

trust planning is not to transfer all assets to the trustee immediately, but to specifically authorize the attorney in fact to complete trust funding if you become incapacitated. This can make initial trust establishment much less time-consuming and expensive, and still avoid the possibility of guardianship. This approach might not avoid probate, however.

Taxes and a Revocable Living Trust

By itself, a revocable living trust does not avoid income, estate, or gift taxes. Standard provisions for saving estate and gift taxes can be included in a revocable living trust or a will. And a state estate tax return still must be filed after you die if your net estate exceeds \$2 million in value. A federal estate tax return will need to be filed if your net estate exceeds \$3.5 million in value. You should not set up a revocable living trust if your sole motivation is to save taxes.

Cost of a Revocable Living Trust

The exact cost of a revocable living trust depends on how valuable and complicated your assets are, whether standard documents can be used, how many assets must be transferred to the trustee, and whether tax planning is needed. Before you direct an attorney to set up a trust for you, ask for estimates of how much it will cost, how much writing a will would cost, and how much probating your estate would cost. The fee arrangement should be in writing.

If you do not plan to serve as trustee, you should consider any fees you might have to pay the trustee and whether those fees would replace fees you are already paying to manage your assets.

A standard revocable living trust package should include the trust document, the transfer of assets to the trust, a “pour-over” will to add any other assets to the trust, and a similar durable power of attorney; it also might include descriptive materials and related legal documents, such as a directive to physicians or “living will.”

Advantages of a Revocable Living Trust

- Avoidance of probate; specifically, avoidance of expensive multiple probate proceedings when you own real estate in several different states.
- Avoidance of guardianship.
- Reduction of delays in distribution of your property after you die, although delays caused by filing an estate tax return cannot be avoided.
- Privacy (because your trust instrument would ordinarily not be filed in court).
- Continuity of management of your property after your death or incapacity, especially if you do not serve as the trustee.
- For married couples with substantial separate property, segregation of those assets from their community property assets.

Disadvantages of a Revocable Living Trust

- Expense of planning — It is more complicated than a will to draft, and asset transfers can take time and result in various additional costs.
- Expense of administration — If you appoint a bank or trust company as trustee, you will have fees to pay (though these may take the place of investment advisory fees and other fees you are already paying); if you do not, someone will still have to take the time to maintain the trust, and under Washington law that person would be entitled to a reasonable fee. One way or the other, setting up a revocable living trust will mean significant professional fees in the future.
- Inconvenience — Once the trust is established, you must be sure that trust books are maintained and that all assets continue to be registered to the trustee; persons dealing with the trustee (such as banks and title insurance companies) may want to review the trust instrument to check on the trustee’s powers and duties.
- Protection of assets — If you are worried about litigation or creditors, a probate personal representative may be better able to protect your assets; the same applies to guardianship.
- Unforeseen problems — Revocable living trusts

can raise a variety of new problems regarding title insurance coverage, real estate in other countries, Subchapter S stock, and many other issues. Only a skilled attorney or other estate planning professional can tell you whether, on the whole, a revocable living trust is right for you, your family, and your assets.

This pamphlet was prepared as a public service by the Washington State Bar Association. It contains general information and is not intended to apply to any specific situation. If you need legal advice or have questions about the application of the law in a particular matter, you should consult a lawyer.

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Revocable Living Trusts

Revocable living trusts have become a popular alternative to the traditional Washington state will as a way to pass property on when you die. Even though Washington's probate system is among the simplest and least expensive in the nation, many citizens are attracted by the possibility of even quicker and easier asset transfers.

But revocable living trusts have some drawbacks. Here, to help you decide if a revocable living trust is right for you, are answers to some of the most frequently asked questions about these trusts.

Defining a Revocable Living Trust

A revocable living trust is an arrangement you make for management and distribution of your property. Like a will, the trust is "revocable," meaning that you can modify or eliminate it at any time.

These trusts are established by a written agreement or declaration which appoints a "trustee" to administer the property, and which gives detailed instructions on how the property is to be managed and eventually distributed. If you want your trust to substitute for probate (court administration of property after death) or for guardianship (court administration after incapacity), you must give the trustee detailed instructions about how to handle these situations, and you should legally transfer substantially all of your property to the trustee. A revocable living trust agreement or declaration is usually longer and more complicated than a will, and transfers of assets to the trustee can be time-consuming and expensive.

Who Can Establish a Revocable Living Trust

Any competent adult can establish a revocable living trust. Husbands and wives can establish a trust together, and can provide that their community and separate property assets be held in different accounts.

Selecting a Trustee

In Washington, any competent adult can be the trustee, including the person setting up the trust. A Washington bank or trust company is often a good choice.

You can appoint more than one trustee, can delegate different duties to each trustee, and can retain the power to remove the trustee and appoint a new one. Appointing an alternate trustee is essential if you are the first trustee and the trust will carry on after you die or become incapacitated.

Establishing a Revocable Living Trust

You should take two steps. First, sign a written agreement or declaration. Then, legally transfer all trust assets to the trustee. Deeds, stock transfers, new bank accounts, and other legal documents may be necessary. Assets not formally transferred to the trustee will probably not be considered part of the trust and might still be subject to probate.

Your will can add up to \$100,000 in assets to the trust at your death without probate, and you can have life insurance and certain pension accounts paid directly to it. If you want a trust just to avoid guardianship, you can use a durable power of attorney to finish funding the trust if you become incapacitated.

Avoiding Probate

Probate is the legal process for transferring your property when you die. It is supervised by a court. Probate usually involves validation of your will, appointment of a personal representative, collection of your assets, notification and payment to your creditors, and transfer of your property to the beneficiaries under your will.

A revocable living trust avoids the probate process because you collect your assets and transfer them to the trustee before you die. If you fail to do this, you will not avoid probate.

The trustee must keep separate records for trust assets and might have to file separate income tax returns for the trust. If the trustee does not obey these rules, the trust may not avoid probate.

If you die owning real estate outside the state of Washington, a court proceeding might be required in each state where real estate is located. A revocable living trust can avoid these extra court proceedings and can substantially reduce probate fees. There are a variety of approaches to settling title to real estate located in other states at the death of the owner. Some states only require that proof of the personal representative's authority from the decedent's home state be filed with the court in the state where the real property is located. Once this is done the personal representative has power to deal with all property in that state. Other states, like Washington state, require an independent separate probate proceeding and do not have any streamlined procedures which an out of state personal representative can take advantage of.

Sometimes it is not a good idea to avoid probate. For instance, a probate personal representative has special powers to deal with your creditors and can force them to file claims within four months or lose their claims. The trustee of a revocable living trust has no such powers.

Even if you want to avoid probate, there may be better ways to do it. Washington married couples can leave all of their property to the survivor through a simple written "community property agreement," which costs very little to prepare and involves no transfers to a trustee. Joint tenancy ownership of specific assets, with the right of survivorship, can be a cost-effective way to avoid probate. There are several ways to pass bank accounts at death without probate, including joint accounts with right of survivorship, trust bank accounts, and so-called "payable on death" accounts. Most pension plans and life insurance policies pass under beneficiary designations which avoid probate without use of a revocable living trust. If you have a modest amount of property, one or more of these nonprobate assets could be a better way for you to avoid probate.

Guardianship

Guardianship is the legal process for management of your property and providing for your personal needs

when you become disabled or "incapacitated." It is court-supervised and it usually involves a formal, public determination that you can no longer handle your own affairs; the appointment of a guardian "of the estate" to manage your assets, and a guardian "of the person" to care for you; the listing of your assets in the court file; court-supervised investment of your property; and the preparation and filing of periodic reports and accountings. If your assets are complicated and your family members cannot agree on how they should be managed, or if litigation is necessary to protect your assets, guardianship can be a cost-effective way to manage your assets. If you have no such special needs, however, it can be unnecessarily complicated and expensive.

If you transfer all of your assets to a revocable living trust and give your trustee detailed instructions on how to handle your assets if you become disabled, there should be no need for a guardianship. Your written agreement or declaration can specifically authorize your trustee to rely on a letter from your physician as proof of your incapacity.

A guardian can establish, or complete funding of, a revocable living trust if: (1) the trust would be a more efficient way to administer the property of the incapacitated person, and (2) use of the trust would be consistent with the person's overall estate plan. A special court order is needed to do this, however.

Durable Power of Attorney

Is a durable power of attorney a better way to avoid guardianship?

For many people, it is. A durable power of attorney is a simple and inexpensive way to avoid guardianship. This brief document appoints another person as your "attorney in fact," to handle your assets and, perhaps, to make medical-care decisions on your behalf if you become incapacitated. It is less detailed than a revocable living trust agreement or declaration, and it is less expensive because it is so short and involves no transfers of assets before incapacity.

One compromise approach to revocable living