



Benefits of a Revocable Trust

A proven alternative to a will, a well-crafted revocable trust helps you avoid probate and maintain control of your assets while you are alive and after you die.

Overview

A will might not be the best plan for you and your family despite common perceptions. Rather than avoiding probate when you die, a will must undergo validation by a probate court before being enforced, and then the transfer of assets is supervised by the court. Also, because a will only goes into effect after you die, it does not provide protection if you become physically or mentally incapacitated. That means the probate court will control your assets before you die—a concern of millions of older Americans and their families.

Fortunately, a simple and proven alternative to a will is a revocable trust. Often referred to as a revocable “living” trust because you create it during your lifetime, a well-crafted revocable trust avoids probate and lets you keep control of your assets while you are alive and after you die.

Problems With Probate

Probate is a court-supervised process that ensures payment of your debts and distribution of your assets according to your will. Without a valid will, the distribution of your assets takes place according to state law. Probate is also the process known as guardianship or conservatorship, by which the court supervises your finances and personal decision-making if you are incapacitated.

Probate can be expensive. Legal fees, executor fees, and other costs must be paid before your assets can be fully distributed to your heirs. If you own property in other states, your family could face multiple probates, each one according to the laws in that state. Costs can vary widely based on a percentage of the value of your assets.

Probate also takes considerable time. Probate administration can take nine months to two years, and sometimes longer. During this time, the court can freeze assets while awaiting an accurate inventory. Nothing can be distributed or sold without court or executor approval. If your family needs money to live on, they must request a living allowance, which the court may deny.

Probate is a public process, meaning anyone can see what you owned, what debts you owed, and who will receive your assets. The process invites disgruntled heirs to contest your will and exposes your family to unscrupulous solicitors.

Your family has no control over the probate process, how much it will cost, how long it takes, and what information is made public.

Can You Avoid Probate?

People often think that joint ownership will help them avoid probate. However, joint ownership usually only postpones probate. And with most jointly owned assets, full ownership transfers to the surviving owner, without probate, when one owner dies. If that owner dies without adding a new joint owner, or both owners die simultaneously, the assets must go through probate before distribution to the heirs.

Joint ownership poses other problems. When you add a co-owner, you lose control. Your chances of being named in a lawsuit and losing the asset to a creditor increase. There could be gift or income tax problems. And since a will does not control most jointly owned assets, you could unintentionally disinherit your family. And owners must sign to sell or refinance assets such as real estate. So, if a co-owner becomes incapacitated, the court becomes a “co-owner,” even if the incapacitated owner is your spouse.

Suppose you cannot conduct business due to mental or physical incapacity (i.e., dementia, stroke, heart attack). In that case, only a court appointee can sign for you, even if you have a will (remember, a will goes into effect after you die). The court-appointed and supervised person is called a Guardian or Conservator.

Once the court is involved, it usually stays involved until you recover or die. The court, not your family, will control how your assets get used for your care. This public probate process can be expensive, time-

consuming, and challenging to end. It does not replace probate at death, so your family may have to go through probate twice.

In some cases, a durable power of attorney lets you name someone to manage your financial affairs if you cannot do so. However, many financial institutions will not honor a durable power of attorney unless it is on their form. And, if accepted, it may work too well, giving someone a “blank check” to do whatever they want with your assets. It can be very effective when used with a revocable trust but risky when used alone.

The Revocable Trust

A revocable trust is a legal document that, like a will, contains your instructions for what you want to happen to your assets when you die. But, unlike a will, a revocable trust can avoid probate at death, control all your assets, and prevent the court from controlling your assets if you become incapacitated.

When you establish a revocable trust, you transfer assets from your name to the name of your trust, which you control. For example, from “Bob and Sue Smith, husband and wife” to “Bob and Sue Smith, trustees of the Bob and Sue Smith Revocable Trust.”

Legally you no longer own anything; everything now belongs to your trust, so there is nothing for the court to control when you die or become incapacitated. And that keeps you and your family out of the probate process.

You keep complete control of the assets in your trust. As trustee of your trust, you can do anything you could do before, such as buy and sell assets, change, or even cancel your trust. That is why it is called a revocable trust. No other tax returns are required. Nothing changes but the names on the titles to your assets.

Transferring assets into your trust is not difficult. An attorney, trust officer, financial adviser, or insurance agent can help. Typically, you will change titles on real estate, stocks, CDs, bank accounts, investments, insurance, and other titled assets. Most revocable trusts also include jewelry, clothes, art, furniture, and other assets that do not have titles.

It is also wise to change beneficiary designations to your trust, such as those on insurance policies. That way, the court will not control those assets if a beneficiary is incapacitated or no longer living when you die.

Setting up a revocable trust takes some time. But you can do it now, or you can pay the court and attorneys to do it for you later. One of the benefits of a revocable trust is that all your assets are brought together under one plan. It is best not to delay “funding” your trust because it can only protect assets you have transferred into it.

Using a Professional Trustee

You may decide to be the trustee of your trust. However, many people select a qualified lawyer, accountant, bank, or trust company to act as trustee or co-trustee. A

professional trustee can be helpful, especially if you lack the time, ability, or desire to manage your assets. Or if one or both spouses are ill or want to give the trustee a “test drive” to build the relationship for a time when they will no longer be able to manage assets.

Professional trustees are experienced investment managers; they are objective and reliable, and their fees are usually very reasonable—often no more than you are currently paying for investment management.

If you and your spouse are co-trustees, either can act and have instant control if one becomes incapacitated or dies. Should something happen to both of you, or if you are the only trustee, the successor trustee you selected will step in. If a professional trustee is already your trustee or co-trustee, they will continue to manage your trust for you.

If you become incapacitated, your successor trustee looks after your care and manages your financial affairs for as long as needed, using your assets to pay your expenses. If you recover, you resume control. When you die, your successor trustee pays your debts, files your tax returns, and distributes your assets. All can be done quickly and privately, according to instructions in your trust, without court interference.

Successor trustees can be family members, trusted friends, or professional trustees. If you choose an individual, you should also name additional successors if your first choice is unable to act.

Other Revocable Trust Benefits

Unlike a will, a trust does not have to die with you. Assets can stay in your trust, managed by the trustee you selected, until your beneficiaries reach the age(s) when you want them to inherit. Alternatively, your trust can continue longer to provide for a loved one with special needs, or to protect assets from beneficiaries' creditors, spouses, and future death taxes, or ensure assets stay "in the family."

Revocable trusts are relatively inexpensive compared to all the back-end costs of court interference at incapacity and death. How much you pay will depend primarily on your goals and what you want to accomplish. Typical prices for a revocable trust-based estate plan are \$2,800 for single clients and \$3,800 for married clients. Cost increases with special circumstances such as family members with special needs, estate tax planning, or significant tax-qualified retirement plan assets (i.e., 401k, IRA). At your death or incapacity, your successor trustee will still need the assistance of professionals such as a lawyer and an accountant, but the costs of this work are far less than if probate is required.

We recommend that you have an attorney prepare your trust. But only if you have the right attorney. An attorney who has considerable experience in trusts and estate planning will be able to give you valuable guidance and peace of mind that your trust is prepared and funded correctly.

Even if you have a revocable trust, you still need a will. A "pour-over" will work as a safety net if you forget to transfer an asset to your trust. When you die, the will "catches" the forgotten asset and sends it into your trust. The asset may have to go through probate first, but it gets distributed as part of your overall revocable trust plan. Also, if you have minor children, a guardian will need to be named in the will.

Regardless of your age, marital status, and wealth, you should have a revocable trust. If you own titled assets and want your loved ones (spouse, children, or parents) to avoid court interference at your death or incapacity, you should probably have a revocable trust. You may also want to encourage other family members to establish a revocable trust, so you won't have to deal with the courts at their incapacity or death.

Summary of Revocable Trust Benefits

- Avoids probate at death, including multiple probates if you own property in other states
- Prevents court control of assets at incapacity
- Brings all your assets together under one plan
- Provides maximum privacy
- Quicker distribution of assets to beneficiaries
- Assets can remain in trust until you want beneficiaries to inherit
- Can keep assets “in the family”
- Significantly less expensive than the back-end costs of probate and uncertainty
- Easy to establish and maintain
- Can be changed or canceled at any time
- Difficult to contest
- Prevents court control of minors’ inheritances
- Can protect dependents with special needs
- Prevents unintentional disinheritance and other problems of joint ownership
- Professional management with a professional trustee
- Can minimize the impact of death taxes
- Peace of mind



801 West South Boundary | Suite C
Perrysburg, OH 43551
567.806.5200
chad.baker@bakerlawltd.com

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