

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 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 the term of the 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. However, that does not mean that you will not need to amend your Revocable Living Trust when you move to a different state. You will 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 Revocable Living Trust different?

A 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 more efficient 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 inform your children you 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?

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 and give them the contact information of your Estate Planning Attorney.

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 created 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 does a Trustee do?

The Trustee manages the assets of the Trust. There is an incapacity Trustee who handles the Trust assets while the owner of the Trust is alive but unable to serve as Trustee and there is a death Trustee who pays final expenses of decedent, gathers Trust assets and distributes the Trust assets at the death of the owner.

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 Trust Department of a Bank or Trust Company to be a Trustee of your Revocable Living Trust. Most people choose to use individuals as their Trustee. 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 directs your named Personal Representative to "pour over" any asset which was not included in your Revocable Living Trust, into your Revocable Living Trust, for distribution under the terms of your Revocable Living Trust. 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. Last Will and Testaments do not avoid probate. They provide instructions to the probate court when probate is necessary.

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 financial institutions 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 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 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.

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 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.

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

No. Transferring your home into the Revocable Living Trust should not have an effect on your mortgage. However, we recommend that you inform your lender if the Trust is going to own the home.

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, if needed.

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 so if tax planning needs to be done you know to contact your Estate Planning Attorney.

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. The Trust tax identification number is the owner(s) of the Trust's social security number.

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 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 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. If you want additional information on nursing home Medicaid, you would want to meet with an attorney that handles Medicaid Planning.

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 Last Will and Testament 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 Last Will and Testament. 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?

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 if needed. A Trust does not get filed with the Court.

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

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

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 pursuant to 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 a 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 (natural or adopted) *per stirpes*, the distribution will be distributed 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 distributed to the deceased child's then-living descendants in the same manner.