
REVOCABLE TRUSTS

(also known as “LIVING” or “INTERVIVOS” TRUSTS)

A Trust is created when one person (the “Settlor” or “Trustor”) transfers property to a person or corporation (the “Trustee”) with instructions to hold it for the benefit of himself or others (the “Beneficiaries”).

If the Trust is created during the Settlor’s lifetime, rather than in his or her Will, it is an “intervivos” or “living” Trust. When the Settlor retains the right to dissolve the Trust arrangement it is a “revocable” Trust.

WHAT ARE SOME OF THE ADVANTAGES?

1. Assets in the Trust are not subject to probate administration. This saves executor and attorney fees. It also grants more privacy as to who gets the estate, when they get it, and how much they get.
2. Usually the Settlor will act as the Trustee as long as he or she is able. Professional management is available if the Settlor becomes incompetent, disabled, or wants to be free of management worries.
3. At the Settlor’s death, a named successor Trustee steps in and manages the estate with little delay.
4. Annual Court accountings, with the accompanying legal fees generally are not required during the Settlor’s life. In most cases accountings are required after the Settlor’s death, unless the beneficiaries waive them. Some states do not require annual accountings for testamentary Trusts (a Trust created in a will) either.
5. The Trustee can collect life insurance proceeds immediately after the Settlor dies and can use the proceeds to care for family members without any need for court approval.
6. A successor Trustee can be in another state without complications.

WHAT ARE SOME OF THE DISADVANTAGES?

1. Creditors may not be cut off as quickly as they are in probated estates; i.e., usually four months.
2. A little more effort is required to transfer assets into the Trust and records should be kept on later transactions by the Trustee.
3. The attorney usually charges a higher fee to establish either a revocable or a testamentary Trust, as compared to a simple Will.
4. A probate estate is a separate taxable entity, which may allow the Beneficiary to pay a lower income tax while the assets are being probated.