

PITTMAN LAW OFFICE

ESTATE PLANNING CONSUMER GUIDE

Estate Planning Consumer Guide

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ESTATE PLANNING CONSUMER GUIDE

Article One Our Mission



Pittman Law Office exists to provide value through education and superior customer service to help retirees in The Villages area create an estate plan that best suits them. We assist them in them creating an estate plan that will give them Peace of Mind as well as providing guidance to the Personal Representative of a probate estate and the Trustee of a Trust when someone dies.

Our entire staff is involved with our clients. We pride ourselves in prompt, courteous and professional representation, while maintaining that personal touch. We dedicate ourselves to giving our clients the power to be informed individuals and to achieve all of the benefits that the law guarantees.

Please feel free to contact the Pittman Law Office to have a complimentary consultation with an attorney to discuss your Estate Planning needs or for a review of your current Estate Planning documents, such as your Trust, Will or Power of Attorney.

Article Two
Meet the Team



Section 2.01 Amy R. Pittman, Attorney/ Owner

Amy R. Pittman has been practicing as an Attorney in The Villages area since 2007 and has an Estate Planning law office where she concentrates in Estate Planning (Wills, Trusts, Durable Power of Attorney for Financial and Health Care Surrogates) and Probate and Trust Administration. Her practice focuses on the distinctive needs of retirees and the elderly. It is Amy’s goal to help take the worry away and give her clients peace of mind in planning.

Amy’s personal mission is to make estate planning as accessible, efficient and streamlined as possible so that individuals and families are motivated to express their estate planning goals, and families do not have to deal with the disastrous fallout from lack of planning. Amy strives to help loved ones in implementing estate plans when a loved one passes away.



Section 2.02 Audra M. Platt, Attorney

Audra M. Platt has been practicing as an attorney in Florida since 2017 and is honored to practice law in the County she grew up in. Audra focuses on Estate Planning for retirees and young families, including: Trusts, Wills, and Durable Power of Attorney for Financial and Health Care Surrogates for young families as well as retirees. It is Audra’s goal for her clients to feel relieved when they walk out of the office knowing that their affairs are taken care of for their loved ones.



Section 2.03 Toni Riebling, Director of First Impressions

As a long-term resident of New York, Toni Riebling brings to our firm her 35 years of experience. Toni is usually the first person our clients or potential clients speak to or see when they come into our office. She is a happy and easy-going team member who enjoys interacting with our clients.



Section 2.04 Tara Dirato, Probate Paralegal

Tara Dirato has spent over 15 years in the legal field and handles all of the probate and trust administration cases here at Pittman Law Office. Her days consist of drafting court documents and helping the loved ones of our clients through the court process. Her goal is to make the probate court process as smooth as possible and ensure that the wishes of loved ones who have passed are honored.



Section 2.05 Leslie Rector, FRP, Paralegal and Office Manager

Leslie Rector is a Florida native, born and raised in Lake County, Florida. Leslie's day-to-day work life consists of managing the office, preparing legal documents, and coordinating with clients. If you have any questions regarding your estate plan, she is the one to contact.



Section 2.06 Alexandria St. Clair, Paralegal

Alexandria St. Clair, also known as Lexi, is here to prepare your estate planning documents and make sure your experience here is a great one. She is the one who makes sure your documents are uploaded to our cloud database and that you received all of your signed documents. She also handles and resolves all of our technical problems here at our office.



Section 2.07 Alissa Patrick, Legal Assistant

Alissa Patrick is a Florida native, born and raised in Sumter County. Alissa is new to the workforce and only just graduated from the Villages Charter School in 2022. She spends her time at Pittman Law Office assisting the attorneys and preparing legal documents.

Section 2.08 Anjali Rampersad, Administrative Assistant

Anjali Rampersad is an administrative assistant and started at Pittman Law Office in 2023. She helps to answer the client's phone calls and assists with the day-to-day administrative tasks for the firm.

Article Three

Glossary of Terms

Administration

The court-supervised distribution of an estate during probate. Also used to describe the same process for a trust after the Grantor dies.

Alternate Beneficiary

Person or Organization named to receive your assets if the primary beneficiaries named in your Trust or Will die before you go.

Ancillary Administration

An additional probate in another state. Typically required when you own real estate in another state that is not titled in the name of your Trust.

Annual Exclusion

Amount you can give someone each year without having to file a gift tax return or pay a gift tax. Currently \$15,000 per recipient. The amount of tax-free gifts is tied to inflation and may increase from year to year.

Assets

Anything you own, including your home and other real estate, bank accounts, life insurance, investments, retirement accounts, annuities and personal belongings.

Basis

What you paid for an asset. The value that is used to determine gain or loss for income tax purposes.

Certificate of Trust

A shortened version of a trust that verifies the trust's existence, explains the powers given to the trustee and identifies the successor trustee. Does not reveal any information about the trust assets, beneficiaries or their inheritances.

Codicil

A written change or amendment to a Will.

Co-Grantors or Co-Settlers

Two or more persons who establish one living trust together.

Co-Trustees

Two or more individuals who have been named to act together in managing a trust's assets.

Common Trust

One living trust established by two or more individuals (usually a married couple)

Community Property

Assets a married couple acquire by joint effort during marriage if they live in a community property state. Each spouse owns half of the assets in the event of divorce or death.

Conservator

One who is legally responsible for the care and well-being of another person. If appointed by a court, the conservator is under the court's supervision. May also be called a guardian.

Conservatorship

A court-controlled program for persons who are unable to manage their own affairs due to mental or physical incapacity. May also be called guardianship.

Contest

To dispute or challenge the terms of a will or trust.

Corporate Trustee

An institution, like a bank or trust company that specializes in managing trusts.

Creditor

Person or institution to whom money is owed.

Custodian

Person named to manage assets left to a minor under the Uniform Transfer to Minors Act. In most states, the minor receives the assets at legal age.

Deceased or Decedent

One who has died.

Deed

A document that transfers title of your real estate to another person.

Designation of Health Care Surrogate (DHCS)

This legal document is used to give another person or persons (the “surrogate”) the right to make medical decisions on a person’s behalf should he/she become unable to do so.

Disclaim

To refuse to accept a gift or inheritance so it can go to the recipient who is next in line.

Discretion

The full or partial power to make a decision or judgment in a will or trust.

Disinherit

To prevent someone from inheriting from you.

Distribution

Payment in cash or asset(s) to one who is entitled to receive it.

Do Not Resuscitate (DNR)

This document is developed by the Florida Department of Health. To be valid this must be proper in form and be signed and dated by the patient’s physician. This Florida form is always on yellow paper and can be obtained from your physician. The DNR tells hospitals, doctors and health care providers to not resuscitate when certain conditions occur because your quality of life will not be sufficient after resuscitation.

Durable Power of Attorney (DPOA)

A Durable Power of Attorney is a legal document delegating authority from one person (the “principal”) to another (the “agent”). This document is typically used when the principal is incapacitated and allows the agent very broad powers to perform any legal act on behalf of the principal. An agent may perform only those acts specified in the DPOA. This document becomes effective as soon as the principal signs it and is no longer valid upon the death of the principal.

Equity

The current market value of an asset less any loan or liability.

Estate

Assets and debts left by an individual at death.

Estate Planning

Estate Planning is the process of preparing for incapacity and death by establishing the appropriate legal documents that are mentioned below as well as how your assets will pass upon your death. Therefore, everyone needs an estate plan.

Estate Taxes

Federal or state taxes on the value of assets transferred at death.

Executor

Person or institution named in a will to carry out its instructions. Also called a Personal Representative.

Federal Estate Tax Exemption

Amount of an individual’s estate that is exempt from federal estate taxes. In 2019, the exemption amount is \$11.4 million. This exemption amount is likely to change due to upcoming Presidential election.

Fiduciary

Person having the legal duty to act primarily for another’s benefit. Implies great confidence and trust, and a high degree of good faith. Usually associated with a trustee.

Funding

Funding a Revocable Trust refers to the process of titling certain assets in the name of the Revocable Trust, where possible, or naming the Revocable Trust as a beneficiary of certain assets with the intent of having all applicable assets in the Trust “bucket” to avoid probate but also allowing your Successor Trustee to have

access to the assets when you pass away. We provide a detailed handout on Funding Instructions as well as a monthly Funding workshop for clients that have established a Revocable Trust.

Gain

The difference between what you receive for an asset when it is sold and what you paid for it. Used to determine the amount of capital gains tax due.

Generation Skipping Transfer Tax (GSTT)

A tax on assets that “skip” a generation and are left directly to grandchildren and younger generations. Everyone has an exemption from this tax. In 2019, the GSTT exemption is \$11.4 million.

Gift

A transfer from one individual to another without fair compensation.

Gift Tax

A federal tax on gifts made while you are living. In 2019, \$15,000 per person is exempt from gift tax.

Grantor

The person who sets up or creates the trust. The person whose trust it is. Also called settlor, trustor, donor or trust-maker.

Gross Estate

The value of an estate before debts are paid.

Guardianship

See Conservatorship.

Health Care Proxy

See Designation of Health Care Surrogate.

Heir

One who is entitled by law to receive part of your estate.

Health Insurance Portability and Accountability Act (HIPAA)

This document is used to give another person access to an individual’s medical information.

Holographic Will

A handwritten will. Not valid in Florida.

Incapacitated/Incompetent

Unable to manage one’s own affairs, either temporarily or permanently. Lack of legal power.

Inheritance

The assets received from someone who has died.

Inter vivos

Latin term that means “between the living.” An inter vivos trust is created while you are living instead of after you die. A revocable living trust is an inter vivos trust.

Irrevocable Trust

A trust that cannot be changed (revoked) or cancelled once it is set up. Opposite of revocable trust.

Intestate

One who dies without a will.

Joint Ownership

When two or more persons own the same asset.

Joint Tenants with Right of Survivorship

A form of joint ownership in which the deceased owner’s share automatically and immediately transfers to the surviving joint tenant(s).

Liquid assets

Cash and other assets (like stocks) that can easily be converted to cash.

Living Trust

A written legal document that creates an entity to which you transfer ownership of your assets. Contains your instructions for managing your assets during your lifetime and for their distribution upon your incapacity or death. Avoids probate at death and court control of assets at incapacity. Also called revocable inter vivos trust. A trust created during one’s lifetime.

Living Will (LW)

This is a legally binding document that expresses an individual's end-of-life preferences, such as whether or not that person wants to be kept alive through artificial life-support if they are in a persistent vegetative state or end stage condition.

Last Will and Testament

A Last Will and Testament (will) is a document that provides instructions to the Probate Court on who will receive assets that are titled in an individual's name alone, at death. A Will does not avoid probate.

A **Personal Representative** (also known as Executor)

for your Last Will and Testament is your legal personal representative that you nominate in your Will to handle your estate. **Probate** is the legal process whereby a Will is "proved" in a court and accepted as a valid public document to be the true Last Will and Testament of the decedent. The granting of Probate is the first step in the legal process of administering the estate of a deceased person, resolving all claims and distributing the deceased person's property under "will".

Medicaid

A federally-funded health care program for the poor and minor children.

Medicare

A federally-funded health care program, primarily for Americans over age 65 who are covered by Social Security.

Minor

One who is under the legal age for an adult, which varies by state (usually age 18 or 21)

Net Estate

The value of an estate after all debts have been paid. Federal estate taxes are based on the net value of an estate.

Net Value

The current market value of an asset less any loan or debt.

Payable on Death Account

A bank account that will transfer to the beneficiary who was named when the account was established.

Per Capita

A way of distributing your estate so that your surviving descendants will share equally, regardless of their generation.

Per Stirpes

A way of distributing your estate so that your surviving descendants will receive only what their immediate ancestor would have received if he/she had been living at your death.

Personal Property

Movable property. Includes furniture, automobiles, and equipment.

Personal Property Memorandum

A document that allows you to designate an individual or institution to receive a specific personal property item. You must date and sign memorandum.

Personal Representative

Another name for executor.

Pour Over Will

A short will often used with a living trust. It states that any assets left out of your living trust will become part of (pour over into) your living trust upon your death. This does not avoid probate.

Probate

The legal process of validating a will, paying debts and distributing assets after death that are titled in an individual's name that is deceased.

Probate Estate

The assets that go through probate after you die. Usually this includes assets you own in your name and those paid to your estate. Usually does not include assets owned jointly, payable on death accounts, insurance and other assets with beneficiary designations. Assets in a trust also do not go through probate.

Probate Fees

Legal, executor, and court costs when an estate goes through probate. Probate fees are paid from assets in the estate before the assets are fully distributed to the heirs.

Quitclaim Deed

Document that allows you to transfer title to real estate. With a quitclaim deed, the person transferring the title makes no guarantees, but transfers all of his/her interest in the property.

Real Property

Land and property that is permanently attached to land (like a building or a house).

Recorded Deed

A deed that has been filed with the county land records. This creates a public record of all changes in ownership of property in the state.

Revocable Living Trust

A Revocable Living Trust (RLT), if properly drafted, offers you complete asset control during your lifetime; provides for an individual and their loved ones in the event of incapacity; and upon death, allows an individual to pass their assets to loved ones without costs, delays and the publicity associated with probate. The purpose of the trust is to provide benefits to a person or people, or to a charity. A trust in which the person setting it up retains the power to change or revoke the trust during his/her lifetime.

Separate Property

Generally, all assets you acquire prior to marriage and assets acquired by gift or inheritance during marriage.

Separate Trust

A trust established by one person. A married couple has separate trusts if each spouse has his/her own trust with its own assets.

Settle an Estate

The process of handling the final affairs (valuation of assets, payment of debts and taxes, distribution of assets to Beneficiaries) after someone dies.

Settlor

See Grantor.

Special Needs Trust

Allows you to provide for a disabled loved one without interfering with government benefits.

Spendthrift Clause

Protects assets in a trust from a beneficiary's creditors.

Stepped-up Basis

Assets are given a new basis when transferred by inheritance and re-valued as of the date of the owner's death. If an asset has appreciated above its basis (what the owner paid for it), the new basis is called a stepped-up basis. A stepped-up basis can save a considerable amount in capital gains tax when an asset is later sold by the new owner.

Summary Administration

A form of probate available in many states. Intended to simplify the probate process when probate assets are below a certain threshold. In Florida the assets must be under the value of \$75,000 and decedent does not have creditors.

Surviving Spouse

The spouse who is living after one spouse has died.

Successor Trustee

Person or institution named in the trust document who will take over should the first trustee die, resign, or otherwise become unable to act.

Tax-Deferred Plan

A retirement savings plan (like an IRA, 401(k), pension, profit sharing or Keogh) that qualifies for special income tax treatment. The contributions made to the plan and subsequent appreciation of the assets are not taxes until they are withdrawn at a later time – ideally, at retirement, when your income and tax rate are lower.

Taxable Gift

Generally, a gift of more than \$15,000 in one year to someone other than your spouse. The value of the gift is applied to your federal gift and estate tax exemption, and no gift tax is required to be paid until the exemption has been exhausted.

Tenants in Common

A form of joint ownership in which two or more persons own the same property. At the death of a tenant in common, his/her share transfers to his/her heirs.

Tenants by the Entirety

A form of joint ownership in some states between a married couple. When one spouse dies, his/her share of the asset automatically transfers to the surviving spouse.

Testate

One who dies with a valid will.

Title

Document proving ownership of an asset.

Transfer Tax

Tax on assets when they are transferred to another. The estate tax, gift tax and generation skipping transfer tax are all transfer taxes.

Trust

An entity that holds assets for the benefit of certain persons or entities.

Trust Company

An institution that specializes in managing trusts. Also called a corporate trustee.

Trustee

An individual or a corporate trust department given control or powers of administration of property in a trust with a legal obligation to administer it solely for the purpose specified. A Trustee is responsible for managing property or assets placed in a trust.

Unified Credit

The amount each person is allowed to deduct from any federal estate taxes owed after death.

Uniform Transfer to Minors Act (UTMA)

Law enacted in many states that lets you leave assets to a minor by appointing a custodian. In most states, the minor receives the assets at legal age.

Unfunded

Your living trust is unfunded if you have not transferred assets into it.

Warranty Deed

Document that allows you to transfer title to real estate. With a warranty deed, the person guarantees that the title being transferred is clear (free of any encumbrances). If title is defective, the person making the transfer is liable.

As you can see, it's important to have a qualified Estate Planning attorney overseeing your overall estate plan.

Article Four

Estate Planning

Did you know...?

If you don't have a valid will or trust, then state laws will determine how your assets pass, to whom they pass, and when they pass. This could lead to unnecessary estate and income taxes, your estate being consumed by creditors, your estate being tied up in probate court (possibly for years...), and other undesired results, and is perhaps the costliest and emotionally draining way to pass assets to your loved ones.

Section 4.01 Revocable Living Trust:

- The Trust-Maker (you) keeps control over assets while alive
- The Trust-Maker instructs what happens to trust assets at your death
- Provides privacy
- Can be amended or terminated
- Can reduce or eliminate estate taxes
- Avoids the time consuming and costly process of probate
- Maintains control over beneficiaries' inheritance to protect it from spouses, predators, and creditors
- Must title assets in the name of Trust, also known as funding your Trust

Section 4.02 Last Will and Testament:

- Does not avoid probate
- Goes into effect after you pass away
- Provides instructions to the probate court as to who will receive your assets
- States who you want as Personal Representative of your estate

Section 4.03 Durable Power of Attorney:

- Allows you to appoint someone to manage your financial affairs
- Effective immediately upon signing
- Terminates upon passing
- Can avoid guardianship
- Very powerful; trust whomever you appoint

Section 4.04 Health Care Surrogate/HIPAA Authorization:

- Allows you to appoint someone to make health care decisions on your behalf if you are unable to do so
- Gives your loved ones access to your medical records

Section 4.05 Living Will:

- A declaration that allows you to clearly state whether you want life prolonging procedures to be withheld or withdrawn in the event you have a terminal condition, end stage condition or in a persistent vegetative state.

Article Five

Disability

- Includes instructions on how to address your property and your person if you become disabled
- At minimum, you need a Durable Power of Attorney and Health Care Surrogate
- Have a HIPAA Authorization to allow your loved ones access to your medical information
- Use of a Revocable Living Trust can ensure consistent asset management through the continued use of your existing financial advisors
- Avoids court appointment of a guardian

Article Six

Probate and Trust Administration

Section 6.01 What is Probate?

Probate is the court proceeding in which the probate court assumes jurisdiction over a decedent's assets. By assuming jurisdiction over the asset, the Court will award that asset to whomever is designated under the terms of a will. If the decedent did not have a will, the Court will award the asset to the heirs of the decedent as determined by Florida law. The probate process also includes identifying and handling the decedent's debts.

Section 6.02 When is Probate necessary?

Probate is necessary if there is an asset in the sole name of the decedent and there is no named beneficiary for the asset. For example, if you are the sole owner of a checking account and you do not list a beneficiary on that checking account, then the probate court has the power to award ownership of that checking account to your heir. Another common example is real property. If your home is titled solely in your name, then a probate case would be necessary, at your death, to transfer title of your home to your heirs, as determined by your will or Florida law, if there is no will.

Section 6.03 When is Probate not necessary?

If all assets owned by a decedent have designated beneficiaries, then the named beneficiaries will receive the asset directly and there will be no need for the probate court to be involved. These assets may include bank accounts, investment accounts, life insurance policies, annuities and/or retirement accounts. In addition, if the decedent has a properly drafted and funded Revocable Living Trust, then probate may be avoided.

Section 6.04 How does a Will affect the Probate process?

A Last Will and Testament does not avoid probate. The will identifies those you want to receive your probate assets and whom you want to be named as the Personal Representative/Executor. The Personal Representative will be appointed to account for all probate assets, value the estate and pay off any debts before distributing what is left of the estate among the beneficiaries, according to the will.

Section 6.05 How long does Probate take and how much does Probate cost?

The probate process is dependent upon the nature of the assets and debts that need to be probated. Florida offers two types of probate proceedings. First, a summary administration is available for estates that have assets with a total value of less than \$75,000 or if the decedent's death was more than two years ago. Summary administration also requires that the estate has no creditors. Generally, the summary administration can be completed in 90 days and the cost is usually a flat fee. Second, a formal administration is the probate process for estates with assets exceeding \$75,000 and/or estates with creditors. As formal administration is a more intensive process, it typically can take 9 months to one year to complete and the cost is a percentage of the probate estate assets or the attorney will charge an hourly rate. Please keep in mind that every case is unique and the cost and time for probate cases will vary.

Section 6.06 What is Trust Administration?

If a decedent has a properly drafted and funded Revocable Living Trust, then upon death, there may not be a need for probate. In the Trust, the decedent names a Successor Trustee to administer the terms of the Trust. The Successor Trustee will file a formal acceptance of his or her role as Successor Trustee, as well as a Notice that the trust is ready to be administered. The duties of the Successor Trustee in administering the trust are identifying and handling the decedent's debts, locating Trust assets, liquidating those assets, and then distributing assets to the beneficiaries based on the terms of the Trust. The Successor Trustee's duties also include locating and reviewing all of the decedent's estate planning documents, locating all trust beneficiaries, filing the original Will with the local Probate Court and recording the death certificate in the County where decedent lived and/or owned real property. If all of the decedent's assets have been placed in the trust prior to death, then the Successor Trustee will be able to fully disburse the assets to the intended beneficiaries. As such, there will be no need for probate. Trust administration is generally a much faster and less costly proceeding than probate.

Article Seven

Common Estate Planning Concerns

Section 7.01 Blended Families:

- Ensure that your loved ones will receive an inheritance from you;
- Elective share rights (30%);
- Homestead rights (spouse is entitled to 50% ownership of the homestead-primary residence or a life estate in the homestead); and
- Health care issues

Section 7.02 Titling of Assets: The way you own assets controls the disposition of the assets at your death.

- Are your assets owned jointly? Joint Tenant with Rights of Survivorship? Tenants in Common? Revocable Living Trust?
- Do you own assets with a non-spouse?
- Are your beneficiary designations current on your Retirement Accounts, Life Insurance policies and Annuity contracts?
-

COMMONLY ASKED QUESTIONS ABOUT REVOCABLE LIVING TRUSTS

1. What is a Revocable Living Trust?

A Revocable Living Trust is often referred to as a substitute for a Last Will and Testament and is a contract entered into by you to establish a separate entity, the Trust, which will own your assets. You retain control of those assets and have the right to change it, amend it or revoke it at any time.

2. Does the Revocable Living Trust prevent you from borrowing against assets in the Trust?

No. Your ability to borrow against assets in the Trust has not been affected in any way.

3. How does a Revocable Living Trust help me to avoid probate?

Once you have created your Revocable Living Trust, you can avoid probate on all of the assets that you transfer into the Trust or assets that you name your Revocable Living Trust as a beneficiary of. By transferring your assets into the Trust, your assets are then owned by the Trust while you are alive or upon your death, and upon your death, the Trust operates to provide for the distribution of those assets to your beneficiaries pursuant to your instructions stated in the Revocable Living Trust.

4. Is the Revocable Living Trust valid in all fifty states?

Yes, Revocable Living Trusts are recognized in each of the fifty states and in many foreign countries as well. This does not mean that you will not need to amend your Revocable Living Trust when you move to a different state. You will always want to meet with an attorney in the state you are a residence of to ensure that your estate planning documents comply with that state's laws.

5. How are a Last Will and Testament and a Trust different?

A Last Will and Testament guarantees probate, if there is an asset in a deceased individual's name alone that does not have a named beneficiary connected to the asset. The Last Will and Testament must be admitted into court and approved by a judge before the probate assets can be transferred to the beneficiaries named in the Last Will and Testament. A Revocable Living Trust avoids probate and provides for a quick and inexpensive transfer of assets upon death, if the assets are owned by the trust at your death.

6. What is an Irrevocable Trust?

An Irrevocable Trust is a Trust where you do not retain the right to amend or revoke it. Once it is created, it is permanent and cannot be changed. Revocable Living Trusts are not irrevocable until the owner of the Trust dies.

7. Should my children read my Revocable Living Trust?

Many people show their Revocable Living Trust to their children and consult with them. It is up to you. We strongly recommend that you specifically inform your children that you do have a Revocable Living Trust as well as where you keep your important information such as a list of your expenses, how you pay those expenses, list of assets and how those assets are owned as well as a list of usernames and passwords. We do not recommend that you provide copies of your estate planning documents to your family.

8. Where should I keep my Revocable Living Trust?

Your Revocable Living Trust is a valuable document. You should store it in a safe place. Access to a safe-deposit box can be limited upon your death. A fire box would be a good place. Let your Successor Trustee know where your Revocable Living Trust can be found.

9. Who are the parties to the Revocable Living Trust?

The parties to a Revocable Living Trust are, the Grantor(s)/Settlor(s), which is(are) the person(s) who creates the Trust, the Trustee(s), which is(are) the person(s) who manages the Trust, and the beneficiaries, who benefit from the Trust income and assets. In most Revocable Living Trusts, the Grantor(s)/Settlor(s), the Trustee(s) and initial beneficiaries are always the same unless you specifically request otherwise.

10. What are the rights of the surviving spouse as Trustee?

It depends on the terms of your Revocable Living Trust. Usually in a first marriage situation, the surviving spouse retains full rights to all of the Trust assets and continues to have the ability to amend or revoke the Trust. The only exception is if an A/B Trust (a/k/a "Credit Shelter Trust") has been created.

11. How is the Successor Trustee forced to abide by the wishes of the creators of the Revocable Living Trust?

A Successor Trustee has a fiduciary obligation to follow the instructions provided in the Revocable Living Trust. The beneficiaries named in the Revocable Living Trust have the right to take the Trustee to court if the Trustee fails to abide by those instructions.

12. Can my Successor Trustee make changes to my Revocable Living Trust?

Once the individual(s) who created the Trust have passed away, no changes are permitted to the Revocable Living Trust.

13. Does a Bank or Trust Company have to be involved?

No. If you choose, you can name a Bank or Trust Company to be Trustee of your Revocable Living Trust and to manage your financial affairs. Most people choose to use individual Trustees. The person who creates the Revocable Living Trust is, almost always, named as the first Trustee. They then designate a Successor Trustee to handle their affairs if they become disabled or when they die.

14. If I set up a Revocable Living Trust, is a Last Will and Testament also required?

A Last Will and Testament is not required but is highly recommended. A Pour-Over Will is created as part of every Trust Package that we prepare. The purpose of the Pour-Over Will is to capture any assets inadvertently omitted from the Revocable Living Trust (meaning the Trust did not own those assets at your death) and transfer them into the Revocable Living Trust after the probate process is completed. However, the use of the Last Will and Testament to capture such assets requires a probate proceeding.

15. What is a Pour-Over Will?

Since it is sometimes impossible to include everything you own in your Revocable Living Trust by deed, account or name, you have a Pour-Over Will. Unlike the normal Last Will and Testament that you may be familiar with, the Pour-Over Will simple directs your named Personal Representative to "pour over" any asset which you failed to include in your Revocable Living Trust, into your Revocable Living Trust, for distribution under the terms of your Revocable Living Trust. Hopefully, you will have already transferred all major assets into the Revocable Living Trust so a probate is not necessary to transfer the remaining assets into the Revocable Living Trust through the Pour-Over Will. You may wish to think of the Pour-Over Will as a safeguard for any assets inadvertently left out of your Revocable Living Trust.

16. Does my Last Will and Testament avoid probate?

No. Revocable Living Trusts avoid probate, if the assets are owned by your Revocable Living Trust at your death. Last Will and Testaments do not avoid probate if there are assets in your individual name when you die.

17. What is the difference between a funded and unfunded Revocable Living Trust?

A Revocable Living Trust will not take effect until you execute it by signing all of the necessary papers and obtaining witness signatures and a notary. However, then you need to fund your Revocable Living Trust. For example, with a deed, you can transfer your real property from your current ownership to your Revocable Living Trust. The law does not consider such a transfer to be a sale for the purposes of reassessing your property for tax purposes. In addition, we will recommend that contact your bank or other institution where you hold assets to retitle your assets and accounts in the name of your Revocable Living Trust or name your Revocable Living Trust as the beneficiary of your assets. After your assets are transferred to your Trust, your Trust is considered "funded".

18. What happens to assets that are outside my Revocable Living Trust? Since they pour over in the Trust, must they go through probate?

Assets left outside the Trust are captured by the "Pour Over" Will and transferred into the Trust after the probate process. However, these assets must go through probate and there are additional expenses incurred as a result.

19. Is there anything that I should not put into the Revocable Living Trust?

Yes. You should not name your Revocable Living Trust as a beneficiary of your qualified accounts such as IRAs, 401ks or Keogh plans or other assets that may become disqualified for tax advantaged treatment unless your attorney has specifically recommended that you do so.

20. Can probate be avoided by the use of joint tenancy?

Yes. Joint tenancy property avoids probate upon the death of the first owner. However, when the second owner dies, all of the assets and the property must go through probate unless they are contained in a Revocable Living Trust or the asset had a named beneficiary designated on it.

21. Can I transfer my assets from my Revocable Living Trust to myself or someone else?

The assets in your Revocable Living Trust are totally accessible by you. You can spend them, give them away, and transfer them into your own name or to other individuals, all without any restriction.

22. Will my Revocable Living Trust protect me from lawsuits/creditors?

No. It is a Revocable Living Trust so you still maintain ownership and control over your assets.

23. Should owner life insurance policies be placed inside the Revocable Living Trust?

No. However, your Revocable Living Trust can be the beneficiary of your life insurance policies. By naming your Revocable Living Trust as the beneficiary of your life insurance policies, the funds will be distributed to your Revocable Living Trust so you are able to consolidate all of your wishes into one comprehensive plan.

24. Should I put IRAs and Keoghs inside the Revocable Living Trust?

No. IRA and Keogh accounts must be owned by the individual. The Revocable Living Trust should not be the owner of your IRAs and Keoghs, as this disqualifies them from their tax favored status.

25. How are assets acquired after my Revocable Living Trust is created?

They are acquired just as easily as before you created your Revocable Living Trust. However, you should use your name as Trustee of your Revocable Living Trust on all acquisitions. For example, "Mary Smith, Trustee of the Smith Family Trust."

26. Do I need to change ownership of my stocks and bonds?

Yes. Ownership of stocks and bonds should be changed into the name of your Revocable Living Trust or name your Revocable Living Trust as the beneficiary of the stocks and bonds in order to avoid probate.

27. Should I transfer my mortgage on my home into the Revocable Living Trust?

No, it is not necessary. Your liabilities follow your assets. You transfer your assets into the Revocable Living Trust. Therefore, it is not necessary to transfer your liabilities into the Revocable Living Trust.

28. If I place my home in the Revocable Living Trust, will it affect my mortgage? Can the mortgage company "call" my mortgage?

No. Transferring your home into the Revocable Living Trust will have no effect on your mortgage.

29. Do I have to value my assets as they go into the Revocable Living Trust?

No. There is no reason to value your assets as you title them into your Revocable Living Trust. It is helpful, however, for you to have an understanding of the value of your assets so that you can properly plan strategies to reduce estate taxes.

30. Must special income tax returns be filed?

No, special Trust tax returns are not filed for a Revocable Living Trust. When a Revocable Living Trust becomes irrevocable, then a Trust Tax Return is required. A Revocable Living Trust becomes irrevocable upon the death of the owner(s). If assets are retained in the Trust, then a Trust Tax Return would be filed each year.

31. Will a Revocable Living Trust reduce estate taxes?

A Revocable Living Trust may reduce estate taxes depending upon the size of your estate. An estate under the Federal Estate Tax exemption will not have to pay any Federal Estate Tax. The Federal Estate Tax exemption changes so it is imperative that you are aware of the exemption amount.

32. Will a Revocable Living Trust change my income taxes?

No. A Revocable Living Trust does not affect your income taxes. You continue to file your income tax return as you have in the past.

33. If I put my home in a Revocable Living Trust, can I still deduct my mortgage interest?

Yes. A Revocable Living Trust has no impact on your income taxes.

34. Do I place rental properties in my Revocable Living Trust, and, if so, how is the rent treated?

Yes. It is important that you transfer your assets into the Revocable Living Trust including your rental properties. The rental income is recorded on your tax return just as you have done before. Depreciation expenses on your rental real estate will also be handled in the same manner as you did prior to creating your Revocable Living Trust. However, if your rental properties are owned by a business, like an LLC then you would assign your interest in the LLC to your Trust. You will need to tell the attorney how the rental properties are owned so the attorney can give you better guidance on how to handle the rental properties.

35. Can I sell my assets once they are in a Revocable Living Trust?

Yes. You have the same control over your assets, including the right to buy, sell or transfer those assets as you did before they were placed into the Revocable Living Trust.

36. Are the assets in my Revocable Living Trust available to pay for nursing home care?

Since the Revocable Living Trust is totally revocable, assets in the Revocable Living Trust are available to pay for nursing home expenses. Some people mistakenly believe that if they transfer their assets into the

Revocable Living Trust and then enter a nursing home and apply for governmental assistance, that the assets in the Revocable Living Trust will be protected. This is not the case. You would want to meet with an attorney that handles Medicaid Planning to help with trying to qualify for Medicaid.

37. How is distribution upon death different if I have a Revocable Living Trust rather than a Last Will and Testament?

When your assets are not titled in a Revocable Living Trust, they are distributed according to the terms of your Will through the probate process, if the assets are in your name alone. Once the probate process is completed, your assets will be distributed pursuant to the terms of your Will. However, with a Revocable Living Trust, the assets may remain in the Trust to be distributed later if the Trust so provides, since the Trust is a legal entity and "lives on" after a person's death.

38. How should I name assets that are transferred into the Revocable Living Trust, or acquired by the Revocable Living Trust?

Title to assets in your Revocable Living Trust should be as set out as follows: "John Doe, Trustee of the John Doe Trust dated 1/1/2017." The financial institutions that handle your assets will want to know the name of your Trust, the date of the Trust as well as the name of the acting Trustee.

39. Is it difficult to change my Revocable Living Trust, and when would I want to make a change to my Revocable Living Trust?

It is simple to amend your Revocable Living Trust. Typically, there are two types of changes that you might want to make to your Revocable Living Trust. One would involve making a change of the people involved in your plan, such as a change of beneficiary or a change of Successor Trustee. The second type of change would involve amending your Trust to keep current with the laws or because of a significant change in your assets. If a change would benefit your estate, you may want to incorporate that change into your Revocable Living Trust.

40. Can I revoke my Revocable Living Trust?

Yes. The creators also known as Settlers or Grantors of a Revocable Living Trust reserve the right to revoke it at any time.

41. Can a Revocable Living Trust be contested in the same manner as a Last Will and Testament?

No, but there is a procedure for petitioning the Court to intervene in situations where a Trustee is improperly handling the Revocable Living Trust.

42. Can I make a gift to charity through my Revocable Living Trust?

Yes. In a Revocable Living Trust you can simply list the charity as beneficiary to receive an asset or a portion of your Estate.

43. Do I ever need to update my Revocable Living Trust?

It is recommended that you periodically review your Revocable Living Trust to see if there are any changes by way of amendment or restatement that you would like to make.

44. How does the Revocable Living Trust dissolve, and is there any probate at that time?

A Revocable Living Trust is effectively dissolved once all of the assets in the Revocable Living Trust have been distributed to your beneficiaries in accordance with the terms of your Revocable Living Trust. There would be no probate if all of the assets were titled in the Revocable Living Trust or a beneficiary named on an asset.

45. Do I need to liquidate the Revocable Living Trust assets in order to distribute the assets?

No. Liquidation of the Revocable Living Trust assets is not required. The assets may be distributed directly to the heirs without converting them into cash.

46. Do I lose my homestead status if I title my primary residence in my Revocable Living Trust?

No. There is language included in your Revocable Living Trust that allows you to title your primary residence into your Revocable Living Trust.

47. Who do I name as my Successor Trustee?

Usually, clients name a family member or friend to serve as Successor Trustee. The Successor Trustee is the person who will manage the assets in the Trust if you are incapacitated and distribute the assets to your beneficiaries at your death. If you don't have a family member or a friend to serve as Successor Trustee, then we would recommend that you consider naming a corporate trustee to serve in that role.

48. Can my Personal Representative also be my Trustee?

Most of the time the Successor Trustee is the same person you name as Personal Representative/Executor. However, Florida law requires that your Personal Representative be a Florida resident unless they are related to the decedent. If the Personal Representative is not related to the decedent, then the Personal Representative must be a Florida resident. A relative of the decedent does not need to live in Florida to act as the Personal Representative.

49. What happens if a beneficiary dies before you die?

If a beneficiary dies before you then you would need to discuss this death with your Attorney. Usually this matter is addressed when you sign your Revocable Living Trust by naming an alternate beneficiary but it is always recommended that you revisit this matter at the death of a beneficiary to confirm that you want to keep the alternate beneficiary.

50. What does *per stirpes* mean?

Whenever a distribution is to be made to a person's descendants *per stirpes*, the distribution will be divided into as many equal shares as there are then-living children and deceased children who left then-living descendants. Each then-living child will receive one share, and the share of each deceased child will be divided among the deceased child's then-living descendants in the same manner.