



# Revocable Living Trusts



A **Revocable Living Trust** is a trust created during your lifetime that gives the creator full power to revoke or amend any of all of the terms of the trust. It avoids probate upon your passing, provides asset management/protection, secures tax savings opportunities and gives creator control to the trustee if you become incapacitated.



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# + Revocable Living Trusts

## What is a “Trust”?

A trust is a legal entity, somewhat akin to a corporation. Like a corporation, a trust has an existence separate from that of its creators. For estate planning purposes, a trust may be used as an ownership vehicle for several different reasons. Commonly, Revocable Living Trusts are employed to avoid the probate process at death. They are also used to provide a framework for care and financial management in the event of incapacity. Revocable Living Trusts are often structured to minimize estate taxes.

In the typical Revocable Living Trust, the trust creator, or Grantor, describes the terms of the trust in writing, including retention of the right to amend those terms or revoke the entire trust at any time. A Trustee, the party that interprets those terms and manages the trust, is named. A successor Trustee is named as well.

Beneficiaries, who may belong to several different classes, are designated. Frequently, the Grantor serves as both the initial Trustee and the initial Beneficiary of his or her trust.

After the Trust is created, the trust should be funded: transferring assets into trust, or naming the trust as the beneficiary of an asset.

A Revocable Living Trust plays an important role in planning. It can greatly reduce administrative expenses, time, and effort and provide privacy to the family. These trusts are, however, often misunderstood, and sometimes rendered useless by incomplete planning.

It is important to consult with an attorney experienced in trust drafting to ensure your trust is drafted carefully and that the trust is correctly funded.



## The Players of the Revocable Living Trust



**The Grantor** - the person who creates the trust and (usually) places assets into it. Also called the settlor, creator, or trustor.

**The Trustee** - the party who controls the assets of the trust. The grantor may serve as his or her own trustee.

**The Beneficiary(ies)** - The person(s) receiving the benefits of the assets. The grantor may be the initial beneficiary.

**The Successor Trustee** - The party designated by the trust's creator who steps into management of the trust, according to its terms, upon the death, incapacity, or resignation of the originally named trustee.



## What is Probate and Why Should it Be Avoided?

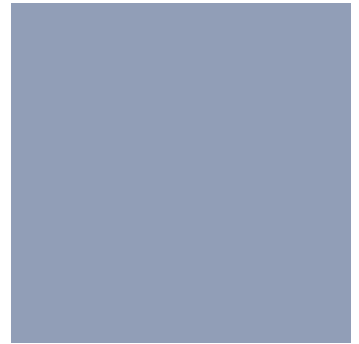
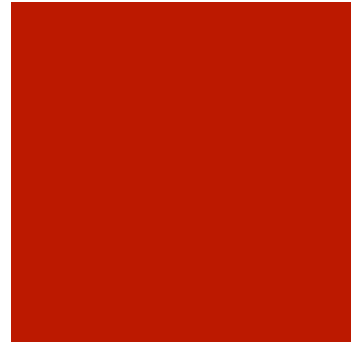
Probate is a formal, court supervised procedure established by each state to protect the rights of citizens to transfer property at death. Probate ensures that the creditors of a deceased person have a venue for recovering their claims. Each state has established their own probate procedure. In Massachusetts, probate can take up to one year, even under the Massachusetts Uniform Probate Code that was designed to simplify probate. Probate is cumbersome, time consuming, expensive, and public. Legal counsel is usually required. Probate records are also a matter of public record.

It is the court's responsibility to ascertain the validity of the decedent's will, appoint a party to represent the estate (Personal Representative), and to make sure that the decedent's taxes and debts are paid. The court also sees that decedent's property is distributed according to the terms of his/her Will, or if there is no Will, in accordance with the laws of intestacy.

Ownership of real estate can also create unique probate headaches.

The costs of probate vary greatly based upon the complexity of the estate plan, assets owned at death, and county where the decedent died. Legal fees, filing fees, publication fees, and recording fees are just a few costs to consider. Additionally there can be financial management fees for account transfers, tax preparation and Personal Representative fees. This is in addition to the cost of income taxes and/or estate taxes.





## How Do Revocable Trusts Avoid Probate?

Assets held in the name of a deceased person must pass through the probate process. Correctly structured, assets held in a Revocable Living Trust are not owned by the decedent; they are owned by his or her trust. The trust does not “die” when its creator does. A successor trustee may have taken over, but the trust itself is still a viable entity. Wills do not avoid probate at all. Testamentary trusts, since they are created under the terms of a will, actually have no effect *until* they are probated. Assets owned by a Revocable Trust should not be subject to the jurisdiction of the probate court.

## What Happens to My Will if I Create a Revocable Trust?

Your existing Will does not cover assets placed into a correctly designed trust. To completely coordinate your estate plan, when a trust is created, a new Will is usually prepared. A will prepared in conjunction with a Revocable Trust is known as a “Pour-Over” Will. This type of Will provides that anything you own outside the trust will pass to the trust when the probate process has been completed, and will thereafter be controlled by the terms of the trust.



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# The Revocable Living Trust



## Can It Help in the Event of Incapacity?

The trustee of a Revocable Living Trust may be given detailed authority to manage the assets of the trust, pay medical bills, file insurance claims, and pay day-to-day expenses of the beneficiary. In the typical living trust situation, the trust creator serves as the initial trustee. If he or she becomes unable to handle business affairs, the successor trustee named in the trust may take over without involvement of the probate court, and use the trust assets for the care of the trust's creator. The terms of the trust can specify how "care" is to be defined, giving the trust creator indirect control of his or her treatment upon disability.

## Can it Protect My Family?

The privacy enjoyed by a Revocable Trust protects survivors. Nosy neighbors, ex-spouses and former in-laws are not able to read the terms of the trust or determine its assets. All of this is possible if your estate goes through probate.



Revocable Living Trusts may provide that after the death of the trust creator, the trust should continue for the benefit of a spouse and/or children, regardless of the age of the children. Income and principal may be applied for their benefit long after the death of the trust creator. This type of trust cannot be invaded by creditors of spouse or children, remarriage by spouse, children's spouses or divorce.

## Are There Income Tax Consequences?

If the trust creator serves as his or her own trustee, the trust simply uses the creator's social security number for tax purposes. No special or additional income tax forms are necessary.



## How Does the Trust Become Effective?

After you and your attorney prepare and execute a Revocable Living Trust, it must be funded by titling assets in the trust's name, or naming the trust as a beneficiary of an account. It is not necessary that the names on all of your assets be changed, but any asset held in your sole name, without a contractually designated beneficiary will require probate at your passing.



## How Do I Fund My Trust?

A trust is funded by making the named changes referred to above. Your attorney can assist you with re-titling your real estate, and advise you on how to re-title your bank accounts and other investments.





For more information on our services or to set up a consultation, call us today at 508.757.3800.

Kristina R. Vickstrom, Esq.  
255 Park Avenue, Suite 507  
Worcester, MA 01609  
p. 508.757.3800 f. 1.866.563.1392  
[Kristina@vickstromlaw.com](mailto:Kristina@vickstromlaw.com)  
[Vickstromlaw.com](http://Vickstromlaw.com)



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