

REVOCAABLE LIVING TRUSTS IN CALIFORNIA

*Review Some Essential Ideas that You Should Understand
If You Want to Get the Most Out of Revocable Living Trusts*



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Contemporary estate plans, especially in recent years, have increasingly relied upon a revocable living trust as a foundational element. A trust is a kind of legal entity that you can use to obtain various types of benefits. Revocable living trusts are a specific kind of trust that give you some very specific abilities.

While revocable living trusts are important, and while most estate plans rely on them, most people have no direct experience with these essential tools. To help clarify what a revocable living trust is, how it helps you, and how it works, we are going to review some essential ideas that you should understand if you want to get the most out of these important devices.

TRUSTS

When people first come to the estate planning process, they often have only a vague notion of what a trust really is. To help clarify the concept, you might want to think of a trust as a kind of corporation. Like a corporation, a trust exists independently from the people who created it. In other words, once you establish your trust, that trust can, like a corporation, exist separately from you, and can even own property in its own name.

This independent legal status gives trust some important qualities. It also allows people to create various types of trusts, each of which are designed with specific purposes in mind. The revocable living trust, for example, provides some benefits that other trusts do not, though it is not as effective in achieving goals that different types of trusts can offer.

REVOCABLE, LIVING

When lawyers use the terms “revocable” and “living” when referring to a trust, they're doing so because those words have specific meaning in the law. A revocable living trust is “revocable” because you, as the person who creates the trust, have the right to revoke or modify its terms as at any time. On the other



hand, if you were to create an irrevocable trust, you cannot change or revoke the trust terms later.

Further, a revocable living trust is “living” because it takes effect while you are still alive. There are two general types of trusts

you can create: living and testamentary. When you create a living trust, you create an entity that begins operating as soon as you complete the necessary steps. On the other hand, if you create a testamentary trust, you create an entity that only comes into existence after you die and your last will and testament takes effect. All testamentary trusts are irrevocable, while all revocable trusts are living trusts.

RLTs

So, if a revocable living trust is a kind of entity you create that takes effect while you're still alive, you may be wondering why you would need one. There are two

main benefits from creating a revocable living trust, each of which is important when you create an estate plan.

The first, and probably most well known, benefit you can obtain from a revocable living trust is the ability to minimize or avoid the necessity of your estate having pass through probate. When you die and leave behind property, that property will have to be distributed to new owners. The legal process and rules that govern this transfer of property from a deceased person to a new owner is generally known as the probate process. Probate has a lot of complicated requirements, can take a long time, and can end up costing your estate a significant amount of money. Not only that, but if you leave behind any inheritances, your heirs may not be able to receive them until after the probate process concludes.

When you create a revocable living trust you create an entity that is allowed to own property even after you die. Because of this, you can use your revocable living trust to distribute inheritances outside of the probate process. Though we will talk about how this works in our next discussion, for now all you need to realize is that revocable living trusts can save your estate time and money.

The second benefit you can obtain from creating a revocable living trust is the ability to help you in the event you ever become incapacitated. When you create your revocable living trust, you will most likely serve as the trustee. The trustee is the person who actually manages the property the trust owns. Since the trust

will own your personal property, it makes sense that you retain the ability to manage this property so you never lose control of it.

However, should you become incapacitated, your revocable living trust will also give you the ability to name a replacement trustee. If you lose your ability to manage the trust property, the replacement trustee can step in and take over your managerial responsibilities.

DEVELOPING A PLAN THAT RELIES UPON AN RLT



As with any other estate planning tool or device, you should only try to use a revocable living trust if you are certain it is right for your needs. While these types of trusts are useful to almost anyone, they aren't something you should try to create or use without the advice and guidance of an experienced lawyer.

Not only is creating the trust something that you need to ensure you do properly, but you also want to be certain that the trust itself fits into your overall estate planning goals. Tailoring an estate plan so that it uses tools such as an revocable living trust to accomplish her goals is something that the attorneys and staff at the Northern California Center for Estate Planning and Elder Law have a lot of experience doing. If you'd like more information about revocable living trusts, have questions, or want to get started on the estate planning process, contact us as soon as possible.

About the Author



Timothy P. Murphy

Timothy P. Murphy is an estate planning and elder law attorney whose practice emphasizes helping people to build, preserve and pass on their wealth. He works with his clients to accomplish their goals while avoiding unnecessary court proceedings and minimizing or eliminating exposure to death taxes. Mr. Murphy also assists families facing the myriad of problems associated with dealing with a loved one's declining health and rising needs for care. He has practiced law in the Sacramento area for 29 years, first with a large firm, and then with his own firm since 1987.

Tim has written a regular column on legal issues for Senior Magazine. He also was a regular featured guest on the Money Experts radio program heard locally on KFBK (AM 1530). Tim has been featured in the Sacramento Bee, Sacramento Business Journal, Sacramento Magazine, Comstock's Magazine and other publications on estate planning and related topics. He also assisted local Channel 3 (KCRA) in an investigative report on the trust mill problem in the Sacramento area and was featured on Channel 10 (KXTV) in its series on personal financial planning.

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