

ESTATE PLANNING: UTILIZING REVOCABLE TRUSTS

Many clients tell me that they hear about revocable trusts on the radio or from a dinner seminar they were invited to. Sometimes there is misinformation provided at these venues so here are the basics regarding the revocable trust.

Generally, a revocable trust is created by a written document known as the trust agreement. The individual creating the revocable trust is called the Settlor (sometimes known as the Grantor). There are beneficiaries named in the trust agreement that will benefit from the assets transferred to the revocable living trust and they are usually the Settlor during the Settlor's lifetime and family members after the Settlor's death. There is also a Trustee who is the person or entity appointed to administer the revocable trust, manage the assets transferred to the revocable trust and make distributions as indicated within the trust agreement to the beneficiaries. The Settlor can be the Trustee during the Settlor's lifetime and successors can be appointed to be the Trustee as of the death or incapacity of the Settlor. The revocable trust typically becomes irrevocable at the Settlor's death and can continue to manage assets for the beneficiaries or terminate and distribute assets to the beneficiaries.

The primary reasons to consider using a revocable trust deal with its ease of administration. There typically is not a tax advantage for using the revocable trust. Many clients use the revocable trust to avoid probate, especially if the client has property that will need to be probated in multiple jurisdictions. Probate is the public legal proceeding in which the administration of an estate is overseen by a Court and subject to the formal legal procedures as promulgated by the probate law. Conversely, assets held in a revocable trust will continue to be administered privately or be distributed to beneficiaries free of any state probate restrictions.

The revocable trust agreement can be amended and restated, or completely revoked by the Settlor during the Settlor's lifetime. The revocable trust can continue to manage assets for the benefit of the Settlor in the event of the Settlor's incapacity. Sometimes a revocable trust is used to segregate assets for specific management and distribution purposes. Although the revocable trust assets are subject to creditor attachment, sometimes the revocable trust is used for asset protection purposes by providing another layer of entity that a creditor would have to discover and pierce when trying to attach assets of the Settlor.

There are other legal requirements that must be reviewed and closely followed when creating the revocable trust. Assets will need to be transferred and retitled to the revocable trust and this may mean additional paperwork from your bank or investment management company for financial accounts. Real estate is transferred to the revocable trust by preparing and filing a Deed with a Court's land record department. The revocable trust can be discussed with your advisor to see if it is a good way to complete your estate planning objectives.