

Revocable Living Trusts

Frequently Asked Questions

Revocable living trusts have become a popular alternative to a traditional Will as a way to pass property on when you die. Many people are attracted by the possibility of quicker and easier asset transfers, even if they live in a state and county that has an efficient probate process. Concerns about privacy in estate settlement may also be the motivation for considering the use of a revocable living trust.

But revocable living trusts have some drawbacks. To help you decide if a revocable living trust is right for you, here are answers to some of the most frequently asked questions about these trusts and a brief description of the advantages and disadvantages.

What is a Revocable Living Trust?

A revocable living trust is an arrangement you make for management and distribution of your property. Like a Will, the trust is “revocable,” meaning you can modify or cancel it at any time.

A revocable living trust is established by a written agreement or declaration that appoints a “trustee” to administer the property, and which gives detailed instructions on how the property is to be managed and eventually distributed. If you want your trust to substitute for probate (court administration of property after death) or for guardianship (court administration after incapacity), you must give the trustee detailed instructions about how to handle these situations, and you should legally transfer substantially all of your property to the trust. A revocable living trust agreement or declaration is usually longer and more complicated than a Will, and transfers of assets to the trust can be time-consuming. Before you decide to establish a revocable living trust, you and your attorney should compare the potential cost of probate administration to the cost of establishing and administering a trust.

Who Can Establish a Revocable Living Trust?

Any competent adult can establish a revocable living trust. Spouses can establish a trust together (a Joint Revocable Trust) and can provide that their marital and individual property be held in different accounts.

Who Can Act as Trustee?

In Wisconsin, any competent adult can be the trustee, including the person setting up the trust. A Wisconsin bank or trust company is often a good choice too, especially as a successor trustee.

You can appoint more than one trustee, can delegate different duties to each trustee, and can retain the power to remove the trustee and appoint a new one. Appointing a successor trustee is essential if you are the first trustee and the trust will carry on after you die or become incapacitated.

How Do You Establish a Revocable Living Trust?

Establishing a revocable living trust involves two steps. First, you (or you and your spouse) sign a written agreement or declaration. Then, you will transfer or direct all of your assets to the trust. Deeds, stock transfers, new bank accounts, and other legal documents may be necessary. Assets not formally transferred to the trust will probably not be considered part of the trust and could still be subject to probate.

An Affidavit can transfer up to \$50,000 in assets to the trust at your death without probate, and you can have life insurance paid directly to it. If you want to avoid guardianship, you can use a durable power of attorney for finances to finish funding the trust, if you become incapacitated.

How Does a Revocable Living Trust Avoid Probate?

Probate is the court-supervised process for transferring your property when you die. Probate usually involves validation of your Will, appointment of a personal representative, collection of your assets, notification and payment to your creditors, and transfer of your property to the beneficiaries under your Will.

A revocable living trust avoids the probate process because you collect your assets and transfer them to the trust before you die. If you fail to do this, you will not avoid probate.

If you die owning real estate outside Wisconsin, a court proceeding might be required in each state where real estate is located. A revocable living trust can avoid these extra court proceedings and can reduce probate fees. To avoid court proceedings in other states (often called “ancillary probate”), you must transfer the ownership of the real property of your revocable living trust during your lifetime.

In some cases, it is not a good idea to avoid probate. For instance, a probate personal representative has certain powers to deal with your creditors and can force them to file claims within four months or lose their claims. The probate court may issue an order declaring an estate insolvent and providing an allowance for a surviving spouse or minor children.

Even if you want to avoid probate, there may be better ways to do it. Wisconsin married couples can leave all of their property to the survivor using a written marital property agreement, which costs less than a revocable living trust to prepare and involves no transfers to a trust. Joint tenancy ownership with the right of survivorship of specific assets can be a cost-effective way to avoid probate. There are several ways to pass bank accounts at death without probate, including joint accounts with right of survivorship and “pay on death” (POD) designations. Real estate can also be transferred to beneficiaries using a “Transfer on Death” (TOD) designation. Most pension plans and life insurance policies pass under beneficiary designations which avoid probate without use of revocable living trusts. If you have a modest amount of property and your beneficiaries are adults who can receive the assets directly, one or more of these non-probate transfers could be a better way for you to avoid probate. Consulting with a well-qualified estate planning attorney will help you decide which options best suit your circumstances and goals.

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