

Guide to Revocable Trusts



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This brochure is meant to provide a basic understanding of the following issues relating to Revocable Living Trusts:

- What is a Revocable Living Trust?
- What are its advantages?
- How does it work?
- How is it administered and funded?

I. WHAT IS A REVOCABLE LIVING TRUST?

A Revocable Living Trust (“Revocable Trust”) is a legal document which is often used as an integral part of an individual’s overall estate plan. Revocable Trusts have been used by individuals of all ages and wealth for generations.

A Revocable Trust is an entity into which the person creating the trust (hereinafter referred to as “Client”) transfers his or her assets while he or she is living. Assets transferred to a Revocable Trust may include a home, other real estate, automobiles, stocks, bonds, securities and the like. There are, however, some restrictions on the type of assets which can be owned by a Revocable Trust, such as retirement plan assets and the stock of a professional corporation.

All Revocable Trusts have at least two time phases. The First Phase covers the period of time during which the Client is living. The Second Phase covers the period of time after the Client’s death, at which point in time the Revocable Trust sets forth the plan for administering and distributing the trust assets.

In most cases, the Client who establishes the Revocable Trust will choose to enjoy all the benefits from the assets in the trust during his or her life while maintaining complete control over those assets just as he or she did prior to creating the Revocable Trust. These benefits include the right to all of the income earned by the assets in the Revocable Trust, the right to withdraw assets (i.e., the principal) from the Revocable Trust, the right to add assets to the Revocable

Trust and the right to amend, change or terminate the Revocable Trust at any time. These latter rights provide the flexibility Clients require when circumstances change or the law changes after the Revocable Trust is created.

Upon the Client's death, a Revocable Trust has a great deal of similarity to a Will in that a Revocable Trust sets forth how the property in the trust is to be administered and distributed among the Client's named beneficiaries (i.e., spouse, children, grandchildren). Unlike a Will, however, the property in the Revocable Trust is **not required** to go through the probate process and therefore avoids the time, expense and publicity associated with probate. The property in the Revocable Trust can be distributed outright to an individual or individuals (i.e., a spouse or children) after the Client's death or it could continue to be held in trust for named beneficiaries, which is typically the case when young children are involved.

II. ADVANTAGES OF A REVOCABLE TRUST

The following is a list of some of the advantages and benefits of a Revocable Trust:

1. Avoids Probate. Assets placed in a Revocable Trust are not subject to the probate process and thereby avoid the delay, complexity and expense of probate. The probate process in the U.S. Virgin Islands can take many years, with the average being 7 years. Further, the probate process can be costly.
2. Prevents Conservatorship. A Revocable Trust allows the Client to name who he or she wants to administer the trust assets in the event that the Client becomes disabled and can no longer manage and control the trust property. Without a Revocable Trust, a guardian or conservator would have to be appointed by the local probate court (sometimes referred to as "living probate") to manage the Client's property. The expense, delay and restrictions of court-supervised conservatorship are avoided when assets are held in a Revocable Trust. It should be noted that conservatorship is only avoided to the extent assets are in the Revocable Trust.

A Durable Power of Attorney may also be advisable if some assets are not placed in the Revocable Trust.

3. Preserves Privacy. Without a Revocable Trust, a personal representative of a deceased's estate is required to file the Will with the probate court and report the details of the estate's administration to the probate court. Accordingly, the administration of a Client's property would become a matter of public record, including what property the Client owns and to whom he or she left such property. Because a Revocable Trust is not required to be filed with any court and because the administration of the Revocable Trust need not be reported to any supervising authority, use of a Revocable Trust avoids undesired publicity.

4. Complete Flexibility. A Revocable Trust provides flexibility in that it can be changed, altered, canceled or revoked at any time prior to the Client's death.

5. Complete Control. Assets transferred to a Revocable Trust continue to be controlled by the person who created the Revocable Trust if that is what is desired.

6. Continuity of Investment and Management. Use of a Revocable Trust can provide for continuity of investment and management of assets even after a Client's death. This may be important where a Client's designated beneficiaries are unwilling or unable to adequately manage such assets themselves.

7. Minimizes Emotional Stress on Family. Most people involved in the probate process have had unpleasant experiences. The probate process can place a great deal of emotional stress on people who have just experienced the loss of a loved one. Because Revocable Trusts avoid probate and usually result in a timely distribution of assets, this emotional stress is greatly diminished.

8. Protection of Dependents. Because a Revocable Trust sets forth how property is distributed at death, a Client can choose to maintain the property in trust even after death to provide an ongoing source of funds for young children or other dependents with special needs.

9. Hard to Contest. A Will may be contested in the probate court by a disgruntled or omitted beneficiary. While a Revocable Trust may likewise be contested, the procedure for doing so is much more difficult than contesting a Will and may therefore dissuade a disgruntled or omitted beneficiary from doing so.

10. Easy to Set Up and Maintain. Setting up a Revocable Trust is relatively easy and usually only involves a one-time charge. Once a Revocable Trust is set up and funded, it requires very little maintenance. Typically, a Client only needs to see an attorney after the Revocable Trust is set up if the Client desires to change the document (i.e., change the successor trustees, disinherit someone, etc.)

11. Avoids Problems of Joint Ownership. Joint ownership is often referred to as “poor man’s estate planning.” Joint ownership will only avoid the probate process at the death of the first joint owner (the probate process will occur upon the death of the surviving joint owner). In addition, if the joint owners die in a common disaster or accident such that it is impossible to determine which joint owner died first, then two probate estates will need to be opened (one for each joint owner). With the Revocable Trust, the Client enjoys the benefits of joint ownership without the problems associated with joint ownership.

12. Effective Prenuptial Protection. A Revocable Trust can provide prenuptial protection for property placed in the Revocable Trust. This is because any property placed in the Revocable Trust before marriage remains property of the Revocable Trust and stays separate from property accumulated during marriage, provided there is no commingling of such assets.

III. HOW DOES A LIVING TRUST WORK?

A. Revocable Trust Parties

To understand how a Revocable Trust works, it is important to understand the roles that people involved in the trust play and their legal names.

Essentially there are three parties to every type of trust including a Revocable Trust. These parties are the *Grantor*, the *Trustee* and the *Beneficiaries*. In most cases, the Client establishing the Revocable Trust will serve in all three roles simultaneously. In all events, the Client establishing the Revocable Trust will be the Grantor and one of the Beneficiaries.

Grantor: This is the individual who establishes the Revocable Trust. Some Revocable Trusts refer to the Grantor as the *creator*, *settlor* or *trustor*.

Trustee: A Trustee must be named in all Revocable Trusts to manage the assets in the trust and carry out the terms of the Revocable Trust. Most individuals establishing a Revocable Trust choose to be the Trustee of their Revocable Trust or a Co-Trustee with their spouse or a child. By serving as the Trustee, the Client will continue to control his or her assets in the same manner as was done prior to the creation of the Revocable Trust. It is not a requirement that one serve as his or her own Trustee if he or she chooses not to or other circumstances prevent him or her from doing so. In such an event, another individual and/or qualified institution with trust powers who professionally manages trusts can serve as Trustee.

Successor or Back-Up Trustee: Because a Client may change his or her mind about serving as a Trustee or circumstances could arise which prevent the Client from continuing to serve (i.e., a disability or death), it is essential that the Client/Grantor name a successor or back-up Trustee who can immediately step in to manage the Revocable Trust.

Beneficiaries: The persons receiving the benefits from the assets in the Revocable Trust (income and/or principal) are called the “Beneficiaries.” During the Grantor’s life, he or she will be the Beneficiary of the Revocable Trust and will receive all of the benefits from the assets in the Revocable Trust. The Grantor’s spouse may also receive benefits from the Grantor’s Revocable Trust. At the death of the Grantor, the persons or organizations that the Grantor designates to receive the benefits of the Revocable Trust will then become the Beneficiaries. This will typically be the Grantor’s spouse and/or children. During the Grantor’s life, he or she may change the Beneficiaries who will benefit from the trust at any time.

B. What Happens After the Revocable Trust is Executed?

After a Revocable Trust is executed, it must be funded. This means that assets which were otherwise in the Client’s individual name must be transferred to the Revocable Trust. Funding the Revocable Trust is essential because the Trustee only has control of assets which are actually in the Revocable Trust.



Without transferring assets to the Revocable Trust, the benefits previously described will be lost. This Firm works with our Clients and their other advisors (financial planner, CPA or banker) to assure that the funding of the Revocable Trust occurs. Fortunately, the process of funding the Revocable Trust is fairly simple and can be accomplished with little or no inconvenience to the Client. After the Revocable Trust is funded, the Client will administer the trust assets (as Trustee) for the Client’s benefit (as Beneficiary). In other words, the Client will deal with the trust assets in substantially the same manner as when the assets were in the Client’s individual name.

C. What Happens to the Revocable Trust if the Client Who is Serving as Trustee Becomes Incompetent?

If the Client becomes incompetent and can no longer serve as Trustee, the back-up or successor Trustee will automatically take over the Client’s duties and responsibilities and administer the Revocable Trust. This will avoid the necessity of having a conservator appointed

by a court to administer the assets in the Revocable Trust and ensure that all family members will be continually taken care of while the incompetency exists.

D. What Happens to the Revocable Trust After the Death of the Client?

Upon the Client's death, the successor or back-up Trustee named in the Revocable Trust will act in a manner similar to an individual's personal representative in a Will, only he or she will not have to report to the probate court. The successor or back-up Trustee will carry out the terms, conditions and instructions stated in the Revocable Trust. This usually involves the payment of bills and taxes and the distribution of the assets to the Beneficiaries. If the Revocable Trust provides for the assets to remain in trust for the Grantor's spouse and/or children, the Trustee will administer those assets in accordance with the terms of the Revocable Trust. The process is quicker, less expensive and more private than a probate proceeding which must occur if a person's assets are left pursuant to a Will.

E. Revoking or Amending a Revocable Trust

Until the Client's death, a Revocable Trust can be amended or revoked. Amendments are often done when a Client wishes to change the Beneficiaries or the successor or back-up Trustee, or if the Client gets divorced, financial or physical circumstances of the Client change (for better or for worse) or changes in estate or gift tax law occurs. Most amendments are simple and can be done inexpensively.

IV. FUNDING AND ADMINISTERING A REVOCABLE TRUST

A. Introduction

In order for a Revocable Trust to work in the manner explained above and for it to afford the benefits discussed herein, it is essential that the Client properly transfer legal title of his or her assets to the Revocable Trust. This is called "funding" the Revocable Trust. The Trustee is only authorized to administer assets if they are in the Revocable Trust and the Beneficiary only benefits from assets that are in the Revocable Trust. Clients can make most of the transfers to

their Revocable Trust themselves, but as mentioned above, our Firm will work closely with our Clients and their advisors to assure that the Revocable Trust is funded.

B. Titling Assets in the Name of Revocable Trust

Typically, assets transferred to or purchased by a Revocable Trust should be titled as follows:

[Name of Trustee], TRUSTEE OF THE [Name of Client] REVOCABLE TRUST DATED [Date Revocable Trust Executed].

C. Funding a Revocable Trust with Various Assets

The following is a brief description of how various types of assets should be transferred to a Revocable Trust:

1. Bank and savings institution accounts and certificates should be re-registered in the name of the Revocable Trust. New passbooks, checks and certificates will be issued by the financial institution to evidence the change in ownership. The re-registration of certificates of deposit should not give rise to any early withdrawal interest penalty, but it would be prudent to confirm this with each institution prior to re-registering a C.D.

2. Certificates representing shares of corporate stocks, mutual funds and registered bonds and debentures should be delivered to the brokerage firm or mailed (registered mail) to the designated transfer agent along with executed stock or bond powers appointing such institution as attorney-in-fact to transfer such securities to the Revocable Trust. The executed stock or bond power should be mailed in a separate envelope. If more than one stock certificate in the same company is being transferred to the Revocable Trust, it is advisable to request that a series of new certificates be issued, each corresponding to the old certificates, rather than one certificate consolidating all of the shares. In that way the Client will be able to trace his/her income tax basis in any shares that might subsequently be sold.

3. Investment and custodial accounts at brokerage firms, investment companies and trust departments, where the underlying assets are being held for the Client's account in nominee or street name, should be retitled.

This can be accomplished by having the institution prepare a new account agreement, to be executed by the Client's Trustee, showing ownership in the name of the Revocable Trust.

4. Mutual fund shares are most commonly held on account by the mutual fund company or its agent rather than in certificate form by the owner. To transfer mutual fund holdings to a Revocable Trust, the Client should contact each mutual fund company, or the broker through whom the Client purchased the shares, and request the documentation they require to make the change in ownership.

5. Certificates representing shares of closely-held stocks and bonds, like their publicly traded counterparts, should be re-registered in the manner described in Paragraph B of this Section IV. Such certificates, along with executed stock or bond powers, should be given to the Secretary of the closely-held corporation with instructions to issue new certificates in the name of the Revocable Trust.

6. General and limited partnership interests should be re-registered in the name of the Revocable Trust and a new certificate of partnership interest, or an amendment to the partnership agreement, should be executed to reflect ownership of the interest in the name of the Revocable Trust. In the case of a limited partnership, a new certificate of amendment may be required to be recorded with the Secretary of State if a change in the general partner occurs. The partnership agreement may also require that the Client obtain the consent of the general partner in order to properly transfer the Client's interest to the Client's Revocable Trust.

7. Real estate interests should be transferred to the Client's Revocable Trust by means of a deed (usually a general warranty deed). Before transferring any real estate interest, such as a family residence, that is titled as jointly-held property between spouses or other parties, the Client should determine whether, for tax and non-tax reasons, the severance of the joint tenancy and transfer of all or a portion of the property interest to the Client's Revocable Trust is desirable. Furthermore, before transferring any real estate interest that is subject to a deed of trust, mortgage or other encumbrance, the Client should request that the lender release any rights it may have under a "due-on-transfer" provision in the security agreement, or the related promissory note, for such transfer. While "due-on-transfer" clauses are usually inapplicable to most residential real estate, it is prudent to obtain consent to the transfer.



8. Tangible personal property consisting of such items as jewelry, art objects, precious metals, coin and stamp collections, and items of household or personal use may be transferred to the Client's Revocable Trust by executing an "Assignment of Tangible Personal Property" describing the items of personal property to be transferred to the Client's Revocable Trust.

9. Motor vehicles may be transferred to your Revocable Trust by completing an "Application of Title."

10. Unregistered or bearer bonds and debentures, which cannot be registered in the name of the Revocable Trust, should be assigned to the Client's Trustee and such bearer bonds and debentures should be held by the Trustee in the Client's safe deposit box.

D. Designating a Revocable Trust as Beneficiary of Insurance Proceeds and Retirement Plan Benefits

Because of various estate tax considerations the Client should consult with a qualified attorney prior to changing the ownership of any life insurance policies or the beneficiary designations under such policies to a Revocable Trust. Further, because of various income tax considerations, the Client should also consult with a qualified attorney before changing the beneficiary designations under any qualified retirement plan (profit sharing, pension, Keogh, etc.). Oftentimes, income tax consequences will indicate that the preferred beneficiary for such plans should be the Client's spouse if the Client is married. However, other considerations may

override this decision. In some cases, the Client's Revocable Trust will be the appropriate contingent beneficiary.

If a beneficiary designation is to be changed, change of beneficiary forms from the insurance companies or the administrator of the Client's retirement plan must be completed and filed with the insurer or the plan trustee or custodian. It may be necessary for the Client's spouse to consent in writing to a designation of the Client's Revocable Trust as the beneficiary of any retirement plan benefits.

E. Taxpayer Identification Number ("TIN")

From time to time a Client may be asked to supply a taxpayer identification number for the Revocable Trust to any entity that pays income (i.e., interest and dividends) to the Revocable Trust. If the Client is the Trustee or Co-Trustee of his/her Revocable Trust, the Client should furnish his/her personal social security number in response to such request. However, if the Client is not a Trustee, then a separate federal taxpayer identification number must be obtained by filing Form SS-4 with the Internal Revenue Service.

F. Tax Returns

If the Client is a Trustee or Co-Trustee of the Client's Revocable Trust, all items of income and all deductions and credits from the Revocable Trust will be reported on the Client's Form 1040. A separate tax return for the Client's Revocable Trust will not be necessary. However, if the Client is not a Trustee, then a separate tax

return will be filed (a Form 1041) by the Trustee of the Client's Revocable Trust. All income reported on the Form 1041 will still be reported and taxed to the Client, and the Client must still file a Form 1040.



G. Casualty Insurance

Any assets that are transferred to a Revocable Trust and which are presently insured for loss or damage or liability against injury or death must of course remain insured. If the Client's Revocable Trust is the owner of any such assets, then the Client should arrange to name it as an additional insured on his/her policy along with the Client. The Client should also notify the insurance company of the retitling of the asset so it can advise the Client of any other requirements it might have in order to continue coverage.

H. Conclusion.

The Revocable Trust has proven to be an integral part of an estate plan for matters arising both during a Client's life as well as at the Client's death. The benefits of the Revocable Trust make it a planning tool which requires a client's serious consideration. We trust that this brochure sheds light on the Revocable Trust. This brochure is not, however, meant to be legal advice which can only be rendered when the attorney-client relationship is established and all pertinent facts become known to the attorney.

DISCLAIMER:

Internal Revenue Service regulations provide that, for the purpose of avoiding certain penalties under the Internal Revenue Code, taxpayers may rely only on formal opinions of counsel which meet specific requirements set forth in such regulations. Any tax advice that may be contained in this writing does not constitute a formal opinion that meets the requirements of the regulations. Accordingly, the Internal Revenue Service requires that we advise you that (1) any tax advice contained in this communication was not intended or written to be used, and may not be used, for the purpose of avoiding penalties that the IRS might attempt to impose on a taxpayer, (2) no one, without express prior written permission, may use any part of this communication in promoting, marketing or recommending an arrangement relating to any Federal tax matter to any person or entity, (3) there is no limitation by this Firm on the disclosure of the tax treatment or tax structure of the transaction(s) or matter(s) discussed herein by the intended recipient of this communication.

EXHIBIT A

REVOCABLE TRUST PARTIES

- * ***Grantor(s)*** - Person(s) creating the trust - you (and your spouse). Also called Creator, Settlor or Trustor.
- * ***Trustee(s)*** - Manages the trust now. Usually you (and your spouse) and/or a corporate trustee (bank or trust company).
- * ***Back-Up Trustee(s)*** - Will step in and manage the trust for as long as necessary if you (and your spouse) become disabled. At your death(s), your back-up will distribute your property according to your instructions. Back-up Trustees can be adult children, trusted friends, and/or a corporate trustee. You should name more than one, in order of your reference, in case your first choice is unable to act. Also called Successor Trustee.
- * ***Beneficiaries*** - Persons and/or organizations who will ultimately receive the property in your trust when you (and your spouse) die.
- * ***Children's Trust*** - If you have minor children, you will want a children's trust set up within your living trust. This way, if you (and your spouse) become disabled or die, your assets can be used to care for your children without the need for probate.
- * ***Children's Trustee*** - Manages the assets in your children's trust until your children reach the age(s) you specify that they are to receive trust property outright and free and clear of trust. Provides for education, maintenance, and support of your children from the assets in the trust. Can be the same person you name as guardian, another adult, and/or a corporate trustee.

EXHIBIT B

REVOCABLE LIVING TRUST
PARTIES

