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Understanding Trusts

A revocable living trust is an arrangement by which you transfer ownership of your property into a trust throughout the course of your lifetime. To fully understand how a trust operates, let's take a look at the four main components:

Establishing the Living Trust

Unlike a will, which comes into play only after you die, the living trust can start benefiting you while you are still alive. The trust is revocable in nature, which allows you to make changes to fit your personal situation.

The revocable living trust is established by a written agreement or declaration that appoints a trustee to manage and administer the property of the grantor. As long as you're a competent adult, you can establish an RLT. In essence, the trust is like a rulebook for how your assets are to be handled when you die. As the grantor, or creator of the trust, you can name any competent adult as your trustee; some people prefer to choose a bank or a trust company to fill this role.

Advantages of the Living Trust

Let's look at some of the advantages of having a revocable living trust in place:

- **Avoidance of Probate** - Probate is the legal process for transferring your property when you die. Establishing an RLT can be especially useful in avoiding expensive multiple probate proceedings when you own real estate or other property in several states. Assets named in trust avoid the costly courts and typically take precedence over the property designated in your will.
- **Changeable or Revocable** - The living trust allows you to make changes (or amendments) to the trust document while you are still alive.

- ***Privacy Preservation*** - Trusts allow the transfer of your personal assets to remain private within the constraints of the trust document. The probate process may expose your estate to the public.
- ***Eliminate Challenges to the Estate*** - The standard will can create family disputes at your death and be challenged for alteration by any member of your family. By using a trust, you can specifically disinherit anyone who posts a challenge to your wishes upon your death.
- ***Segregation of Assets*** - This is useful for married couples with substantial separate property that was acquired prior to the marriage. The trust can help segregate those assets from their community property assets.
- ***Assignment of Durable Power of Attorney/Guardianship*** - A living trust can be used to help control a guardian's spending habits for the benefit of your minor children. It can also authorize another person to act on your behalf if you become incapacitated and need someone else to make medical decisions for you.
- ***Continuous Management*** - This allows the wealth that you've accumulated to continue to grow for multiple generations by using a professional trustee to manage your property. You can limit the amount of withdrawals to income only, with special emergency provisions if you wish.
- ***Estate Tax Minimization*** - While the RLT is not a good tax minimization tool on its own, provisions can be included in the trust documentation to transfer wealth by establishing a credit shelter trust in the event of your death. The CST is a very effective tool to help reduce estate taxes for large estates that exceed the combined estate tax exclusion amounts.

Pros of Using a Revocable Living Trust

- ***Avoiding Probate*** - This is probably the biggest advantage of using a Revocable Living Trust. Why subject your loved ones and your property to the restrictive rules of probate when you can easily avoid it with the use of a fully funded Revocable Living Trust? This is particularly important if you own real estate in more than one state because without a trust, your loved ones will be faced with two or more probate proceedings. A Revocable Living Trust will also give your loved ones almost immediate access to cash during a difficult time. Compare this with the time it takes to open a probate estate and gain access to your bank account (anywhere from a few weeks to several months), and the value of a Revocable Living Trust to your loved ones will be priceless.
- ***Avoiding Guardianship or Conservatorship*** - This is an advantage of using a Revocable Living Trust that's often overlooked. Why subject your loved ones and your property to the restrictive rules of guardianship or conservatorship when you can easily avoid it with the use of a fully funded Revocable Living Trust? After following the trust provisions for determining your incapacity, your loved ones will be able to take over control of your trust assets without interference by a judge. Aside from this, the value that a Revocable Living Trust offers to your loved ones in avoiding guardianship can be more than the value created by

avoiding probate. Why? Because probate will only last for a fixed period of time (usually a year or two at the most), but guardianship can last for five, ten, or even twenty years.

- ***Keeping Things Private*** - As required by state law, probate is a public proceeding. This means that anyone can go to the court house and take a look at each and every probate file being stored there. For example, if I've been hired by the beneficiary of an estate that's already been opened, I'll just go down to the court house and take a look at the probate file. Not once has the court clerk asked me why I need to look at the file, and I've even asked the clerk to make copies of specific documents or the entire file and she hasn't batted an eye. In fact, in some jurisdictions you can look up court dockets and filings online. Contrast this with a Revocable Living Trust - it doesn't need to be filed with a court, so it won't become a public record for everyone to see, while anyone can read a Last Will and Testament that's been admitted to probate.
- ***Forcing You to Get Organized*** - It still amazes me how many people don't really know what they own or how their property is titled. When you set up a Revocable Living Trust, you'll be required to fund your assets into it, and this, in turn, will force you to find account statements, stock certificates, corporate minutes, car and boat titles, and deeds to real estate. And this will continue to benefit you in the long run because once you've taken the time to get organized and fund your trust, you'll stay organized and it will be easy for you to understand how your property is titled - in the name of your Revocable Living Trust.

Cons of Using a Revocable Living Trust

- ***Up Front Costs are High*** - In general, it will cost more time and money to set up and fund a Revocable Living Trust than it will to simply write a Last Will and Testament. But in the long run the overall time and money spent on the trust will be lower. Why? Because the trust will allow your loved ones to avoid a costly court-supervised guardianship if you become disabled and a costly court-supervised probate proceeding after you die. Aside from this, the trust will benefit your loved ones by allowing them to avoid all of the emotional costs associated with guardianship and probate.
- ***Funding a Trust is a Pain*** - Once your trust has been signed, you're not done - you'll need to contact your banks, investment and insurance companies, and transfer agents to change account and stock ownership and update beneficiaries; issue new stock certificates or assign partnership or LLC interests for closely held businesses; retitle cars and boats; and sign and record new deeds for real estate. For many people, this is *the* major drawback to using a Revocable Living Trust - if it's not fully funded, then it's really not worth any of the money spent on it. The type of assets that you own and what will need to be done to get them funded into a Revocable Living Trust should be carefully considered before you decide to use a trust.

- ***There's a Longer Time Limit Allowed for Contesting a Trust vs. Contesting a Will*** - Most states have specific statutes that dictate who can challenge a Last Will and Testament and how long they'll have to challenge it (usually only 30-90 days). Contrast this with contesting a trust, which was, at least until recently, a wide-open court proceeding subject only to state specific statutes of limitation (usually 1-5 years, but sometimes longer). Lately, however, quite a few states have decided to close this gap by enacting specific laws that severely restrict the time frame for challenging a trust. For example, in 2007, Florida enacted a statute that limits the time for challenging the terms of a Revocable Living Trust after the Trustmaker dies to six months.