

REVOCABLE LIVING TRUSTS: FACT AND FICTION

Negotiating the “cafeteria plan” of estate options requires careful consideration of your individual goals and particular circumstances. One option, a Revocable Living Trust, may in fact be a better estate planning technique than a Last Will and Testament.

A Revocable Living Trust acts as a Will substitute to dispose of one’s assets at death. In fact, a Revocable Living Trust can accomplish more than a Will if properly used. It is important to understand some of the more common truths and fallacies behind Revocable Living Trusts.

Truths:

- 1. Probate avoidance.** All property owned by a Revocable Living Trust will not be subject to the probate process. If you own out-of-state property, a Revocable Living Trust is a good way to avoid probate proceedings outside of Texas. Probate in Texas is typically less costly and quicker to complete because Executors can act independent of the probate courts. However, if not all assets are transferred into the Revocable Living Trust, then probate will be necessary to transfer those assets to the rightful beneficiary.
- 2. Ability to manage assets:** A Revocable Living Trust is an ideal way for you to plan for your own future incapacity and the need for management of your property. You may be able to manage your property today, but in a few years, a trusted relative or friend (or a trust company or bank, if you desire) can manage your affairs on your behalf. The Revocable Living Trust will also help to avoid an expensive and cumbersome guardianship proceeding upon your incapacity.
- 3. Provides privacy:** Wealthy individuals are often attracted to a Revocable Living Trust solely for this reason. The probate process is a public venue. Since a Revocable Living Trust can avoid probate (if completely funded), no inventory will need to be filed at the County Clerk’s Office.
- 4. Deters angry heirs:** If you are planning to disinherit one or more persons, a Revocable Living Trust may provide an additional roadblock to the contesting heir following your death.

Fallacies:

- 1. Estate Tax avoidance:** A Revocable Living Trust will not avoid any more estate taxes than can be avoided with a Will which creates a Family (or Bypass) Trust.

- 2. Provides creditor protection:** Simply put, a Revocable Living Trust will provide no creditor protection during the lifetime of the person(s) who creates the Revocable Living Trust.

Even if you create a Revocable Living Trust, you should also have a Will if it is discovered that some assets were never transferred to the Revocable Living Trust. A Revocable Living Trust only avoids probate if ALL assets are owned by/transferred into the trust. You should also expect to pay more in attorney's fees to create and fund a Revocable Living Trust as opposed to a Will.

The best advice is to have your situation analyzed by a qualified attorney who will consider both Wills and Revocable Living Trusts, and who will also look at your needs and wants. Remember, your situation is unlike any other, and it deserves to be treated as such.

Jeffery H. Kaplan, JD, CPA is Board Certified in Estate Planning and Probate Law by the Texas Board of Legal Specialization. His practice focuses on advising individuals and small businesses with tax and legal matters. Contact Jeff at jhk@jhkaplan.com.

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