



REVOCABLE LIVING TRUSTS

A Revocable “Living Trust” is a trust established during your lifetime. Under a Living Trust agreement, you, as the creator, select a Trustee (including yourself) who holds and administers your property for your benefit during your lifetime pursuant to the terms of a Trust Agreement established by you. You have full control over these assets because you retain the right to amend or revoke this Trust Agreement at any time. Upon your death, the property held by the Trustee passes to the beneficiaries you designate in your Trust Agreement. The Trust Agreement operates like a Last Will and Testament without the time and cost of probate.

- The Importance of Funding a Trust

An unfunded Living Trust may not avoid probate. Assets listed in the name of the trust or assets that name the Trust as beneficiary will be distributed in accordance with the terms of the Trust. Assets outside of the Trust that name joint owners or specific beneficiaries will pass to those beneficiaries named on those particular assets.

- Advantages of a Funded Revocable Living Trust

- Avoid Probate. Assets transferred into the name of your Trust avoid probate.
- Avoid Guardianship. A successor Trustee designated in your Trust takes over the management of your assets when you are incapacitated.
- Reduce Federal Estate Taxes While Providing for Surviving Spouse. For a married couple with more than \$10 million (2011 and 2012), Living Trusts can be structured to eliminate federal estate tax. This type of trust is commonly known as a Marital/Family Trust, QTIP/Credit Shelter Trust or A/B Trust.
- Reduce State Estate Taxes While Providing for Surviving Spouse. For a married couple with more than \$338,333, a Living Trust can be structured to eliminate Ohio estate tax on estates with assets of \$676,000.
- Privacy. Living Trusts are not available to the general public, while

Probate documents are readily available to the general.

- Management. If you or a beneficiary do not have experience in financial management, you may designate a professional financial advisor to manage the assets.
- Control. In a Living Trust, you determine when income or principal will be distributed to the beneficiaries. You may set the ages and purposes (*i.e.*, health, education, maintenance, support) for which a Trustee may distribute income or trust principal to a beneficiary. For example, you may provide that a child receives one half of the principal at age 25 and the balance at age 30. If a simple Will is used, the child is entitled to receive the principal at age 18 (or even hold the money in trust for life).
- Avoid Multiple Probate Proceedings. Your Ohio trust can hold out of state property and avoid probate in other states.
- Protect Both Spouse and Children. A Living Trust can provide that assets pass to your children upon the death of your surviving spouse. A Living Trust is very useful in a second marriage situation.
- Protect Assets from a Beneficiary's Creditors. Creditors and spouses of a beneficiary of the Living Trust (other than yourself) cannot seize such beneficiary's interest in the Living Trust while the Trust holds the assets.
- Disadvantages of a Funded Revocable Living Trust
 - No Court Supervision. There is no one to supervise an inexperienced Trustee.
 - Effort to Transfer Assets into Trust. In order to avoid probate, you must transfer your assets into your Trust or change the beneficiary designations. You must spend time to process the paperwork.
 - Higher Cost. A Living Trust costs more than a simple Will.
- Misconceptions About Living Trusts (What a Living Trust Will Not Do)
 - Estate Taxes. Married couples can save substantial Federal Estate taxes with a Trust. Individuals who have assets greater than the estate tax exemption (currently \$5 million) should consider additional techniques for tax savings through the use of an Insurance Trust, Gifting Trust, Family Limited Partnership and/or Charitable Remainder Trust.
 - Income Taxes. A Living Trust will not save you income taxes. No separate tax identification number is needed when you serve as Trustee of your

Living Trust. After your death, the Trustee must file a U.S. Fiduciary Income Tax Return (Form 1041) each year the Trust is in existence.

- Medicaid Qualification. A Living Trust will not enable you to qualify for Medicaid.
- Right to Challenge Validity of Trust. A Living Trust does not prevent a beneficiary or heir from challenging the validity of your Living Trust by claiming that you were incompetent when it was written.
- Protect Assets from Your Creditors. A Living Trust does not prevent your creditors from reaching your assets during your lifetime. However, it can protect a beneficiary's assets when their money is held in trust.