

Can a Living Trust Replace Your Will?

When planning your estate, you may consider setting up a **revocable living trust**. A properly managed revocable living trust can provide unique benefits; however, it does not completely replace a **will**. In determining whether this type of trust is appropriate for you, it helps to understand the overall benefits and tradeoffs of this estate planning tool.

A revocable living trust is created during your lifetime, and you can alter it in any way, and at any time. One key feature is that it allows you to retain control of the management and distribution of your assets.

The Probate Connection

Many people establish a revocable living trust to avoid **probate**, which is the legal process of settling your estate. Assets distributed from a trust upon your death *do* avoid probate. However, the probate process itself is not as burdensome for many estates as in the past. Many states have adopted the Uniform Probate Code, which greatly simplifies the process for many small- to medium-sized estates.

But, even with these improvements, the probated assets in your estate still become a matter of public record, which may raise privacy concerns. Avoiding probate may also be appropriate if you own properties outside your state of domicile, which may involve multiple probate proceedings.

Once you set up a revocable living trust, you must transfer your assets into the trust. Failing to do so will subject your assets to probate. Simply signing a trust document *without* retitling assets renders your living trust useless.

Do I Still Need a Will?

The short answer is yes. Generally, a revocable living trust cannot entirely replace the need for a will. There are some assets you may not wish to place in a trust. For example, it may be impractical to transfer tangible personal property such as automobiles, furniture, and jewelry to a trust. Consequently, some of your assets will remain outside your trust, making a will necessary to name your intended beneficiaries of those particular assets. If you have minor children, a will may also be used to designate a **guardian** for them.

Other assets may require special consideration. For example, retirement plan accounts (Individual Retirement Accounts (IRAs), 401(k)s, and profit-sharing plans) cannot be retitled to a living trust, although you could change the beneficiary designation to the trust. However, naming someone other than a spouse as beneficiary of a qualified retirement plan often requires spousal consent, because in many states, spouses now have rights to retirement plan benefits. In addition, naming your trust, rather than your spouse, as the beneficiary of your qualified retirement plan may have income tax consequences at the time of your death.

Trusts and Taxes

Other benefits that properly funded living trusts may offer under the right circumstances include a possible reduction in estate taxes. Your legal professional can help you examine all the variables affecting your property—the *type* of assets (e.g., real estate, life insurance, bank accounts, savings, business interests, and personal property), *where* they are located, and *how* they are titled—to determine if a revocable living trust can help you meet your short- and long-term estate planning goals.

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