

The Revocable Living Trust



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When thinking about your estate planning options, consider whether a trust might be right for you. You may have heard that the need for a trust is limited to extremely wealthy individuals, but a trust can actually be more important to those with limited resources. A trust can help individuals who have worked hard to save for a specific goal or life event, even if they are not considered “rich.” These individuals may actually have a greater need for a trust in order to conserve the assets they have worked so hard to accumulate.

What is a trust?

A trust is a document prepared by an attorney that allows you to specify how, when and to whom your assets will be distributed. In a trust, you appoint an individual or corporation as a trustee who manages your property upon your incapacity or death. A “living” trust is created and funded during your lifetime. A revocable living trust (RLT) allows you to specify how your assets should be handled during your lifetime, as well as how they are distributed upon your death. Assets can be added or removed from the trust throughout your lifetime. In addition, an RLT can be revoked or amended to change the terms of the trust. Although you may transfer some of your assets into the trust during your lifetime, you do not lose control over the assets as long as you still have the ability to revoke the trust. Putting your assets in a trust can provide you with peace of mind, control, privacy and convenience.

- A trust can allow someone else to act on your behalf if you become incapacitated and cannot act for yourself.
- As a part of your estate plan, a trust can provide control over the assets left to your heirs.
- A living trust allows the trust assets to avoid probate and remain private.
- A living trust can be used to avoid separate estate administration if you own property outside your state of residence.

The parties to a trust include the following:

- Grantor – an individual who creates a trust by transferring ownership of his or her assets to the trust (a grantor is also known as settlor, trustor, creator and donor).
- Trustee – one or more individuals (or a named corporation) responsible for managing the assets in the trust according to the terms of the trust document. The trustee’s role is to carry out your objectives, included in your trust document, for the support of your beneficiaries. With an RLT, the grantor can also be the trustee during his/her lifetime.
- Beneficiary – one or more individuals or entities designated to receive assets according to the terms of the trust document
- Successor Trustee – one or more individuals (or a named corporation) who will take on the role and responsibility of trustee upon the resignation, incapacity or death of the original trustee.

Flexibility

An RLT allows you to specify how and when you want your assets managed and/or when you want your assets distributed to your heirs. Because the trust is revocable, the terms of the trust can be amended or revoked, as needed, to accommodate any relevant changes in your life.

Planning for Incapacity

An RLT allows you to transfer assets into the trust while continuing to manage the assets yourself (if you are the named trustee). However, your trust document should also name someone to take over as trustee in the event you become unable to act for yourself. While a durable power of attorney (POA) document could also allow you to designate someone to act on your behalf (the attorney-in-fact), it does not provide for asset management like an RLT. In addition, a durable POA does not have as much flexibility to control the actions of the attorney-in-fact. A revocable living trust allows you to specify exactly which powers your trustee will have regarding your affairs. The trust can provide for asset management in the event of your disability, and the trust assets will continue to be used for your benefit during your lifetime. In addition, because you have authorized someone to handle your affairs after incapacity, you have eliminated the need for a court-appointed guardian. Consider the following example:

Judith's husband, Rick, died two years ago. They had no children. Judith has become concerned with her health and who might take care of her financial matters in the event of her incapacity. She has several friends that she trusts, but they are close to her in age, so she is concerned about relying on them as a long-term solution. Judith has decided to create an RLT that names SECU Trust Services through Members Trust Company to manage her affairs in the event of her incapacity or death. Judith has peace of mind knowing that a professional will step in if she can no longer take care of her affairs during her lifetime and the assets in the trust will continue to be managed for her beneficiaries after her death.

Control how your assets are distributed

Having a will allows you to specify who will receive your assets at death, but does not control when or how the assets are distributed. Giving assets to beneficiaries who are young, financially irresponsible, or who have substance abuse or gambling problems can result in a waste of inherited assets and could even cause harm.

By placing assets in a trust, you control when and how those assets are distributed to your beneficiaries. The trustee is responsible for making decisions based on the terms of your trust document. Because an RLT will avoid probate, it may allow assets to be distributed to your beneficiaries more efficiently after your death, subject to the terms of the trust document. Consider the following example:

John and Catherine have three sons: Stewart, Richard and Daniel, who also have children. Although Stewart and Richard are financially responsible, Daniel does not manage his finances responsibly. John and Catherine would like each son to benefit equally upon the death of the last of them, but they are concerned about Daniel's inability to manage the assets should everything be distributed outright. They are also considering setting some assets aside for the educational needs of their grandchildren. By establishing an RLT, John and Catherine can provide for each son after death while still controlling the assets in the trust. The RLT will state that their assets will remain in trust for the continued benefit of their three sons and the future benefit of their grandchildren. Ultimately, the trust will ensure that assets will be available to pay for the grandchildren's education without the burden of saving for that education falling on Stewart, Richard or Daniel.

Avoid probate of certain assets

Probate is a legal, public process of settling a decedent's estate. During probate in North Carolina, the Clerk of Superior Court reviews and determines the validity of the decedent's will (if one exists) and ensures that the terms of the will are carried out properly by the personal representative of the estate. Not only is the probate process completely public, but it can also be a costly and lengthy process. An RLT is known as a will substitute because the assets of the trust are not subject to the terms of the will and are generally not subject to probate. The assets of the trust are distributed to beneficiaries according to the terms of the trust document. Consider the following example:

George and Frances would like to leave their assets to their two children and their favorite charity. However, they do not want the details of the transfer of their assets to be public record. To avoid the public process of probate, George and Frances have placed many of their assets in an RLT. The assets will be distributed according to the terms of the trust document, which will provide them with privacy while also avoiding the expense of probate.

Simplify your estate plan

If you own property outside of your state of residence, that property could be subject to a separate probate process in the state in which it is located (known as an ancillary administration). Placing that property in your RLT can avoid the need for a separate administration and simplify the settlement process for your heirs.

If you are concerned about burdening your heirs with the responsibility of managing your assets (investment portfolios, life insurance policies or a special collection, such as art, antiques, etc.), a corporate trustee may be able to help. SECU Trust Services through Members Trust Company will have the experience necessary to manage your assets and remove the burden from your family during this difficult time. Consider the following example:

Susan's husband, Robert, is an experienced investor who owns stocks, bonds and real estate. Robert knows that Susan would not be comfortable handling his investments in the event of his incapacity or death. Robert has created an RLT naming SECU Trust Services through Members Trust Company as his successor trustee. Robert is his own trustee during his life, but if Robert is unable to continue managing the assets in the trust, SECU Trust Services through Members Trust Company will step in as trustee to manage and distribute the assets.

Frequently Asked Questions

1. Can an RLT help me avoid income taxes?

No. Because you still have control over your RLT, it is considered a grantor trust, and is generally treated as the same taxable entity as you.

2. Do assets in my RLT avoid probate?

Yes. Any assets that are titled in the name of your RLT during your lifetime will avoid probate. This does not, however, include assets that your will puts into the trust after your death.

3. Can an RLT help me avoid estate taxes?

No. Estate taxes are calculated based on your gross estate (anything you own), regardless of whether or not those assets are in your name or in the name of your RLT. However, if an RLT is right for you, it can be structured to create a credit shelter trust upon your death, which can reduce the amount of estate taxes that will be due at your death.

4. Does an RLT provide asset protection from creditors?

No. Since you still have control over the assets in your RLT, the assets are still subject to your creditors. If you are concerned about asset protection, you should speak with a qualified attorney.

5. How does an RLT provide for incapacity planning?

An RLT allows you to be your own trustee during your lifetime, but can allow a successor trustee to step in upon your incapacity. Although a durable POA also allows an attorney-in-fact to act for you during incapacity, the powers granted are broader than an RLT. An RLT has more flexibility to restrict the actions of the trustee.

6. If I have an RLT, do I still need a durable POA?

Maybe. Your RLT only controls those assets that are titled in the name of the RLT. A durable POA can allow your attorney-in-fact to transfer additional assets to your RLT, to be sure those assets are administered and distributed according to the terms of your trust.

7. If I have an RLT, do I still need a will?

Yes. While an RLT contains many of the same provisions as a will, it does not completely replace your will. Since the provisions in the trust only control the assets that have been transferred to the trust, an RLT is often used in conjunction with a “pour-over” will. In this situation, any assets that were not in the name of the trust will “pour” into the trust in the event of your death. The assets are then administered according to the terms of the trust document.

8. How do I set up a revocable living trust?

SECU recommends that you consult an estate planning attorney to create a revocable living trust. While there are self-service templates and “kits” available, you need to consult an attorney to obtain legal advice about your individual situation to avoid making an unforeseen mistake. A trust is a very important legal document, and you should have professional advice in executing what may be one of the most important documents in your life.

9. Can I meet with an attorney through SECU’s Estate Planning Essentials Program to set up a Revocable Living Trust?

No. The Estate Planning Essentials Program is intended to cover the estate planning needs of most members whose situation can be addressed in a single appointment with the attorney. Estate Planning with a Revocable Living Trust requires more complex planning and is not included in the program. However, you may meet with an SECU Trust representative to discuss your specific situation before being referred to several local estate planning attorneys.

10. How do I fund a revocable living trust?

Once your RLT is drafted by your attorney, it must be funded. Your RLT can be funded with all of your assets, or as little as \$1. Your attorney can assist you with recommendations about what assets should be placed in your RLT. Your attorney can also advise whether or not you may need a durable POA that allows someone else to add assets to your RLT in the event that you become incapacitated.

11. Do I need a revocable living trust?

Trusts are not just for the wealthy. Even if you have only accumulated a moderate amount of assets over your lifetime, an RLT may be a beneficial part of your estate plan. While an RLT is not a solution for everyone, it offers flexibility and control and can be tailored to fit your specific needs. SECU Trust Services, offered through Members Trust Company, can help you determine your specific estate planning needs. After discussing your specific situation with you, we can help refer you to an attorney to determine if an RLT is a suitable estate planning tool for you.

For more information, or to discuss your specific concerns, contact your local branch and request a consultation with your nearest trust representative.

Trust Services offered through Members Trust Company, a federal thrift regulated by the Office of the Comptroller of the Currency. Trust products are not credit union deposits, are not insured by the NCUA or any federal government agency, are not obligations of or guaranteed by the credit union, Members Trust Company or any affiliated entity, and involve investment risks, including the possible loss of principal. The material above is for educational purposes only and is not intended to provide legal or tax advice regarding your situation. For legal or tax advice, please consult your attorney and/or accountant.

