

LIVING REVOCABLE TRUSTS

GAINING MAXIMUM BENEFITS FROM A LIVING REVOCABLE TRUST. The living revocable trust is a technique for owning property during life and transferring it to our intended beneficiaries at the time of death. Essentially, it is an estate plan which can also be a very effective lifetime financial plan.

WHAT IS A LIVING REVOCABLE TRUST? It is a trust that is set up during life and can be changed or revoked by the Grantor at any time. Every living revocable trust is the actual owner of all the property transferred to the trust. Like other trusts, the living revocable trust has a *Grantor*. That's the person who creates the trust and transfers property to the trust. There is always a *trustee*— the person or institution responsible for managing and investing the trust properties. There are always one or more *beneficiaries*---the persons who are designated to receive income, principal, or other benefits from the trust. And, there is always a *written document* that defines the rights and responsibilities of the Grantor, the trustee, and the beneficiaries. In most cases, the Grantor will also be the trustee and the sole beneficiary of trust income during his or her life. The living revocable trust can be changed, modified, or canceled by the Grantor at any time and for any reason. However, like a will, it does become irrevocable and unchangeable when the Grantor dies.

VARIATIONS IN FUNDING A LIVING REVOCABLE TRUST. It is important to note that there is no such thing as a standard living revocable trust. Your living revocable trust should be planned and drafted to meet your individual needs and accomplish your personal objectives. When you create a living revocable trust, you have many funding options. You can: (1) immediately transfer the ownership of certain properties to the trust; (2) arrange to transfer properties to the trust at a later time typically when there seems to be a high risk of death or disability; (3) name the trust as the death beneficiary of your life insurance and/or your IRA and other retirement death benefits; or (4) in your will, name the trust as the beneficiary of certain properties or even of your entire probate estate.

If your primary objective is to avoid the costs and delays inherent in passing the property by will, you will want to transfer most, if not all, of your assets to the trust prior to your death. These assets will be used or disposed of exactly as you have directed in the trust agreement with no need for court supervision or approval. They will not be subject to any of the costs and delays normally involved in settling an estate. In addition to transferring property to the trust during life, you can arrange for the proceeds of your life insurance policies and/or your retirement death benefits to be paid to the trust at your death. Finally, you can transfer your personally owned property to the trust. If you allow this property to pass through your will, these transfers will take effect at your death, and they will be subject to the costs, the delays, and the possible complexities of probate. The trustee will hold and dispose of these properties as directed in your trust agreement.

VARIATIONS IN MANAGING A LIVING REVOCABLE TRUST Most living revocable trust arrangements name the Grantor as trustee. This arrangement, of course, gives the Grantor complete and immediate control over the management and investment of all assets transferred to the trust. If you decide to act as your own trustee, you will want to name a successor trustee to assume this office at your death. And it is generally advisable to provide that the successor trustee will also assume the office of trustee if you become incapable of managing the trust

properties.

VARIATIONS IN DISPOSING OF PROPERTY AFTER DEATH. A Living revocable trust agreement can direct the trustee to distribute the trust properties to designated beneficiaries immediately after the death of the Grantor. Or the agreement can direct that the trust be continued for a spouse, family members, or other designated beneficiaries. The living revocable trust can do everything a will can do. It can name contingent beneficiaries; create presumptions as to the simultaneous order of deaths; set up estate-tax-saving trusts and qualify property for a marital deduction.

BENEFITS OF A LIVING REVOCABLE TRUST. One primary purpose for setting up a living revocable trust is to avoid probate proceedings. Properties transferred to the trust during the life of the Grantor are not subject to probate at the death of the Grantor. Thus, the living revocable trust can avoid all or most of the delays, the confusion, and the costs of settling or probating an estate. Probate costs in North Carolina are four tenths of 1% of the value of the probate estate. Attorney's fees generally range from 1% to as much as 5% of the value of the estate. Although settlement costs will often be based on the difficulties of settling the estate, it can cost about \$2,500 to settle an estate valued at \$100,000, \$10,000 to settle an estate valued at \$400,000, and \$20,000 to settle a million-dollar estate. A living revocable trust can significantly reduce these costs. And that, of course, means that more of your estate will pass to your intended beneficiaries.

Because most assets of a husband and wife will not be subject to probate, on the death of the first to die the ability of a living revocable trust to avoid probate may not be an important factor in their estate planning. But if both die simultaneous, all of the property will be subject to probate in most instances. Clearly, the ability of a living revocable trust to avoid probate costs is most advantageous for persons who will have relatively large probate estates.

Only assets transferred to a living revocable trust during life avoid probate. Assets bequeathed to the trust through the will of the Grantor are subject to probate.

It may be helpful to point out some of the ways a living revocable trust agreement can direct the disposition of property at the death of the Grantor. The trust agreement can direct that some or all properties can be distributed to designated beneficiaries immediately upon the death of the Grantor. The living revocable trust agreement can also direct that the trust — or part of the trust — be continued for many years after the death of the Grantor. The trustee, for example, can be directed to hold the trust properties and to pay an income to one or more beneficiaries for their lives and distribute the principal to other beneficiaries when all the designated income beneficiaries have died. Certainly, all these trust arrangements can be set up in a will just as easily as they can be set up by a living revocable trust. But the living revocable trust does have some distinct advantages. A living revocable trust makes it possible to accumulate practically all the assets of a decedent in a single fund where it will be managed by a single trustee under a single comprehensive plan set out in the trust agreement.

Another important benefit of a carefully planned living revocable trust is its ability to help avoid or minimize federal estate taxes. (See the outline on Estate Planning). The skillful use of trust arrangements could permit a couple to pass an estate to their children substantially or completely free of all federal estate taxes. The value of all properties that pass outright to the qualified charities are immediately deductible for federal estate tax purposes. Indeed, a deduction is even allowed when the charity will not receive the property until after the death of

designated family members, based on how long the family members continue to enjoy the property. The living revocable trust does not, in and of itself, avoid or reduce the federal estate tax. Properties owned by the trust are part of the Grantor's gross estate for estate tax purposes in the same way that individually owned properties are part of the gross estate. The living revocable trust does, however, makes it easier to set up arrangements that can minimize estate taxes.

When an estate goes through probate, all estate records become public knowledge. Anyone can review the probate file and learn all the assets and liabilities of the decedent, the value of many assets, and exactly who inherited the various assets of the estate. A living revocable trust, on the other hand, is a private document. The terms of the trust, the nature and value of the trust property, and the beneficiaries of the trust are simply not available to the public.

PROTECTION IN THE EVENT OF ILLNESS OR INCAPACITY. Most living revocable trust agreements provide for the appointment of a successor trustee if the Grantor/trustee is unable to handle the trust properties. This can be an important advantage of a living revocable trust because, in the absence of a trust, it is generally necessary to petition a court for the appointment of a guardian or conservator for a person who has become permanently or temporarily incompetent to handle his or her financial affairs.

WHAT DO YOU WANT FROM YOUR LIVING REVOCABLE TRUST? There are other possible advantages of a living revocable trust but in thinking about a living revocable trust you will want to consider how important it is to:

- X avoid probate costs and delays in settling your estate;
- X continue a trust arrangement for selected beneficiaries after your death;
- X minimize estate taxes;
- X use your properties to benefit the charities as well as family members;
- X avoid publicity concerning your estate and your estate plan;
- X assure the management of your assets in the event of your incapacity or absence;
- X free yourself from day-to-day investment and management responsibilities.

DISADVANTAGES OF A LIVING REVOCABLE TRUST. The living revocable trust does have certain disadvantages. Planning and drafting a living revocable trust will probably cost more than planning and drafting a will. And transferring the legal ownership of properties to the trust can take time and, perhaps, add to the cost of the arrangement. Managing a living revocable trust is not difficult but it does require a certain structure and discipline. Happily, a living revocable trust does not create tax reporting problems. Indeed, in most cases the trust is not required to file any type of report with the IRS. Income, gains, expenses, and losses are reported on the Grantor's tax return just as if there was no trust. Transferring property to and from a living revocable trust can sometimes be cumbersome. Transferring listed securities to the trust may require filing a copy of the trust agreement with the transfer agent. Buying and selling trust properties may also be cumbersome because the person dealing with the trust may insist upon an assurance that the trustee has the right to buy or sell the property. This may require providing that person's attorney with a copy of the trust agreement. We can often arrange the trust to avoid some or all of these problems.

GAINING MAXIMUM BENEFITS FROM THE TRUST. A Funded Trust Is Most

Beneficial

We recommend that the Grantor transfer to a living revocable trust the ownership of business interests, listed securities and brokerage accounts, residence and other real estate, certificates of deposit, money market accounts, investment real property and tangible personal property. A living revocable trust can be named as the beneficiary of a life insurance policy, annuity or retirement plan. This can be an excellent arrangement if the Grantor wants the insurance proceeds held in trust for family members after his or her death.