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What is a Revocable Living Trust?

A Revocable Living Trust is a legal document that allows you to make instructions about the management and control of your property while you are alive, and the distribution of your estate after your death. The person or persons who carry out these instructions are called Trustees. The people who benefit from your Revocable Living Trust are called beneficiaries. However, these positions are not filled by strangers. You may serve as the initial trustee if you choose. Most people do. Family members, friends, trusted advisors, and banks or trust companies can also be named as trustees, either now, or after you decide you do not want the job anymore, and after your death or disability.

You will be the primary beneficiary of the trust while you are living. Once your Revocable Living Trust is created, title to all your assets should be re-titled to the name of your trust. You will transfer your bank accounts, certificates of deposit, real estate, investments, and even your furniture and personal effects into the name of your Revocable Living Trust. When this process is complete, you, as an individual, will no longer technically own any property. Your Revocable Living Trust will be the legal owner, but you will retain complete control of your trust and the assets in it. In our office, we handle all the "funding" (re-titling of assets) for clients to insure that it is done properly.

A Revocable Living Trust, as the central document of an estate plan, offers many technical and practical advantages. The trust is very easy to change as needed, which gives you great flexibility. It can be modified whenever you wish. You may at any time alter, amend or even revoke it. It gives you an excellent method for organizing your affairs, which affords tremendous value to you and to those who will be following the instructions you leave.

Because the trust is revocable the income generated by the assets in it are taxed to you as an individual and are reported on your **personal income tax return**. This means your personal income tax situation is exactly the same after the creation of your Living Trust as it was before. You have the same exemptions, deductions, credits, and liabilities. You will even continue to file your income tax returns using the same Social Security number you have always used.

A Living Trust is valid in every state. The laws of every state recognize the validity of a Living Trust. A truly beneficial feature is that your Living Trust can freely cross state lines without any need to redraft its terms to comply with local law. And if you own real estate in another state, if you convey it to your trust, then on your death there will not be the need for a probate action in that state.

For the most part, a Revocable Living Trust will enable your trustee to immediately direct assets to your beneficiaries upon your death. However, a simple Pour-Over Will must be prepared along with your Living Trust.

The purpose of the **Pour-Over Will** is to allow your personal representative to “pour over” to your Living Trust those assets which may not have been transferred to your trust during your lifetime. If you do not have a Pour-Over Will, then those assets will pass by the laws of intestacy.

The trust will be set up similarly to the contents of a will, in that that you will control the assets in your trust while you are alive, and upon your death, the assets will be transferred as you direct in the trust.

The Revocable Living Trust also deals with **disability planning**. The trust will address issues of how your assets are managed should you become disabled or not competent to make decisions for yourself. It will cover how you would like to be cared for should you be disabled. As well, we will draft **powers of attorney** for medical and terminal condition decision-making, and a special power of attorney authorizing transfer of assets into the trust in case you become disabled and in the future and had inadvertently not re-titled an asset to your trust.

An important aspect to your estate plan is who will be involved as **Trustees**. Initially, you will be your own trustee. However, you should consider who would be successor trustee after your death, or in case you became disabled while alive and cannot manage your affairs. As the word designates, a trustee should be someone you can highly trust. This person or entity should be familiar with your estate planning objectives. You should be comfortable with the trustee's decision-making ability and the trustee's competence to carry out the goals and objectives. When naming a trust company or trust department of a bank as a trustee, you should consider the logistics and administrative fees which might be entailed in making such an appointment. There are many good reasons to name a trust company or a bank as a trustee, but you should understand thoroughly what their functions are and how they are best used in your particular estate plan.

The trustee accepts trusteeship and assumes control of trust assets. The trustee performs initial administrative functions such as setting up accounts and verifying assets. The trustee must act only in the best interests of the beneficiaries. The trustee invests and manages the trust assets. The trustee is responsible for accounting, filing income tax returns, and other tax matters. The trustee distributes the trust assets when the trust terminates.

Summary of Benefits of a Living Trust

- Avoids probate at death. While probate in Maine is not as expensive and time-consuming as in some other states, having your estate go through a Will does require court involvement, cost and continued control and supervision if there are trusts involved in the estate (either trusts for children or special needs trusts).
- Avoids multiple probates if you own property in more than one state.
- Prevents court control of assets at incapacity.
- Brings all your assets together under one plan while you are alive.
- Provides maximum privacy; probate does not. Probate records are open to the public.
- Quicker distribution of assets to beneficiaries.
- Can be changed or cancelled at any time.
- Difficult to contest.

IMPORTANT: While you are alive a living trust, in and of itself does not protect your assets from nursing home costs or give you asset protection (as an irrevocable trust, or corporation, can do). A living trust, however, does give your disability trustee or agent the ability to plan with your assets should you become disabled. It also plans your estate for yourself and your loved ones. Upon your death, your living trust estate plan can.