



# Revocable Living Trusts

*What you need to know about revocable living trusts*

## What is a revocable living trust?

A revocable living trust is a written agreement in which the trustor, the person who creates the trust, names a trustee and governs the management of trust assets during the trustor's lifetime and upon the trustor's death. Establishing the revocable living trust (RLT) essentially creates a legal trust entity, to which the trustor transfers ownership of some or all of his or her assets. RLT-owned assets typically include the trustor's residence and financial accounts. Usually retirement accounts such as IRAs are not transferred to the RLT. As with any estate planning document, each situation is unique and the RLT-based plan should be tailored to the individual's particular circumstances, assets and goals. (Although this resource refers to a single trustor, often couples create a revocable living trust together as their joint estate planning document, in which case both spouses or partners are usually the trustors, together. Note also that another word for trustor that is sometimes used in trust agreements is "grantor;" but only the term "trustor" is used herein for simplicity's sake.)

## Who should serve as trustee of a revocable living trust?

Typically, a trustor serves as the trustee immediately and throughout the trustor's lifetime. The trustee is responsible for carrying out the terms of the RLT. It is important for the trustor to designate at least one alternate to serve in the event of the trustor's incapacity or death. The alternate trustee



is usually referred to as the "successor" trustee. If a trustor is elderly or already facing a debilitating illness at the outset, he or she may choose to name a third party as trustee immediately. Depending on the circumstances, a trustor may name a family member, friend, colleague, and/or a professional fiduciary, such as a trust company, as successor trustee(s).

## How is a revocable living trust different from a last will and testament?

Both wills and RLTs give instructions about the transfer of assets after death. However, a will is essentially sits dormant until the testator – the person who created the will – passes away. If someone dies with a will instead of a RLT a court probate proceeding is often required. By contrast, a RLT agreement creates a legal trust entity

upon signing, and that trust becomes the owner of some or all of the trustor's assets during the trustor's life. If a RLT is maintained properly, then a court probate proceeding may not be necessary when the trustor dies. The RLT is an alternative to a will; a person has one or the other as their fundamental estate planning document. However, usually a simple will called a "pour-over will" accompanies the RLT, to capture any assets outside of the trust.

## How much does a revocable living trust cost?

The cost of establishing a RLT varies greatly, depending upon where one lives, attorney fees, and the level of complexity of the trustor's situation. In addition, usually RLTs are created as part of a comprehensive estate plan

that includes other documents such as powers of attorney. Some attorneys perform estate planning work on a “flat fee” basis, while others charge hourly rates. If cost is a concern, it is usually a good idea to compare cost estimates from two or more attorneys.

### **Can a revocable living trust be changed?**

The terms of a RLT can be changed at any time, which is usually accomplished by amending the document or, if the changes are substantial, by restating and amending the trust document in its entirety. Moreover, a RLT is, as the name states, revocable, and may be cancelled in full at any time before the trustor’s death.

### **I often hear mention of “trusts.” How does a revocable living trust compare to other types of trusts?**

There are many different types of trusts, some of which are created during the trustor’s lifetime and others that are created only after death. Different trusts have different purposes, such as minimizing estate taxes or providing for a disabled family member. In general, the RLT’s purpose is to provide for a relatively straightforward and private process for transferring assets after death.

### **Does a revocable living trust protect assets from potential lawsuits and creditors?**

No; contrary to popular belief, the transfer of assets to a RLT does not provide meaningful protection from potential lawsuits and creditors.

### **Are there tax reasons to have a revocable living trust instead of a will?**

No, there are no tax advantages to using a RLT instead of a will. The creation of a revocable living trust has no effect on the trustor’s personal income tax situation; all income and expenses are reported on the trustor’s regular, individual tax return. Also, the same gift and estate tax planning can be ac-

complished with a RLT as with a will. (In 2013, an individual’s estate is exempt from Washington’s estate tax if the net estate is less than \$2 million, and exempt from federal estate tax if the net estate is less than \$5.25 million. These exemption amounts will increase over time because, under current law, both the state and federal exemptions are indexed for inflation. In addition, and in general, estate tax laws often change.)

### **What are the advantages of a revocable living trust compared to a will?**

RLTs offer some advantages, including:

- Private transfer of assets to beneficiaries after death instead of probate, which creates a public record;
- May avoid (if properly created and maintained) the requirements and expenses of a probate;
- Designation of another person to manage one’s assets during life is easy, if desired.

### **What are the disadvantages of a revocable living trust compared to a will?**

There are also disadvantages to RLTs, including:

- RLTs are not as common as wills in Washington and their unfamiliarity can complicate matters after the trustor’s death;
- RLTs are usually more expensive to establish than a will because of the time involved in ensuring that appropriate assets are transferred to the trust;
- Administering a RLT without a probate does not provide the helpful and protective aspects of probate, which include creditor deadlines and a court venue for addressing disputes;
- Ongoing maintenance is required to ensure that appropriate assets are held in — and new assets are acquired by — the RLT.

### **Why have I heard from friends or relatives who live in other states that a revocable living trust is superior to a will?**

Approaches to estate planning vary significantly from state to state. For example, in some states only RLTs are used. Moreover, the probate process varies greatly among states in terms of cost, benefits, complexity and duration. For Washington residents, the decision about whether to establish a RLT or a will is an individual one that is best made in consultation with an experienced estate planning attorney.

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*This pamphlet was prepared as a public service by the Washington State Bar Association. It contains general information and is not intended to apply to any specific situation. If you need legal advice or have questions about the application of the law in a particular matter, you should consult a lawyer.*

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