

What We Know

ARTICLES & INSIGHTS

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Should you get a Revocable Living Trust?

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More and more law firms and financial advisors in North Carolina are touting the benefits of having a revocable living trust. While there are many benefits, a revocable living trust may not be for everyone. This article will briefly highlight some of the pros and cons.

The primary talking point around the use of a revocable living trust is that it will allow your loved ones to avoid probate and unnecessary costs. This, of course, may be true, but it doesn't always work out that way. Establishing a revocable living trust is only part of the equation. The other part involves making sure to fund the trust properly. Unfunded items within a Trust are at risk. Those items can be taken through probate or the rules established by the trust are not applied. For example, at your death a bank account held solely in your name might have to be frozen, and a check will only be issued to your estate. Or, a joint account, with rights of survivorship or a named beneficiary, may pass directly to that person at your passing. In the first part of the example, probate may be the only way to move those assets to your heirs. In the second part, assets transferred directly to the beneficiary or named joint account owner, bypassing any rules set up within the trust.

Another talking point usually has to do with cost. When going through probate, two major costs are involved: court costs and attorney's fees. Court costs are relatively low in North Carolina, depending on the amount of assets passing through the probate process. The second cost, attorney's fees, can range from hundreds to thousands of dollars, depending on the complexity of the probate process. In fact, you may not need to hire an attorney at all if you have a simple estate. Proponents of revocable living trust tout that investing in a revocable living trust now will save you money later. The fact is, you may spend upwards of five thousand dollars establishing a revocable living trust only to have your loved ones spend additional dollars at your death for the reasons referenced above.

One clear advantage of having a revocable living trust is privacy. A trust does not have to be filed as a public record as a will must. This privacy protection prevents the public from a) knowing the size of your estate, b) how and to whom your estate will be distributed, and c) the rules placed upon those assets and your beneficiaries. Another advantage of a revocable living trust involves its ability to organize assets spread over

different accounts and states. If you have a substantial amount of assets spread over different accounts and states (i.e. a complex estate), a revocable living trust may allow you to streamline the process for your heirs at your death. But if you don't have a complex estate, a revocable living trust may be a worth more to the person who drafted it then it is for your heirs.

Estate taxes are another big concern for most people. In North Carolina, we currently do not have estate taxes. The federal estate tax is now up to more than \$5 million per person, and for married couples the limit is pushing well above \$10 million. Therefore, a married couple in North Carolina can pass upwards of \$10 million to their heirs without paying a dime of estate tax. But, if you have property or assets held in a state that imposes estate taxes, you should consult an attorney. If you have a taxable estate greater than say \$11 million (if you are married), a revocable living trust alone cannot ease one's tax burden. If you are in this bracket, you should also consult an estate planning attorney and a financial advisor as to ways you can limit your estate's tax burden.

Many will tell you that a revocable living trust will protect your assets from creditors' claims and Medicaid recovery actions. In North Carolina, neither are true. The law protects creditors' claims against your estate and you while you are alive of transferring funds to a revocable living trust with the intent to defraud a creditor. In other words, you cannot just transfer money to this type of trust, run up your credit card bills, and then claim you do not have the funds to pay them. The same is true for when you die too. The law allows a creditor to become your "executor or the administrator of you estate" and have full power to reach inside a revocable living trust to make funds available to pay your debts. Regarding Medicaid, a revocable living trust will not shield assets from the Department of Social Services (DSS) either. It will not help you qualify, and it will not keep DSS from making a claim on your home after you die (if you were on Medicaid). This is not to say that a revocable living trust will not protect your assets from the creditors of beneficiaries or prevent a beneficiary from becoming or continuing to qualify for Medicaid. It just not you.

So what are the reasons one should consider a revocable living trust? If you want a vehicle to better control and manage your assets, then a revocable living trust may be a good choice for you. If you have children, grandchildren, or a potential heir who has special needs, then a revocable living trust may be a good choice for you. If there are any other challenging family issues, such as a child with substance abuse or debt problems, then a revocable living trust may be a good choice for you.

No one has a simple life, and very few of us have a simple estate. With the advice of an estate planning attorney, can you be confident in knowing whether a revocable living trust is right for you and your loved ones.

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