

Tax Matters

Smart Planning, Succession Solutions & Tax Updates



January 2015

Why Everyone DOES NOT Need a Revocable Living Trust

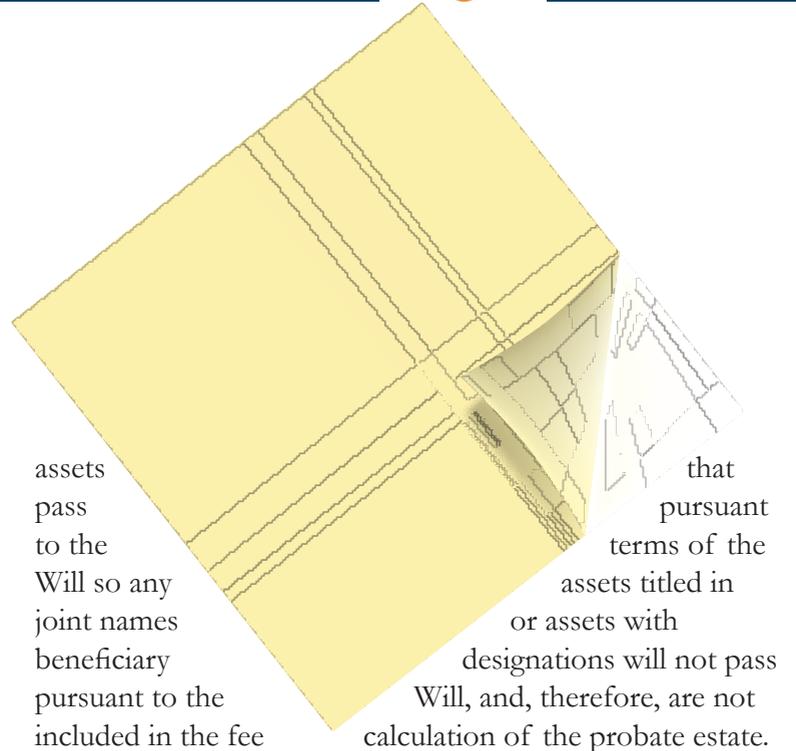
In recent years more and more clients are asking me about revocable living trusts; and shouldn't such a document be part of their estate plan? The question has become more prevalent with the Suze Orman's hit CNBC television show pushing revocable living trusts and toting the superiority of such a document over a standard Will.

For those not familiar with a revocable living trust, a revocable living trust is a legal entity that holds title to your assets. The trustee of the trust manages the assets while you are alive and then distributes the assets according to the trust provisions on your death.

Yes, we are all going to die someday, and if we don't prepare an estate plan of our own, Pennsylvania will provide an estate plan for you based on its intestate laws. But, not everyone needs a revocable living trust, especially if you live in Pennsylvania. Let's examine Suze Orman's arguments supporting the need of a revocable living trust.

Argument 1 - Avoid Probate. One main argument is that a revocable living trust will avoid time consuming probate. Probate in California, New York and Florida can be very time consuming, but this is not the case in Pennsylvania. Probate in Pennsylvania is the act of lodging a decedent's original Will with the Register of Wills in the county the decedent resided. The process begins when the person named as Executor in the Will appears and files with the Register of Wills the Petition to Probate the Will, the original Will and the death certificate. The clerk then examines the documents. If the documents pass the clerk's review, the clerk will then administer an oath to the person, thereby swearing the person in as Executor. If the paperwork is in order, the process can take less than 15 minutes.

Argument 2 – Probate Fees are Costly. Yes, there are fees associated with probate. The fee is determined based on the size of the probate estate. The probate estate includes those



assets pass to the Will so any joint names beneficiary pursuant to the included in the fee calculation of the probate estate. So for example, a probate estate ranging between \$600,001 to \$700,000 will cost approximately \$525 to probate. Compare this fee against the \$3,000 plus fee that many attorneys charge to prepare an estate plan that includes a revocable living trust. See the Register of Wills, Chester County probate fee schedule below.

Valuation of Gross Estate {Note #1}			Cost
0	to	10,000	125.00
10,001	to	50,000	175.00
50,001	to	100,000	225.00
100,001	to	200,000	275.00
200,001	to	300,000	325.00
300,001	to	400,000	375.00
400,001	to	500,000	425.00
500,001	to	600,000	475.00
600,001	to	700,000	525.00
700,001	to	800,000	575.00
800,001	to	900,000	625.00
900,001	to	1,000,000	675.00
...For each succeeding \$100,000 or fraction of,			add 75.00

Argument 3 - Avoid the need of an Executor. Suze

Orman argues that if you have a revocable trust then there is no need for an executor, and therefore, no need for executor's fees. But Orman neglects to mention that the revocable living trust still needs a trustee, and a trustee is also entitled to trustee's fees.

Argument 4 – Privacy. Another argument for a revocable living trust is that it provides more privacy than a Will since the revocable trust is not subject to probate, and therefore, it is not accessible to the public. Here, in Pennsylvania, a revocable living trust does not provide any more privacy than a Will. Even if an estate avoids probate, most, if not all estates are required to file inheritance tax returns with the Department of Revenue – Inheritance Tax Division. The inheritance tax return is filed with the Register of Wills and becomes public knowledge. Anyone can go to the Office of the Register of Wills and request a copy of an inheritance tax return and see the assets, the debts, and the beneficiaries of an estate. Regardless of whether the assets pass pursuant to the terms of a Will or the terms of a revocable living trust both documents must be attached to the Pennsylvania inheritance tax return when filed.

Argument 5 – Incapacity. Another argument used to support the need for revocable living trust is the possibility of a loved one becoming incapacitated. The scenario often presented is where one spouse becomes incapacitated and the other spouse now needs to sell the incapacitated spouse's assets to pay household bills and access funds to support the family. Instead of a revocable living trust, consider a well-drafted Durable Power of Attorney in which your spouse (or another trusted individual) is appointed to handle your financial affairs. Furthermore, a well drafted Durable Power of Attorney does not become null and void just because an

individual becomes incapacitated.

Regardless of whether you have a revocable living trust or a Will most, if not all estates, are subject to estate administration, and this process can take up to 2 years or longer in Pennsylvania. Why? Because most, if not all estates must file a Pennsylvania inheritance tax return with the Department of Revenue – Inheritance Tax Division. The deadline for filing the inheritance tax return is 9 months from date of death. During that time the fiduciary (either the trustee or executor) is busy gathering all of the information that must be reported on the return, obtaining date of death values, notifying and settling debts with creditors, notifying beneficiaries, and liquidating assets. Retitling all of your assets under a revocable living trusts will not exempt an estate from this process.

Yes, there are some situations for which I would suggest a client maintain a revocable living trust. For example, if an individual has recently moved from California, Florida or New York and has a revocable living trust in effect then it would be very time consuming and very costly to the client to unwind the trust. Another possible situation is a client's desire to maintain complete separateness of a specific asset upon marriage.

IN CLOSING...

- For most Pennsylvanians, a Revocable Living Trust is not an advisable component of your estate plan.
- There may be limited situations for certain individuals in which a Revocable Living Trust may be an ideal estate planning technique.
- Make sure the options are the best options for you.



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Mary R. LaSota is an experienced attorney who represents individuals in a wide range of estate, business and tax planning issues. Tax Matters is bimonthly newsletter providing timely smart succession solutions and tax updates. Do you have a question or an idea for the next Tax Matters' issue? Email Mary R. LaSota at mlasota@lasotalawllc.com

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