

Does the Washington State Resident Need a Revocable Living Trust? (An Estate Planning Conversation)

It's 2:00 on a Thursday afternoon and I introduce myself to Julie and Aaron, a professional couple in their mid-forties with two children—one just finishing elementary school and one in middle school. We sit down around my conference room table and, somewhat sheepishly, Julie tells that they have been avoiding even thinking about their estate planning, but that their New Year's resolution was to get their finances in order, and they soon realized that estate planning is an important part of that. After a few niceties and learning more about Aaron and Julie's children and their general goals, Julie asks:

Julie: We've been reading Suze Orman's book and she recommends that people have a revocable living trust. I'm not sure what that is, but I'm sure we need one. What do you think?

Me: Okay. That's a fairly common question, so you're in good company. There are a lot of opinions out there about revocable trusts, but, frankly, most people don't really understand what that is, and even if they do, they may not understand why it may or may not be a good choice for them.

So the conversation starts. What is a revocable living trust? And why might you need one...or not?

A revocable trust is a document that provides instructions for the management of your assets while you are living, as well as for the distribution of your assets when you die. Unlike a will, once you sign your trust agreement, the trust becomes active and any assets you transfer into the name of the trust are immediately controlled by the trust.

The trust will have a trustee who is charged with managing the trust. While you are alive and competent you can serve as the trustee, but you will need to name a trustee to take over for you when you can no longer manage the trust.

Like your will, you can change the terms of your trust. You can also move assets in or out of the trust or even cancel the trust. While you are serving as trustee, you do not need

to get a tax identification number (also called a “TIN” or “EIN”) for the trust, nor do you need to file a trust income tax return since all trust activity is reported on your personal income tax return.

In some states, revocable trusts are more common than in others, and the use a revocable trust is based on where you live, your goals, your assets, and your lifestyle. A trust can be used to avoid probate, to provide privacy, and to centralize management of your assets.

Aaron: I thought that having a will avoided probate.

Me: No. In fact, having a will generally means there is probate.

Julie: We want to avoid probate. My aunt Betty had to go through probate with my uncle’s estate. It took years and it was so stressful and expensive. Everyone was fighting and there were a bunch of lawyers—all charging horrendous fees. It was awful! I don’t want to have to go through anything like that when Aaron dies. If a revocable trust avoids probate, let’s do that.

Me: Well, it may not have been the probate that was the problem in your aunt’s case. Probate or not, family conflicts complicate things. I’m sorry your aunt had that happen. Where did she live?

Julie: California.

Me: Uh huh. Well, probate is not the same in every state. In fact, California is one of the worst. There are court-mandated attorney and appraisal fees. The court usually has to supervise everything. Getting a hearing can take a long time.

So, what is probate anyway, and what’s it like in Washington State? Probate is the legal process used to transfer ownership of your assets to your beneficiaries if they cannot be distributed by another legal means. In many states, probate is complicated and expensive. In Washington State, we have the option of a more streamline probate (called non-intervention probate). This type of probate allows your executor (named by you in your will and then appointed by the court) to administer your estate and transfer your assets without the need for court approval along the way.

Of course, your executor must follow the instructions in your will and owes special duties to the beneficiaries. Beneficiaries may bring any questionable activities to the attention of the court at any time during the process.

Probate is necessary when you own property in your name and there is no other means to transfer it to your beneficiaries. The probate process ultimately gets legal title of assets into the name of those to whom you wish to leave them. The way a revocable trust avoids probate is that you transfer some or all of your assets into the trust's name (e.g., the Aaron and Julie Revocable Trust) so they are no longer titled in your your name. When you die, you do not own title to the assets—your trust does—and the trust's instructions are followed by your trustee without the need of court involvement.

There are other commonly-used means to avoid probate. Even if you have a will or revocable trust, you will probably use some of these methods as well. For example, most people name a beneficiary on their life insurance policies and their retirement plans. Those beneficiaries will receive those assets upon your death without the need for the court to be involved. As another example, sometimes assets are owned by more than one person with each owner holding a right of survivorship. This means that as each owner dies, their share passes automatically to the remaining owners on title.

Assets, like those described above, that can avoid probate are called nonprobate assets. The trustee of your revocable trust will transfer trust assets to those identified in your trust, so there is no need for probate. Thus, trust assets are also nonprobate assets.

If you want to use a revocable trust to avoid probate, then you must be careful to make sure that the trust owns all of your assets that would otherwise be subject to probate. This often includes cars, homes, real property, and some bank accounts. That way, upon your death, your trustee follows the instructions you put in the trust to distribute the property and takes care of the rest of the administration process without court involvement. If you are not careful to assure that all your probate assets are in the name of the trust, your estate could end up in probate anyway.

There are also some types of assets that should not, or cannot, be owned by a trust. These are just a couple of the reasons it is very important to meet with your attorney to prepare your trust, determine how assets should be owned and designated, and to review and update your plan on a regular schedule.

In some situations, even though probate is not complicated, avoiding probate can be a very important goal. For example, if you own real estate (including timeshare interests

and mineral rights) in other states your estate could be subject to multiple probates. Using a trust to hold these out-of-state assets allows the trust to direct distribution and eliminates the need for another probate.

Also, your Will is a public document when probate is commenced. This means the details of your estate plan are available to anyone who wishes to see it. You may not want that if you have strained family relationships or if you have a significant public persona. Also, the names of those who are to inherit from your estate will become public knowledge, which could make your loved ones vulnerable to exploitation.

Finally, sometimes people create a revocable trust because it is convenient for those who are already assisting them in managing their financial affairs to take on the trustee role while they are living. A revocable trust can be a valuable tool to protect vulnerable individuals by setting out a process to determine when they should no longer serve as their own trustee or direct the trust assets.

Aaron: My buddy Rick said he has a trust and Rick's got tons of money-- property all over the place, all sorts of complexity. Plus, he's got a fancy downtown lawyer with a million associates. Does it matter what the size of your estate is? Rick can afford that type of advice, but he says it's worth it because he's saving a ton of estate taxes with his trust.

Some people think that a revocable trust will give them estate tax advantages. This is simply not true. However, revocable trusts can take advantage of some tax planning tools. Any tools available to those using a will are also available to those using a revocable trust.

It's true that planning with a revocable living trust can be more expensive overall compared to planning with wills. As mentioned above, to effectively avoid probate, you must own your property in a non-probate form. An important part of planning with a revocable trust is making sure the ownership of assets that would be subject to probate is transferred into your trust's name. That can require deeds, assignments, and account retitling. It is usually helpful to get the assistance of a qualified lawyer in making some of those transfers. That said, revocable trusts are not exclusively for those with significant wealth. There are other factors to consider other than someone's net worth.

Aaron and Julie have much to consider in deciding whether to use a revocable trust as part of their estate plan. We continue our discussion and decide on a plan that they are comfortable with. A revocable trust is not right for everyone and revocable trusts are not

all the same. At Three60 Law Group we understand this, and, like Aaron and Julie, we will work with you to create an individualized plan that fits your needs, your goals, and your lifestyle.

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