**WHAT IS A REVOCABLE TRUST?**

A revocable living trust is a trust created by a person during his or her lifetime and who retains the right to revoke, terminate or amend the trust. The trust is created by a written trust agreement between the person establishing the trust and the party to act as trustee. The person creating the trust, called the “Grantor,” usually acts as his or her own trustee.

A trust is called a “living trust” when the trust is activated by the Grantor transferring assets to the trust to be held by the trustee during the term of the trust. Placing assets in the trust is called “funding the trust.”

A revocable living trust is sometimes called an “inter vivos trust.” This term is used because the trust is active during the lifetime of the person setting up the trust.

1. RIGHT TO AMEND OR CHANGE TRUST. The person who creates the trust retains the right to amend, revoke or terminate the trust just as one has the ability to change or revoke a Last Will and Testament. It is easier to change the living trust since you avoid the formalities required in changing a Last Will and Testament.
2. TRUSTEES. The person who sets up the trust can act as his or her own trustee during their lifetime or until they become incapacitated. The trust agreement provides for the successor trustee, who is a person or bank named by the person setting up the trust.

Using a living trust permits the use of a nonresident person as successor trustee. Thus, a son, daughter or an “in-law” that may reside in another state can be brought in to assist in managing the affairs without any concern that the probate court will not recognize such person, which could happen, depending upon the state of residency, if the estate was handled through the use of a Last Will and Testament.

1. TRANSFER OF ASSETS TO TRUST. To avoid probate, the person setting up the trust must transfer his or her assets to the trustee of the trust, which is usually the person who sets up the trust. See attached Schedule A. If the assets are not transferred to the trust, then the estate of the Grantor must be probated to transfer the assets to the trust and then on to the beneficiaries. After the assets are in the trust, the assets can be bought and sold just as before except you do this in your name, as trustee.

No additional income tax returns are required where a person acts as his or her own trustee and you continue to use your social security number.

1. TRUST AVOIDS PROBATE. If all of the assets of the person setting up the trust are in the trust at the time of death, the successor trustee named in the trust agreement immediately takes over, winds up the decedent’s affairs and distributes the assets in accordance with the trust terms. The trust agreement contains all of the provisions, which are normally in a Last Will and Testament. A very easy way to understand the use of a trust is to simply state that the trust, if funded, “leapfrogs” the entire probate process. The trust, by its terms, transfers the assets from the deceased person to the beneficiaries designated in the trust agreement without the lengthy probate process. This results in a considerable reduction in the time for administration and expense.
2. TRUST AVOIDS CONSERVATORSHIP. Having the assets in a living trust can also avoid conservatorship proceedings. Thus, if a person is injured or has a stroke and the assets are in a living trust, the successor trustee named in the trust agreement takes over and handles all affairs until the person recovers or if death follows, winds up the affairs at death without going through the extensive and costly proceedings of conservatorship. There is no need to declare the person setting up the trust incompetent or for powers of attorney or temporary joint checking accounts.
3. INCOME AVAILABLE TO SURVIVING SPOUSE AND BENEFICIARIES. Under a living trust, upon the death of the Grantor or person setting up the trust, the assets in the trust are immediately available to the survivors; thus, a surviving spouse knows what income is available for his or her use.
4. SHORTENS PERIOD OF TIME TO WIND UP THE AFFAIRS. Using a living trust rather than a Last Will and Testament will eliminate a number of filings in probate proceedings and reduce the time to wind up the affairs of a deceased person. See attached Schedule B. Tax returns, if required to be filed, are all handled by the successor trustee.
5. COSTS OF PROBATE REDUCED. It has been our experience, through many years of using living trusts, that the cost of transferring assets from one generation to the next through a living trust is substantially reduced.
6. INFORMATION CONFIDENTIAL. Using a living trust ensures that all of the information with regard to the transfer of the assets remains confidential. The trust agreement, unlike a Last Will and Testament, does not need to be recorded in any public office.
7. NEED FOR “POUROVER WILL.” A Last Will and Testament is always executed by the Grantor, which provides that any assets which may be owned by the Grantor and not transferred to the trust during the lifetime of the Grantor will be transferred by the Executor under the Last Will and Testament of the Grantor to the trust. It is for this reason the Will has been called a “Pourover Will.”
8. ESTATE AND INHERITANCE TAX EXEMPTIONS. Beginning January 1, 2019, if the total estate of an individual is less than $11,400,000 and that individual is a resident of the State of Iowa and leaves all their property to family members, there is no federal estate tax or Iowa inheritance tax.
9. SIZE OF ESTATES USING LIVING TRUSTS. Living trusts are not necessarily for large estates. They are used by individuals with a small amount of assets in order to avoid the cost of probate and avoid conservatorships. We have utilized the living trust in which the assets were less than $100,000 to avoid Iowa probate and provide for immediate distribution on death when all the heirs lived outside of Iowa.