

REVOCABLE 'LIVING' TRUST

A REVOCABLE TRUST AGREEMENT is a set of written instructions to another person (*Trustee*) telling the Trustee what to do with the property titled in the name of the Trust *during your lifetime* and *after your death*.

DEFINITIONS: Since many of the terms used in a Revocable Trust Agreement are new to you, the following definitions may prove helpful:

Grantor: The person who creates the Trust.

Trustee: The person who manages the Trust Corpus and Trust Income and follows the Grantor's instructions as set forth in the Trust Agreement. It is very common for the Grantor and Grantor's spouse to be the initial Co-Trustees with a Grantor's family member (e.g., child or children) or a Trust Company named as the Successor Trustee.

Revocable: Grantor may revoke, amend, change or modify the Trust Agreement at anytime and for any reason.

Beneficiary: The person who receives Trust Income and Trust Corpus. Usually the Grantor is the first beneficiary, the Grantor's spouse is second beneficiary, and the Grantor's family (children, etc.) are the ultimate beneficiaries.

Trust Income: The income, such as interest or dividends, which the Trust receives.

Trust Corpus: The "body" of the Trust; the property such as cash, real estate, stocks and bonds and other property which are placed in the Trust. This is also sometimes referred to as "Trust Principal".

A revocable Living Trust is a vehicle that is very helpful in avoiding probate. Probate is the process where a court oversees the distribution of property that belongs to a deceased person at the time of death (after all the deceased's debts and taxes have been paid). During your lifetime, you can transfer ownership of your assets to a revocable Trust so that the assets are owned by the Trust at the time of your death, and therefore not subject to probate.

A revocable Trust is one that you can revoke, which means you can take the property back or change the terms of the Trust as long as you are alive and competent to make such decisions. Because you retain control of the Trust, your creditors can take those assets during your lifetime if you owe them money, even though you have transferred ownership of the assets to the Trust. However, the Trust does make it more difficult for creditors to access these assets; the creditor has to petition a court for a charging order before the creditor can get to the assets held in the trust.

In most instances, a revocable Trust becomes irrevocable upon the death of the Grantor. This means that the assets in the Trust can no longer be taken back, and they have to be distributed to the Beneficiaries of the Trust as the Trust document directs. While creditors of the deceased can try and collect from the Trust assets, once the Trust is irrevocable, the Trust Beneficiaries are usually not able to use the assets of the Trust as collateral for their debts, so their creditors can't get to the assets of the Trust. While the assets are held in the Trust, the Beneficiaries do not have control over the property, and any distributions are subject to the Trustee's discretion. Creditors cannot force a Trustee to make a distribution to the Trust Beneficiaries; thus the assets held in a Trust can remain outside the reach of the Beneficiaries' creditors as long as they are held by the Trust. Once assets are distributed to the Beneficiaries, creditors can attach them as they can any other property owned by the Beneficiaries.

BETTER THAN A WILL?

YES, a Revocable Trust Agreement is better than a Will. Assets titled in the name of your revocable trust are not subject to either guardianship or probate. *Guardianship is the legal administration of one's property during any period where the owner is unable to manage property.*

INCOME TAXES:

A Revocable Trust does not reduce its Grantor's income tax liability, but may provide income tax benefits to its beneficiaries after the Grantor's death.

ESTATE TAXES:

A Revocable Trust or a Will may be written to reduce or eliminate Federal and State estate (inheritance) taxes.

TYPES OF REVOCABLE LIVING TRUSTS:

There are two (2) types of Revocable Trust Agreements.

The *Joint Revocable Trust* is suitable for husband and wife to avoid joint tenancy with right of survivorship. In effect, the Trust is established by both husband and wife and all property in the Trust is owned equally by husband and wife until the first spouse's death. At the first spouse's death, the entire Joint Trust becomes the Revocable Trust of the survivor. Both spouses serve as initial Co-Trustees with either spouse having the right to act independently for the trust. Upon the death or incapacity of one spouse, the other continues to serve as sole Trustee. The Joint Revocable Trust is recommended when the combined fair market value of both spouses' estates is less than or equal to \$675,000 for 2000 (*increasing to \$1,000,000 in 2006*).

The *Separate Revocable Trust* is suitable for unmarried Grantors or married Grantors wishing to reduce estate taxes. This type has only one Grantor, who has complete rights regarding the Trust property. Both spouses may serve as initial Co-Trustees with either spouse having the right to act independently for the trust. Upon the death or incapacity of one spouse, the other may continue to serve as sole Trustee. The Separate Revocable Trust is recommended when the combined fair market value of both spouses' estates is greater than \$1,000,000 (*after 2006*).

DO I STILL NEED A WILL WITH A REVOCABLE TRUST?

YES, there are several reasons you need a Will even if you create a Revocable Trust.

First, a new Will revokes all prior Wills you have.

Second, a new Will instructs your Personal Representative to transfer your Probate Estate to your Trust Estate at death. This type of Will is known as a "Pour Over" Will.