

# New Dimensions in Estate & Trust Planning

*An Article to Benefit Clients & Friends  
of*

**FERRIS & ASSOCIATES**  
A PROFESSIONAL CORPORATION  
Attorneys and Counselors at Law

Trust & Estate Planning ♦ Probate & Estate Administration ♦ Business Formation & Planning

## THE REVOCABLE LIVING TRUST IS IT FOR ME?

*by Richard L. Ferris, Esq.*

During my years of practicing Estate Planning law, this question often arises in my first consultation interview with a client--is the **Revocable Living Trust** right for me and my family? The answer depends on what you wish to achieve in your estate plan for yourself and your family. As I explain to clients, Estate Planning is much more than money or property. It's about people: spouses, children, grandchildren, favorite family members and close friends. It's about their security and prosperity without you. It's also about state and federal taxes, as well as income, death and gift taxes. It, too, may be about your favorite charity and how you can remember it in a thoughtful way. Estate planning is life planning. It is a living statement of commitment to others. It is the ability to share your successes with others. Estate Planning allows you to achieve your goals, objectives, dreams, desires and hopes. It provides you the opportunity to control your assets both during life and after death.

Done the right way, Estate Planning is more than just "death planning." In reality, Estate Planning is an act of caring, not an act of death. My experience is that people who love are people who plan. People who care about themselves and others are far more likely to want to create a plan that preserves their assets and shares them with others in a kind and responsible way.

Returning to the headline, "**The Revocable Living Trust--Is It For Me?**" is answered "yes" when clients express the following wishes to me during our first fact-finding and goal-setting conference: (1) I want to control my property while I am alive. I want to take care of my loved ones and myself if I become disabled. (2) I would like to give my property to whom I want, in precisely the way I want. Further, I wish my beneficiaries to receive my property when I wish them to receive it. (3) But, and this is very important to me, I want to save every last tax dollar, both state and federal, and still accomplish my objectives. Oh yes, I

also want to avoid, or at least reduce, legal fees and court costs. (4) Lastly, I don't want myself or my family involved in a lot of red tape that is public and prevents my objectives from being accomplished quickly and in an efficient and effective way.

### **The Will Substitute That Has Come Of Age**

In their book, *PROTECT YOUR ESTATE*, noted Estate Planning attorneys Bob Esperti and Renno Peterson describe the Revocable Living Trust as "the will substitute that has come of age." Their belief, which is shared by our law firm, is that Estate Planning attorneys should use the Revocable Living Trust as the main or "foundation" document to accomplish the majority of their client's estate planning objectives.

Following is an overview of the benefits Esperti and Peterson list in their book that can be derived from using this Estate Planning vehicle:

- You can give what you own to whom you want and when you want subsequent to your death through the use of a revocable living trust. As the trustmaker, you can spell out all your distribution terms and requirements as to how your property passes after your death.
- A revocable living trust can control, coordinate, and distribute all your property interests while you are alive as well as on your death.
- By using a revocable living trust, you can arrange for your well being under your terms as you advance in years, become ill, or become mentally incompetent.
- The use of a revocable living trust assures that your plans and affairs will remain private, rather than being made public, on your death or incapacity.
- A revocable living trust is easy to create and maintain during your lifetime.
- It is not difficult for you to change or amend your revocable living trust at any time during your lifetime.
- There are no adverse lifetime income tax consequences that result from the use of a revocable living trust.
- Property that has been placed in a revocable living trust during your lifetime is not subject to and does not pass through the probate process on your death; it is probate free.

- In case of disability or death, the continuity of cash flow and investments in your portfolio can be continued by your back-up trustees, without interruption.

- All opportunities of death tax planning available through will planning are equally available through the use of a revocable living trust.

- Revocable living trust is legal in every state. Your trust can easily be moved with you as you go across state lines.

- By using a revocable living trust, you can measure your post-death trustees' abilities to manage your assets while you are still alive.

- A revocable living trust is much more difficult to attack by disgruntled beneficiaries than a will.

### **How Does The Living Trust-Centered Plan Work?**

The Revocable Living Trust (RLT) is an ancient legal concept developed in early English common law over a thousand years ago. In fact, the RLT predates the Last Will and Testament by over five hundred years.

A RLT is created by a trustmaker (sometimes called "grantor" or "settlor") who transfers property to a trustee for the benefit of a beneficiary. The trustee can be you alone, you as co-trustee, a family member or corporate fiduciary. Whomever you choose as the initial trustee, you still maintain total control over your assets converted into your trust name. This is possible because you always retain the right to hire/fire trustees, the right to amend or even revoke the trust. In case of your mental or physical disability, you – the Trustmaker – will name your back-up trustee(s) in your RLT. They will be able to take care of you and manage your financial affairs for as long as necessary, using your assets to pay your expenses. When you recover, you automatically resume control of your trust and your assets. At your death, your back-up trustee(s) pays your debts and distributes your property according to your instructions.

A RLT is valid and operational the day it is signed. By contrast, a will can only function after the death of its maker and is, unfortunately, subject to the time delays and

expense of probate. A Living Trust can care for its maker immediately and avoids both a "living" probate (disability/guardianship) and probate at death.

### **How Does a Revocable Living Trust Save on Estate Taxes for a Married Couple?**

The RLT itself does not save estate taxes! While each spouse has a federal estate tax exemption, a RLT must have properly drafted tax language (sometimes called the A-B sub-trusts) within the document that becomes effective immediately at the death of the first spouse in order to capture both exemptions. Many couples lose the exemption of the first spouse to die because they do not have a RLT with tax planning.

As a result, a couple should implement a RLT to allow for both federal estate tax exemptions to be captured to reduce or completely eliminate the estate tax liability. Without capturing both spouses' federal estate tax exemption, a potentially huge death tax loss could result to the family. Our firm does not recommend to clients that they rely on the new "Portability" Law to protect a husband's or wife's estate tax exemption at the first spouse's death. In addition, the tax language in the RLT should include a deferral provision to defer any **State** death tax due at the first spouse's death.

### **Please Summarize For Me A Living Trust-Centered Estate Plan**

When we use the term "Living Trust-Centered Estate Plan" with our clients, we're describing an estate plan in which the Revocable Living Trust is used as the foundation document. In other words, the RLT is the "hub" of the wheel. To be totally effective, it must also include other important legal documents and supporting information. A comprehensive trust-centered estate plan portfolio will include the following:

#### **The Living Trust Document**

A comprehensive living trust document will have extensive language about you and your family. It will define what "disability" is and

how your trustees will care for you. It will have your instructions as to how and to whom property will pass at your death. It will name your back-up trustees, whether they are family members, friends, advisors, bank or trust company, who will follow your instructions at your disability or death. If you are married, it will, of course, contain precise tax provisions to protect each spouse's Federal Estate Tax Exemption.

#### **Pour Over Will**

With every living trust-centered plan, there must be a short, single purpose "fail safe" will. A Pour-Over Will simply says:

"I leave any property owned by me at my death, and not already in my trust, to my RLT. Please have my personal representative put it in my trust."

Please remember that property that goes through your Pour-Over Will is subject to probate. Obviously, the objective is to have all your assets in your RLT prior to death so your personal representative will never use the Pour-Over Will except for determining the guardian(s) you have named for your minor children.

#### **Durable General Power of Attorney**

This legal document allows you to give the power to transfer your property into your RLT to your agent if you become disabled and are unable to do it yourself. Also, the power of attorney allows your agent to manage your property, finances and personal affairs. This document avoids an expensive, time-consuming and unnecessary court proceeding called a "guardianship probate."

#### **Advance Medical Directive**

This legal document allows you to give to your spouse, or a family member, the authority to make health care decisions for you if you are unable to make medical decisions because of serious illness or injury.

### **Living Will**

A Living Will, which is included in the Advance Medical Directive, is a medical directive to your primary care or family physician that you wish to be removed from life-prolonging systems if you are in a terminal, irreversible or vegetative state. The Living Will allows you to state your personal views on dying and, perhaps, more importantly; it takes the pressure off your loved ones to make this most difficult decision.

### **Anatomical Gift**

This is a formal way (compared to the "red dot" on your driver's license) to make donations of all or some of your body parts to medical research or for another's life. You appoint your agent in your Advance Medical Directive to carry out your wishes.

### **Memorandum of Personal Property**

How do you make certain your very important personal property such as the special rocking chair, Christmas Nativity Scene, piano, Mom's rings and Dad's gun collection go to specific individuals? A Memorandum is a separate written document that is incorporated by reference into your RLT. You complete the

Memorandum after your RLT is signed, giving specific items to named individuals.

### **Burial and Memorial Instructions**

Often overlooked is your personal feelings regarding how you wish to be buried, type of funeral and location of burial. These wishes should be properly conveyed in your "Burial and Memorial Instructions" letter contained within your Estate Plan Portfolio.

### **Funding Instructions**

In order for your RLT to meet your planning goals, it is critical that your assets be titled into the name of your trust. The process of transferring the title of your assets into your living trust, called "funding" your trust, is a team effort. It should include your estate planning attorney and your financial advisors.

Where appropriate, we transfer real estate into the RLT, since this requires a deed change, and we provide clients with a comprehensive set of instructions (and letters) for the remaining non- real estate assets. Most of our clients prefer to "fund" their own RLTs and not incur a separate paralegal fee to do the "funding." However, our firm is always available to clients by telephone if help is further needed in this important area..

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