state and a primary residence in another, triggers multiple state probates - are reasons for considering the RLT option.

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