

How To Use

# REVOCA BLE LIVING TRUSTS

*for*

AVOIDING PROBATE  
& REDUCING TAXES



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## AN OPEN LETTER from TrustLock

Dear Friend,

For many years it was thought that only the rich needed trusts. All others, who couldn't afford expensive legal and professional fees, were expected to subject themselves to the two-fold burden of probate and death taxes. That was expected, and that's what we Americans did -- BUT WE SHOULDN'T HAVE!

We were ignorant of the benefits of trusts for two reasons: 1) The "system" of doing things was weighted toward preserving monetary benefits for the "system" (the courts, tax collectors, attorneys and accountants liked the fact that they could get their hands into our wallets upon death); and 2) very few attorneys, financial advisors and accountants actually understood the benefits of trusts, because they were students of the self-perpetuating "system."

Yet, there were a few brave voices that did speak up, exposing unscrupulous probate and death-cost practices, and encouraging the use of trusts for the "less than rich" American. We began to see that the farmer, property owner, investor, small businessperson, wage earner, single parent, executive and retiree, could all use Living Trusts to pass along property to their surviving loved ones -- free from financial stress, probate and unnecessary death taxes!

We at TrustLock applaud the fact that the benefits of trusts are becoming better known. We say it's "about time!" And we sincerely believe that every head of household, even with less than average means, could benefit from a Living Trust - especially if real estate ownership is involved.

If you choose to create a trust, you've made a wise decision; and we hope you'll use our services. Our management has been involved in the creation and administration of trusts since 1987. Our legal counsel specializes in Revocable Living Trusts and all related documentation, including Insurance Trusts, Durable Powers of Attorney for Asset Management and Health Care Directives to Physicians, and other such important documents. These and MORE are provided as a part of our standard service.

We're a bit prejudiced, of course, but we think our "trust package" is simply the best available, anywhere. We think it's more complete, very moderately priced, and written in language everyone can understand -- with no confusing "legalese!"

So take the first important step. Review this booklet, learn the WHYs and HOWs of Revocable Living Trusts, and educate yourself to the many benefits of having your own trust. Open a TrustLock membership and start preparing all your estate planning documents today.

Only then can you be assured that your remaining loved ones will be spared all the costs, frustrations and entanglements of the probate process, and that your estate will survive intact -- to be managed and eventually distributed according to your exact wishes.

That's a worth while goal! With your permission, we can help you make it happen.

## EVERY REVOCABLE LIVING TRUST PACKAGE CONTAINS THE FOLLOWING DOCUMENTS

1. Your Revocable Living Trust (Family Trust)
2. Inventory of Assets
3. Directive to Banks and Financial Institutions
4. Your Directive to Successor Trustees
5. Real Property Deed(s)
6. Abstract of Trust (Condensed Version of Your Trust)
7. Living Will / Healthcare Directive
8. Power of Attorney for Asset Management

No other “trust package” gives you so much. Read this document, then visit [TrustLockUSA.com](http://TrustLockUSA.com) We’ll make sure you are 100% satisfied with our quality and service.

*That’s guaranteed!*

## Ladies and Gentlemen:

Over the years, we have had many occasions to review Inter vivos “Living” Trusts for our clients. We have read and examined a seemingly endless variety of formats and versions.

However, we are now pleased to state - with substantial professional enthusiasm - that TrustLock has developed what we believe to be the ‘ultimate’ Living Trust “package,” uniquely prepared in digital format . In fact, we believe the TrustLock Living Trust package is the most comprehensive and professional Revocable Living Trust package currently available from any source.

The problem associated with most Living Trust formats is the problem of language . In other words, is the trust written in language everyone can understand? We’ve certainly heard our share of complaints from clients and non-clients alike who detest the usual Living Trust verbiage - generally associated with the term “legalese.” The TrustLock Living Trust package, to the contrary is an especially readable set of documents. It is specifically written with you, the client, in mind; and it allows you to quickly understand exactly what your Living Trust is saying.

This is an important concept that we think is often times belittled by those of us in the legal profession. Generally speaking, lawyers tend to believe that if they understand a document, the document must then be sufficient for the purposes of the client. We do not concur & we believe that if you, the client, can fully comprehend the wording and the meaning of your Living Trust that you will not only feel more secure about managing your trust affairs, but you will also be well on your way to accomplishing all of the goals your Living Trust is designed to accomplish: i.e., estate planning, income tax advantages, avoidance of probate, etc. It makes little sense to try to administer a trust you can’t understand. Therefore, we highly recommend TrustLock for providing a Living Trust format - including all related documents - that is not only easily read, but is also the most comprehensive product I have had the privilege of reviewing .

The TrustLock Living Trust package essentially represents a compilation of the best Living Trust ideas and concepts currently utilized by trust attorneys throughout the United States. It is exceptionally complete and functional.

The response from those who have purchased a TrustLock Living Trust package has been especially positive and encouraging. Clients have greatly appreciated the easy to understand language, the easy to read format, and the comprehensive documentation. Their enthusiasm is proof positive that TrustLock is on target - providing a much needed service.

It is my hope that you will join this growing number of satisfied clients and allow TrustLock to prepare a Revocable Living Trust for you . As a legal team, we wholeheartedly believe the Living Trust is the most important estate planning tool available for each and every U.S. citizen. Few people should be without one, regardless of age or wealth .

If you are interested in preparing a Living Trust for you or your loved ones, we strongly urge you to visit [TrustLockUSA.com](http://TrustLockUSA.com) and start today. You will be building the finest Revocable Living Trust package available anywhere.

Sincerely,

The TrustLock legal team

# AVOID PROBATE and PROTECT YOUR ESTATE with a REVOCABLE LIVING TRUST

You'll Save Your Loved Ones Months of  
Legal Red Tape, Untold Frustration, and Thousands of Dollars  
in the Process!

Ask ANYONE who's suffered through it! Probate is a TAKER - taking time, money and control of one's estate away from rightful heirs.

## **What can YOU do to avoid probate?**

You can take a few easy steps NOW and set up a REVOCABLE LIVING TRUST to protect your estate -- or -- you can sit back (with or without a will) and let your state and the Superior Court do your estate planning for you at death.

It's a FACT! If you don't do your own estate planning, your state government will do it for you (at death) -- via the probate process!

## **What IS Probate?**

Probate is the legal process used to transfer title to assets upon the death of the owner. The process is supervised by the Superior Court in the county of the deceased. Through the probate process, the deceased's assets are accounted for, property title cleared, known creditors alerted, heirs notified, and public announcements published so that all who might have an interest in or claim to assets of the deceased have opportunity to respond to the court. The entire proceeding is open to public review.

## **A Will Does Not Avoid Probate?**

Some well-intentioned persons take the time and trouble to prepare a Last Will and Testament, thinking that such a document - duly prepared by a competent attorney - will somehow keep their estate out of probate. Such persons are simply ignorant of the facts, and any attorney who fails to inform them otherwise does them a gross disservice.

While it's true that a will is an important and helpful estate planning tool, A WILL DOES NOT AVOID PROBATE! It simply tells the probate court the deceased's wishes respecting the disposition of his assets, and names the appointed representative to carry out those wishes. A will, in this case, becomes the guiding instrument in the probate process.

The deceased's appointed representative in the will is called an "executor" (if a man) or "executrix" (if a woman). The executor normally hires an attorney to represent the deceased before the court and to handle all dealings having to do with the estate. If the deceased died "intestate" (without a will), the court will appoint an "administrator" and settle the estate according to the "in testacy" laws of that particular state. These laws will determine how your estate will be administered and what heirs will share in the proceeds after all court costs, legal fees and creditor claims are paid.

So, in summary: If you die with a will, it will be probated. If you die without a will, your state will "provide" you one - the state legal code. It may not be to your liking, but you won't be around to argue the point.

### **PROBATE Takes TIME**

In addition to their loss of a loved one (that's YOU), your heirs will also face the frustrations, legal delays and time-consuming red tape inherent in the courts and probate process.

If an estate is small, with few assets (no real estate) and no debts, some states will allow the court to grant petitions for "summary probate." This can result in a simplified process that may take only a few months. Regulations for summary probate will vary from state to state, and will be determined by dollar value of the estate, identity of the heirs and other respective conditions.

The average probate is said to be about 9 months, but to have probate drag on for 18 to 20 months is not uncommon. The wait can become years if the estate is large or there are particular difficulties.

Complex estates, involving real estate ownership, investments, businesses, creditor claims, difficulties between heirs, contestations, and the like can add months and even years to the probate process. And all this time your estate ; including investments, is subject to control of the court.

What about complex multi-million dollar estates? Marilyn Monroe's estate reportedly took 18 very long and public years, which reduced over \$1.5 million down to about \$100 thousand for her heirs; John Wayne's took over 10 years. Bing Crosby's multi-million dollar estate, however, wasn't probated at all! Bing had put his estate into one or more living trusts! No probate. No unwanted publicity. No exorbitant costs. Just a smooth transition to his trustees and beneficiaries at death.

### **PROBATE is EXPENSIVE**

In addition to unwanted time and publicity, PROBATE CAN BE EXPENSIVE! The legal establishment gets paid very well (from your estate, of course), and with every dollar the "system" and the attorneys take, there is one less dollar for your surviving family members.

Fees are based upon the Gross value (fair market value) of the estate before any payment of debts; they are not based upon the net or equity value. This can come as quite a shock! For example if you died owning assets worth \$300,000 and had debts totalling \$200,000, the fees would be calculated on the \$300,000 even though your net worth stood at only \$100,000.

### **What might your probate cost?**

Although 4 to 10 percent of the gross estate is considered normal, small estates can sometimes exceed 15 percent and larger more complex estates can sometimes exceed 30 percent.

Some states have a schedule of fixed fees for executors and attorneys, based upon gross value, while other states allow “reasonable fees.” States having fixed fees may also allow the court to pay further compensation for any attorney services that are deemed just and reasonable or “extra ordinary” (fees for special services approved at the direction of the judge).

So, probate expenses will vary from state to state. In addition, there are court filing fees, appraiser’s fees, accounting fees, and often the posting of bonds, etc., that take additional dollars from the rightful heirs.

## Avoid Probate With A Revocable Living Trust

Probate, then, is a necessary evil only for those who don't have an estate plan. Most people should strive to avoid it; and the simplest and most effective probate avoidance tool is a Revocable Living Trust.

A Revocable Living Trust will not only save the TIME and EXPENSE of probate, but it will allow for the preservation, administration and distribution of one's estate exactly as desired. To give the reader a quick overview, the most prominent benefits of a Revocable Living Trust are briefly listed below:

1. IT AVOIDS THE COSTLY PROBATE PROCESS UPON DEATH.
2. IT ALLOWS PHYSICAL AND LEGAL CONTROL OF AN ESTATE BY SUCCESSOR TRUSTEES.
3. IT PROVIDES FOR CONTINUITY OF MANAGEMENT.
4. IT MINIMIZES THE TIME, EXPENSE AND DIFFICULTY OF SETTLING AN ESTATE.
5. IT PROTECTS FAMILY PRIVACY AND AVOIDS UNWANTED PUBLICITY.
6. IT ALLOCATES THE ESTATE TO THE BENEFICIARIES (surviving loved ones) EXACTLY AS DIRECTED IN THE TRUST AGREEMENT.
7. IT KEEPS DEATH TAXES AT AN ABSOLUTE MINIMUM AND PRESERVES THE ASSET VALUE OF THE ESTATE.

We think you'll have to agree that the above list contains highly desirable reasons for creating your own Revocable Living Trust (see an extensive list in a following section).

But just what is a "REVOCABLE LIVING TRUST," anyway? WHO creates the trust? How does it work to protect and preserve an estate?

### The TRUST Concept

The trust is a very simple concept, yet it's one of the most important achievements of English (Anglo-Saxon) law, dating back to the early 1500s. It was designed to preserve the privacy and property rights of the individual, in opposition to the confiscatory powers of the state. It can still serve that purpose today! In a nutshell it works like this:

A first party ("trustor" or "trustor") places his assets in the hands of a second party ("trustee") to be administered for the benefit of a third party ("beneficiary").

The trust is usually created by a written document wherein the trustor specifies all the terms and conditions under which the trustee may exercise his powers of administration. This document, often called an "indenture," is a "declaration of trust" signed by both the trustor and trustee. It thereby becomes the operating agreement between these two parties respecting the trust estate and its beneficiary(s).

The trustee is expected to protect and preserve the trust estate, and is said to have legal title (legal control in order to exercise his administrative and fiduciary duties), and the beneficiary is said to have equitable title (which may include both the use of, and benefits derived from, the assets).

## **“Revocable” and “Living”**

With a Revocable Living Trust the trustor (or trustor, if more than one) creates the trust during his or her lifetime AND may also appoint himself or herself both trustee and beneficiary. In other words, the trustor may retain both legal and equitable title under a trust arrangement, and may also “REVOKE” (terminate) or “AMEND” (change) the written Trust Agreement at any time during his or her lifetime.

The fact that the trust is created and serves the trustor during the trustor’s lifetime, causes the trust to be termed a “Living Trust.” Upon the death of the trustor, the “revocable” trust becomes “irrevocable” because the trustor is no longer alive to revoke it or to make changes in the agreement. Maybe you may have heard the term “Testamentary Trust.” This is a trust that is not a living trust, but one that was created to become legally binding or take effect upon the death of the trustor.

## **The Trustor Decides**

It is entirely up to the trustor to decide what he or she wants to include in the Trust Agreement. It can be very comprehensive or it can be relatively simple. It can be lengthy or brief. Detailed or general. It can name specific persons as beneficiaries, or a category of persons (i.e.: grandchildren) or entities (i.e.: charities).

The trustor can add beneficiaries, or delete beneficiaries, from time to time and without restriction. The trustor can appoint and name a successor trustee in the document, or outline how a successor trustee is to be appointed and under what conditions. In short, the trustor can create the exact trust Agreement desired and can dispose of the trust estate as he or she sees fit.

## **The Trust “Out Lives” the Trustor**

The trustor, then, can very adequately prepare for the day when he or she will pass from the scene, leaving the trust estate to be managed by an appointed successor. And since the trust doesn’t die, but lives on after the trustor’s death, there is no probate, no exorbitant costs, no legal or Government red tape, and no frustrating hassles or delays in making distributions or providing for the surviving beneficiaries. Also important, there is no unwanted publicity respecting a will, the deceased’s outstanding debts or the disposition of his assets.

The discharging of debts and the disposition of real or personal property to the rightful beneficiary(s) can be effected with little or no public awareness. That’s the way most people would want their estates to be handled. But maintaining privacy or a “low profile” is impossible with probate. And as mentioned earlier, if you don’t create a plan for handling your estate privately, discreetly and efficiently, the state will handle it very publicly - through probate. It’s just that simple! The results could be both embarrassing and expensive.

Further, if you are married but have no trust and your estate is expected to exceed \$5,400,000, you can expect the federal tax man to be waiting for the death of the second spouse in order to collect estate taxes. You can greatly reduce taxes and even disinherit the tax man (along with probate attorneys and the court) with an A-B REVOCABLE LIVING TRUST arrangement. A discussion of A-B Trusts and other valuable information (along with several helpful diagrams) is included in following sections of this booklet.

## ALTERNATE WAYS TO AVOID PROBATE

The Revocable Living Trust, of course, avoids probate. Here are a few other ways to pass along property to heirs and avoid the probate trap, but most of these alternate methods contain potential pitfalls.

**1. JOINT TENANCY:** Holding title to property in JOINT TENANCY WITH RIGHT OF SURVIVORSHIP will automatically (upon your death) pass ownership to the surviving party or parties holding title with you. However, while a joint tenant, you don't have 100% legal control, and you must get permission from other joint tenants to sell or encumber your property. Also, your property could be adversely affected by law suits against other joint tenants, causing you to suffer financial loss, frustration and other anxieties. Joint tenancy might work very well with bank accounts, autos, certain other personal property, or a personal residence with your spouse. Other than that, beware and remember, the last surviving joint tenant's estate will be probated.

**2. GIFTS DURING DONOR'S LIFETIME:** Giving can be a very effective means of avoiding probate, as a gift is removed from your estate into the estate of another. For example, a gift of real property can pass by a deed executed and recorded during your lifetime (caution: it should be done at least three years prior to your death or it will still be counted as a part of your taxable estate). Gifting real estate, however, can cause the recipient potentially thousands of dollars of unnecessary capital gains taxes upon his or her future sale because you also gifted your original cost or "tax basis" in the property. (Distributions through a trust will avoid this pitfall.)

Also, when giving gifts, you need to seriously ask yourself if you can give up the cash or property without causing a future financial hardship on yourself. Do you have adequate retirement funds? Insurance? Future health care and other necessities covered? Money for leisure and travel? Or will you one day wish you had the asset back?

**3. INSURANCE PROCEEDS:** Proceeds received from insurance policies on your life are not included in your estate if the policies are owned by another person. You can purchase a policy and then gift it to another, or you can gift money to another sufficient for them to pay the premium. An irrevocable insurance trust works very nicely as the "other person."

**4. KEEP YOUR ESTATE SMALL:** This probably doesn't sound too exciting, as most people would like a sizeable estate. But there may be some who would prefer to divest themselves of real estate, gift away most of their personal property, and reduce their respective estate down to a size "near zero" so that their death won't require anything more than a simple will and an Affidavit Procedure (no actual court proceeding) is required.

Some states don't allow an Affidavit Procedure, and the regulations in those that do will vary from state to state. A Summary Probate, for slightly larger estates, is a simplified probate (usually with no real estate) having a fixed limit on the value of personal property in order to qualify. For example, Alabama allows a Summary Probate for estates with less than \$3,000 of personal property. In California the value is \$60,000. Hawaii is \$25,000. New York has no Summary Probate law. Texas has a law, but no dollar limit. It all depends upon where you live (and die).

# The Most Often-Asked QUESTIONS About Estate Planning

There is no such thing as a foolish question - especially if the question involves planning for the future well-being of you and your loved ones. We hope these "Most Often-Asked Questions" will give you, the reader, a greater overview of Estate Planning and The Revocable Living Trust. Some of the questions briefly discussed here are covered in more depth elsewhere in this document.

## Q. What is meant by "estate planning"?

A . The term "estate planning" is a relatively new terminology -- and activity. It has sprung from necessity, primarily in the face of increasingly complex tax laws. In short, it concerns the problem of how to best manage, protect and preserve one's assets during one's lifetime and after one's death (for the benefit of heirs). Good planning can preserve and transfer assets in minimum time and without expensive fees.

## Q. What is "probate"?

A . Probate is the legal procedure wherein one's estate (one's lifetime of accumulated property) is "settled" confirmed and distributed to all parties who have a legal right to share in the property at one's death). This is handled in a county Superior Court. The court establishes clear title to all property, supervises liquidation of properties to pay the estate's debts, pays probate fees, court costs, estate taxes, if any, and distributes the remainder to the legal heirs.

## Q. What are the normal problems associated with probate?

A. There are several: 1) The estate can be tied up in court for months, or even years; 2) fees can erode the distributable net amount; 3) there is a decided lack of privacy ; 4) the management of assets (i.e.: business and investments) is outside the control of the heirs during probate.

## Q. How long does probate usually take?

A . An uncomplicated probate will generally take about nine or more months. With an average sized estate, probate may take twice that amount of time. A larger, more complicated probate can run for several years.

## Q. What does probate cost?

A . The hard costs of probate generally run from about 4% to 10% of the gross value of one's estate, depending upon complexity. Statutory fees, those set by law, are based on a percent of the gross value of the

estate. Other costs, generally referred to as “extraordinary fees,” include fees and commissions for professional services incurred when dealing with the various assets in the probate estate. Extraordinary fees may include costs for property appraisals, title searches, lease negotiations, real estate commissions, securities brokerage commissions, court filing fees, bonds, publication fees, accounting, audits, tax preparation, litigation to protect estate property, litigation respecting a contested will, professional management of an ongoing business, and various other miscellaneous legal and professional charges. These fees can swell the total probate costs far beyond expectation. In addition, there may be other immeasurable and far more devastating costs of probate, stemming from loss of business income, loss of control of investments, loss of privacy, etc.

## Q. What is meant by “gross value”?

A. “Gross Value” is the combined total fair market value of all the assets in the estate. Notice that this total does not take into consideration, nor is it adjusted for, any debt. For example, a man may die while still owning a \$75,000 mortgage on a home now worth \$125,000. Probate fees would be calculated on the entire \$125,000 market value, but the actual equity to the estate would only be \$50,000. This certainly seems unfair, and costly to the heirs.

## Q. Are smaller estates probated too?

A. Yes. In California, for example, any estate containing \$9,000 worth of real estate or a total of \$60,000 in gross value of personal property is subject to probate.

## Q. How can one avoid probate?

A. The establishment of a Revocable Living Trust is the best and most practical way to avoid probate.

## Q. What is a Revocable Living Trust?

A. The Revocable Living Trust is a legal document that you can create for the purpose of protecting, preserving and managing your own estate - both during your lifetime and upon your death. In that regard, it replaces a will, and avoids the probate process altogether.

## Q. How does a Revocable Living Trust work?

A. The concept is very simply, and would normally work as follows: You (as trustor) would create the trust and name yourself as trustee administrator, and also name yourself as beneficiary of all the benefits (income, use of assets, etc.) during your lifetime.

You would transfer your assets into the trust and manage them as you normally would (buy, sell, invest, trade, etc., as you determine in your sole discretion). You would name a successor trustee and successor beneficiaries that would, respectively, receive management and beneficial rights to the trust assets upon your death -- exactly as you pre-determined and directed in the trust document while you were yet alive. You can amend the document without limitation during your lifetime, as you deem necessary.

## Q. Is a Revocable Living Trust practical for a small estate?

A . There are many positive reasons for creating a Revocable Living Trust, and the reasons are not all financial. Many people, for example, feel that maintaining family control of their estate -- even a small estate -- and providing a well-planned, uncomplicated transfer of assets to their heirs is reason enough. In other words, they don't want their death and the settlement of their estate to cause additional concerns or troubles for their grieving loved ones. From the point of conserving assets, it's our opinion that the distinct advantages of a Revocable Living Trust will generally prove to be beneficial and a money saver to anyone who owns real estate, operates a small business, has investments, or wants to preserve privacy. Some states, for example, will probate any estate that holds title to even a minimal amount of real estate.

## Q. I understand joint tenancy property isn't probated. Isn't this a good way to hold title to property?

A . Not always. When two or more persons own a property as joint tenants, the surviving party or parties receive title to the deceased's portion of ownership upon his death - without a probate proceeding. But joint tenancy ownership can present problems. For example, a joint tenant owner can't sell or encumber his property interest without the consent of the other joint tenants. Therefore, he has no unilateral control over his property. Another danger arises when one joint tenant has creditors seeking satisfaction of debt. Creditors can get a writ of attachment against the entire property, leaving the other joint tenants totally unprotected.

## Q. Can a husband and wife have one trust?

A. Yes. A husband and wife can be Co-trustees of one trust, and manage the assets together or as they have always done. Then, upon the death of one spouse, the surviving spouse becomes the sole trustee over the estate. If, however, a husband and wife together have a net worth exceeding \$5,400,000 (the maximum estate tax exemption under current tax law), it may be worthwhile structuring the trust in what is called an "A-B" format. This is a special revocable trust arrangement that will divide the original trust estate into two trust estates upon the death of the first spouse, and enable the combined estate to be passed on to the heirs with considerable savings in estate taxes.

## Q. Are estate taxes a federal tax?

A. Yes. Taxes must be paid to the federal government if an estate exceeds \$5,400,000. Because of the "unlimited marital deduction," this tax is not due upon the death of the first spouse, but only after the death of the second spouse.

You would transfer your assets into the trust and manage them as you normally would (buy, sell, invest, trade, etc., as you determine in your sole discretion). You would name a successor trustee and successor beneficiaries that would, respectively, receive management and beneficial rights to the trust assets upon your death -- exactly as you pre-determined and directed in the trust document while you were yet alive. You can amend the document without limitation during your lifetime, as you deem necessary.

## Q. How does the “unlimited marital deduction work?

A . This deduction allows an unlimited amount of assets to be transferred from the deceased spouse to the surviving spouse without any federal estate taxes, so long as the spouses are legally married and the surviving spouse is a U.S. citizen.

## Q. What are Inheritance Taxes?

A. Inheritance taxes are death taxes imposed by the state and federal government. Some states have abolished inheritance taxes, but many still have them. Each person should familiarize himself with the requirement of his particular state.

## Q. Should a single person have a Revocable Living Trust?

A . Certainly. A single person can enjoy all the benefits of a Revocable Living Trust, and may even have a stronger reason for creating one. That reason is to avoid the need for a conservatorship in the event the single person suffers from mental or physical incapacitation. With a Revocable Living Trust, the trustor can anticipate the potential problem and prepare for it with explicit directions in the trust document.

## Q. How does a Revocable Living Trust avoid Conservatorship?

A . With a Revocable Living Trust, a successor trustee can be appointed to step in and run the day-to-day affairs of the trust in the event the trustor becomes mentally incapacitated or physically unable to do so. The successor trustee can conduct trust business, invest or sell assets if necessary, provide for the health and care of the trustor, and pay customary and necessary expenses from trust bank accounts, etc., without having to petition the court for a conservator to gain access to the incapacitated person’s financial accounts. Without a trust, a friend or relative would have to petition the court for a conservatorship in order to provide aid to the stricken individual from his own funds. The incapacitated individual would have no voice or choice in the matter, as the court would appoint a conservator of its own choosing and charge the legal costs and salary to the estate.

## Q. Can I make special provisions for my children in a Revocable Living Trust?

A . Absolutely. Normally your children will be named as successor beneficiaries of your trust. And you can specify how the successor trustee is to provide for each one from the trust estate. Provisions can be made for care and support, college, investments, etc., and you can even specify at what age or under what conditions or all of their inheritance is to be distributed to each respective child. In short, while you’re still alive, you make the determination of how your children are provided for in the future.

## Q. Can I provide for my children from a previous marriage?

A. Yes. This can be done with a separate trust ; or, if the current spouse needs continued beneficial use of the assets during his or her lifetime, an A-B trust arrangement may be used . The A-B trust would insure that your children from a previous marriage and your current spouse's children (possibly from your spouse's previous marriage, also) would each receive their rightful inheritances.

## Q. What is usually transferred into a Revocable Living Trust?

A . Anything and everything can be transferred into trust. Real estate and other assets (i.e.: bank accounts, jewelry, valuable collections, works of art, antiques, investments, stocks, bonds, etc.) that represent most of the value of an estate are almost always placed in trust . In fact, there are generally few valid reasons for keeping any asset out of trust, including even those personal possessions of purely emotional value.

## Q. Can a partnership interest in property be transferred into trust?

A . Yes. Any ownership interest in property, even a partial interest, can be put into trust.

## Q. Does a transfer of real property cause a reappraisal and result in higher property taxes?

A . This generally is not a problem in most states. However, you should call your local county assessor's office and confirm there will be no reappraisal of property placed in a Revocable Living Trust.

## Q. Could a transfer of real property into trust cause a problem with a mortgage holder?

A . No. Mortgage holders and lenders are concerned with protecting their security, and with having their loans repaid in a timely fashion. This means, of course, that they have legitimate concerns when title is transferred without their knowledge or approval. Most institutional lenders now insist that their loan agreements contain a "Due on Sale" clause, meaning they have a legal right to demand full payment of a mortgage if a sale occurs. With a transfer to a Revocable Living Trust, however, there is technically no sale of the property -- only a transfer of title. Therefore your mortgage lender will not be concerned with the transfer of your property to your living trust.

## Q. Can I transfer out-of-state or foreign real property to my trust?

A . Yes. Revocable Living Trusts are generally accepted in states and jurisdictions outside your state of residency, and this is highly desirable. Otherwise, your heirs could be faced with a separate probate proceeding in every state where property is owned, creating enormous headaches and additional expense in settling your estate.

## Q. Can I transfer properties back -- out of trust -- if I so choose?

A. Certainly. You can deed or convey any property back into your own name if deemed necessary, or sell a property without restriction to any other person or legal entity.

## Q. Are there income tax benefits for my heirs when ownership of real property is transferred through a trust?

A . Absolutely. If you transfer real estate to your heirs via a Revocable Living Trust, your heirs will benefit from having a "stepped up basis" in the property at your death. In other words, the property value on the date of your death becomes the new basis for determining your heir's future capital gain on the property. If the property is sold immediately at that value or less, there would be no income tax due. Future profits from appreciation above that new basis, however, would be taxed when received.

## Q. Does a Revocable Living Trust file it's own tax return?

A . No. All principal and earnings in a revocable trust is looked upon by the IRS as belonging to you. Therefore, you include all income losses on your own 1040 form.

# Should a Single Person Have a Trust

Are You SINGLE? WIDOWED?

Possibly With Minor Children?

Do YOU Need a Revocable Living Trust?

**Should you, as a single person, have a trust? Absolutely.**

Many people don't think about it, but a single person may have a greater need for a revocable trust than a married couple. A surviving spouse can look after the family affairs, but who will look after your affairs if you're single and suddenly incapacitated by an accident or other disability? -- or if you die without having your affairs in order?

Remember, that your "single" estate, is no different from any other estate. It still needs protection from the ravages of probate and the benefit of continuous management to avoid hardship to your heirs. This can be accomplished via a Revocable Living Trust.

## **YOUR Living Trust Keeps YOU in Charge**

One of the most comforting things about having your own trust is that you are always in charge. You, as trustor, create the trust and fund the trust with your real estate and personal property. You, as trustee, also manage all trust affairs, and (as beneficiary) have use of the properties and all benefits during your lifetime.

You appoint a successor trustee and successor beneficiaries in your trust document and whenever needed, the successor trustee can assume the management role on your behalf. This insures continuity of management for your trust estate.

## **Complete Flexibility**

A Revocable Living Trust can be suited to just about any situation. If you are currently single or widowed, with or without children, a basic trust agreement can be used to accomplish exactly what you desire.

If you become ill or incapacitated, your successor trustee can step in and manage your trust estate, look after your health, comfort, and business affairs, and care for your children or dependents. If you die, your successor trustee can make funeral arrangements, pay death costs, make distributions to the successor beneficiaries and administer or terminate the trust as directed.

# For Married Couples: The A-B Trust

MARRIED? With Children? Without Children?

A Small Estate? Large Estate? With Special Needs?

The A-B Revocable Living Trust is YOUR

Key to Sensible Estate Planning.

Should you, a married couple, have a Revocable Living Trust? Absolutely.

But what kind of trust should you have?

Should it be a basic trust similar to that of a single person? Maybe, if your estate is small. But, even then, there may be a better way. Let's examine your options.

## The BASIC Trust

A basic trust may suffice for a married couple that (1) knows for a fact that their combined estate will never exceed the \$5.45 Million federal estate tax exemption; and (2) both spouses want the surviving spouse to have unlimited power and use of the trust assets after the death of the first spouse. In such a case, both spouses would manage their combined estate together just as they had done prior to having a trust. But at the death of the first spouse to die, the surviving spouse would have sole and absolute control over and use of the trust estate. Upon the death of the second spouse, a successor trustee will administer the trust and distribute the remaining trust estate to the successor beneficiaries (heirs).

## MORE Options with the A-B Trust

An A-B Trust will do everything a basic trust will do, and MORE!

But WHAT exactly, is an A-B Trust?

Simply stated, an A-B Trust is a family trust that, for tax planning and other important reasons, allows the trust estate to be allocated between the decedent's estate and the survivor's estate upon the death of one spouse. The surviving spouse's estate is referred to as the "A" Trust, and the surviving spouse is given total use of and control over assets in the "A" Trust. The deceased spouse's estate, in an amount up to the federal estate tax exemption (currently \$5.45 Million), is allocated to the "B" Trust. The "B" Trust is also for the support of the surviving spouse, but it must be administered within specific guidelines for tax reasons. Yet, the surviving spouse may control both trusts, as trustee.

## **TAX SAVINGS and Other Options**

Splitting the original trust into two separate “estates” can exempt a total of \$10.9 million from federal estate taxes (a \$5.45 Million exemption for the estate of each spouse). But without this option, the tax man must be paid for estates worth over \$5.45 million.

What if, for example, a husband and wife have a combined estate of \$10.9 million, they have no A-B Trust, and the husband dies leaving the entire \$10.9 million estate exclusively to his wife.

The wife would pay no tax at that time, because she is allowed to receive the entire amount tax free under what is called the “Unlimited Marital Deduction.” But, upon her death, her \$10.9 million estate would have to pay in excess of \$2,000,000 to the federal government in estate taxes (basically robbing the children of this money through poor planning). This loss of funds is totally unnecessary, and can be avoided by using an A-B Trust.

This example, of course, illustrates the maximum estate tax savings that can be enjoyed by larger estates. But any estate over \$5.45 Million can realize a tax savings with an A-B arrangement. And though you may think your estate is small, it could dramatically increase with receipt of insurance proceeds, for example, or with the rapid appreciation of real estate.

## **The Choice is YOURS**

If the value of the original trust estate remains under the federal exemption limits, it does not have to be divided. Yet the option to divide is always available if you feel it would be beneficial for other reasons. You might, for example, want to put restrictions or limitations on the use of the trust estate after the first spouse has died. (i.e.: regulations on the use of principal or income for the surviving spouse, or special allocations for health care, etc.)

Or, you might want to protect the estate of one spouse from being depleted by costly medical care if the other spouse becomes gravely ill. These and other options are available, and all decisions in such cases are entirely up to you. You’re in charge at all times.

## **An OPPORTUNITY for Wise Planning**

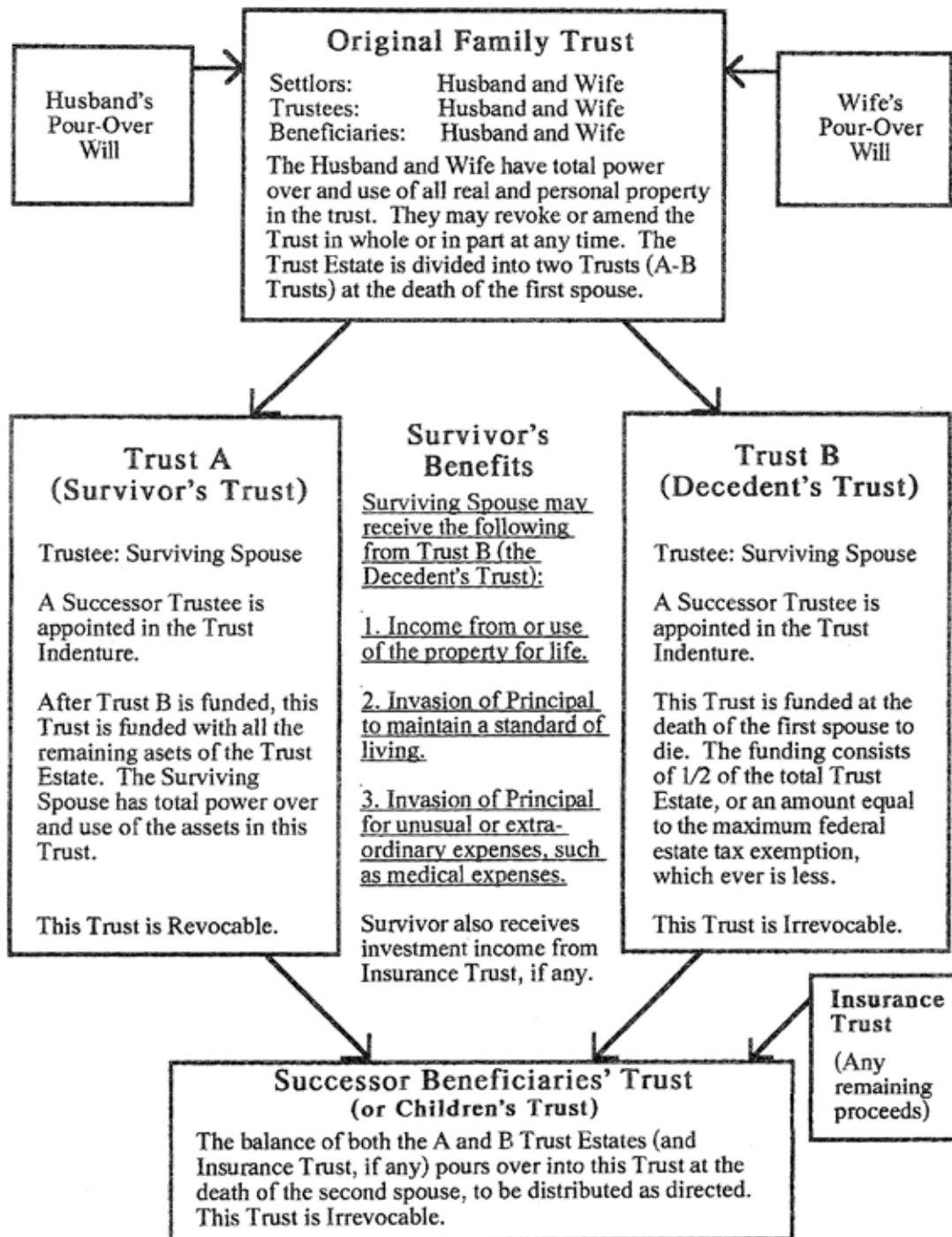
As you can readily see, the A-B Trust provides you with tremendous flexibility and a great opportunity for wise planning.

You are given several important advantages over a basic trust, and greater protection for your estate. You can minimize estate taxes, protect and preserve principal and income, and maximize the benefits to your surviving spouse and successor beneficiaries.

So, if you are married -- whether your estate is small or large -- whether you have special needs NOW or in the FUTURE, you can plan for tomorrow more effectively with an A-B Trust.

Diagram shows how an A-B Trust can reduce or avoid federal estate taxes.

## A-B REVOCABLE LIVING TRUST ARRANGEMENT



## 29 Benefits of a Revocable Living Trust

Here's WHY Revocable Living Trusts are Such a Valuable Estate Planning Tool!

Here are 30 benefits of Revocable Living Trusts. Some have already been briefly mentioned. All are worth considering. Also included are some comments about related estate planning tools.

Note these trust benefits:

1. A trust is easy to create. It's simply a signed agreement between the trustor and the trustee.
2. The trustor can serve as trustee and even name himself as beneficiary during his lifetime.
3. As trustee, he can manage the trust's day to day affairs himself (it doesn't require constant management by an attorney or accountant).
4. Should the trustor not want to serve as trustee, he has the flexibility to appoint a trustee of his own choice -- which could be a friend, relative or financial/investment institution. In respect to his instructions to the trustee, he can be as specific or as general as he wishes to be. He can also specify or pre-appoint a successor trustee, and determine the conditions under which a transfer of trustee power is to take place.
5. A Revocable Living Trust can be "funded" with the separate property of a married trustor, or community property belonging to both spouses. The ownership rights respecting such property will be retained if the trust is revoked or divided. This is an important consideration when setting up a family trust with an A-B Trust provision.
6. A Revocable Living Trust avoid probate. In other words, it doesn't die along with the trustor. And all property placed in trust is owned by the trust. Although the trust remains a part of the deceased trustor's estate, it is not subject to probate.
7. A trust, by avoiding probate, also avoids expensive attorney and court fees, there by protecting and preserving more of the trustor's property for the rightful heirs (beneficiaries of the trust).
8. A trust, by avoiding probate, also avoids unwanted publicity, and affords considerable privacy and peace of mind for the family. There is a minimum of public exposure -- no court records, reporting or public procedures.
9. A Revocable Living Trust can be amended or revoked at any time during the life of the trustor.
10. A Trust Agreement can give the trustor great freedom and latitude in deciding the disposition of his estate. He can determine who all the beneficiaries are (or will be, as in the case of future offspring or marriages) and he can determine if or when a distribution will be made, and/or under what conditions.
11. Trust assets can be distributed before or after the death of the trustor without any delays such as those usually encountered in the probate process.

12. The trustor, of course, can determine the duration of the trust -- how long it is to continue -- whether based on a term of years, or a future event.
13. A trust can be used to divide an estate into one or more separate trusts, and can be used to separate business assets and liabilities from personal assets/property.
14. A larger trust estate can be divided into an A-B Trust arrangement at the death of the first spouse, and thereby greatly reduce costly estate taxes (death taxes) at the death of the second spouse. This is an extremely important benefit! (See additional information in this booklet.)
15. A business held in trust can continue operating without being hindered or even destroyed by probate. Instead of conducting business as a sole proprietor, one may simply operate the business as a trustee.
16. A trust created for the benefit of a child will survive the divorce of the parents, thereby preserving the trust property intact for the intended child.
17. A trust provides strong legal protection against disgruntled heirs.
18. A trust is a legal entity (a fictitious person), and entitled to all the rights of an individual under the law.
19. A trust can legally own any property an individual can.
20. A trust can take title to property in the same way an individual does. Real estate, for example, is transferred to the trust via a signed and notarized deed.
21. Assets can be transferred into trust or taken out of trust very quickly, and at any time, simply by changing the appropriate ownership documents and keeping adequate records of the transfer.
22. For tax purposes, transfers of real estate title to a Revocable Living Trust generally do not cause the property to be re-assessed to present value and property taxes should not be increased. You should confirm this with your county tax assessor.
23. A Trust Agreement can be written to allow the trust to freely "move" from one jurisdiction (i.e.: state or country) to another. Its situs (legal location) is usually determined by the permanent location of the trustee, though some legal jurisdictions may also consider the location of the physical assets to have legal bearing on determining trust situs.
24. Trusts can be written either under state law or under the "common law" provisions of the U.S. Constitution.
25. A Trust Agreement generally does not have to be recorded with any local, state or federal agency, though it can be if desired.
26. A Revocable Living Trust is considered a non-entity by the IRS for tax purposes. It files no tax return and does not add to the complexity of personal tax planning, as trust profits or losses are included on the trustor's personal tax return. However, you may request a federal tax ID number for your Revocable

28. A Revocable Living Trust requires no special accounting procedures or complicated record keeping.

29. A Revocable Living Trust can be named a beneficiary of the trustor's life insurance policy and thereby protect the proceeds of the policy from probate. Such proceeds however will be included in the trustor's estate for estate tax purposes and could be subjected to estate taxes if the estate is of sufficient size (over \$5.45 Million). It is often advisable to have a separate Irrevocable Insurance Trust own such policies.

## GLOSSARY OF LEGAL AND TRUST TERMS

**ADMINISTRATOR** - An individual or corporation appointed by the probate court to administer the estate of someone who died "intestate" (without a will or trust). If there is a will, the person handling the probate is called an "executor." If there is a trust, a "trustee" administers the estate outside of probate (no court proceedings).

**AMENDABLE** - Describing a trust wherein the trustor or some other party is empowered by the Trust Agreement to change the trust's terms and conditions.

**BASIS OF PROPERTY** - The value used to determine gain or loss for income tax purposes. Basis is usually the cost, plus cost of improvements to the property. (See STEPPED UP BASIS.)

**BENEFICIARY** - The person or persons entitled to receive distributions of money or property under the terms of a trust or will. A revocable living trust will usually name the person creating the trust (the trustor) as both trustee and beneficiary during his or her lifetime. The trust will name who the successor beneficiaries will be at the death of the trustor.

**BEQUEST** - A gift of property determined by provision in a will.

**CAPITAL GAIN TAX** - An income tax due if appreciated property is sold. The gain (the portion subject to tax) is calculated by subtracting the basis of property from its selling price.

**CHOSSES IN ACTION** - Intangible assets such as contract rights.

**CODICIL** - An addition or amendment to a will that may modify or change its provisions.

**COMMUNITY PROPERTY** - A form of property ownership between husband and wife, wherein each spouse owns equal shares. Community property may be left to persons other than the spouse by will or through a trust. If one spouse dies without leaving a will or trust, the other spouse will automatically inherit the community property.

**COMPLEX TRUST** - A trust that does not distribute 100% of its earnings to the beneficiaries each year (as does a "simple trust"). This is basically an income tax classification. See SIMPLE TRUST.

**CONSERVATORSHIP** - A Superior Court proceeding that takes control of an individual's assets because that individual is deemed incapable of managing them. Usually, the family must prove to the court that the individual is incompetent. A revocable living trust can avoid a conservatorship by naming a manager in the trust document in the event of incapacity. This manager is usually the successor trustee.

**CORPUS** - Property held in trust {principal as opposed to earnings}.

**DECLARATION OF TRUST** - See TRUST AGREEMENT.

**DISTRIBUTION** - Payment of trust assets {principal or earnings} to a beneficiary.

**DONOR** - One who makes a gift (see GIFT TAX ANNUAL EXEMPTION).

**DONEE** - One who receives a gift (see GIFT TAX ANNUAL EXEMPTION).

**EQUIVALENT EXEMPTION** - The amount of property which will pass tax free upon death. For 2016 and thereafter, the amount is \$5.45 Million.

**EXECUTOR** - The individual or corporation appointed in a will to handle the probate of an estate upon the death of the testator. The executor selects an attorney to probate the estate, and pays the attorney from the deceased's estate.

**EXPRESS TRUST** - A trust agreement created by written document (or indenture).

**FEDERAL ESTATE TAXES** - Taxes imposed on assets transferred at death. Federal estate taxes are levied according to the size of the estate. This is equivalent to an exemption for a \$5.45 Million estate.

**FIDUCIARY** - A person or entity who accepts the responsibility of administering and caring for the property of another, usually on behalf of a beneficiary. Executors and trustees are fiduciaries.

**GIFT TAX ANNUAL EXEMPTION** - Gifts may be made, tax free, to any number of recipients each year. Each person may give \$ 14,000 tax free to each recipient. A husband and wife may jointly give \$28,000 tax free to each recipient.

**GRANTOR** - One who transfers property to a trust (see Trustor).

**GRANTOR TRUST** - A trust wherein the "grantor" or "trustor" retains a reversionary interest of beneficial use of the property in trust. Current income tax regulations treat Grantor Trust property or income as belonging to the grantor for tax purposes. A Revocable Living Trust is classified as a Grantor Trust.

**GROSS VALUE** - An amount used for calculating probate fees. It is the value of an estate before debts are paid. For example, if a home is worth \$150,000 but has a \$90,000 mortgage, the gross value is \$150,000 and the probate fees will be based on the \$150,000.

**GUARDIAN** - A person (other than a parent) who has the legal responsibility for the welfare of a child while the child is not of legal age (usually age 18 in most states).

**HEIR** - The person who would inherit property under state or federal law.

**IMPLIED TRUST** - A trust formed without a written agreement .

**INDENTURE** - The trust document (see TRUST AGREEMENT).

**INTER VIVOS TRUST** - A trust that is in force during the life of the trustor, also called a “living trust,” (as opposed to a testamentary trust which takes effect at the death of the trustor).

**INTESTATE SUCCESSION** - The law that determines who are the legal heirs when an individual dies without a will or trust.

**IRREVOCABLE TRUST** - A trust where the trustor retains no right to revoke or amend the trust, and gives up legal control of trust assets. In contrast, see REVOCABLE TRUST.

**ISSUE** - Lineal descendants (i.e.:children, grandchildren, etc.).

**JOINT TENANCY** - A form of property ownership by two or more persons, which includes the “right of survivorship.” This means the surviving joint tenant(s) gets title to the property owned by a deceased joint tenant, regardless of a will or trust provision.

**MULTIPLE PROBATE** - If an individual dies while owning real property in more than one state, there usually is a separate probate proceeding in each such state. If title to all real property is held in a revocable living trust, multiple probates are avoided.

**NET VALUE** - The value of an estate after all debts are paid. Federal estate taxes are based on the net value of the estate.

**PERPETUITIES (RULE AGAINST)** - A rule that prevents a trust from having a perpetual life. The perpetuities clause in a trust allows the trust to continue for a term of years, and causes the trust to terminate automatically at the required time.

**PERSONAL PROPERTY** - Movable property as contrasted with real property (land). Personal property includes furniture, automobiles, equipment, cash , stocks, bonds, jewelry, precious metals, collectibles, etc.

**PROBATE** - A procedure in which the Superior Court assumes jurisdiction over the estate of someone who has died. The court oversees the payment of debts, taxes, and probate fees, then supervises the distribution of the remainder to the heirs or, if there is a will to the persons named in such will. Probate is time consuming and expensive, and can be avoided with a revocable trust.

**PRUDENT MAN RULE** - An unwritten rule that requires a trustee to view trust investments and management with the same care as if he was investing or managing his own funds.

**QUALIFIED TERMINABLE INTEREST PROPERTY (Q-TIP) TRUST** - A trust frequently used by a married person whose estate exceeds \$5.45 Million and who wants to restrict the surviving spouse's use of the trust estate after the death of the first spouse. The trust allows the surviving spouse to enjoy lifetime income from the trust , but preserves the capital for the trustor's family or other heirs.

**QUITCLAIM DEED** - A deed used to release or convey a person's right, title, and interest in real property.

**REAL PROPERTY** - Land and property permanently affixed to the land.

**REVERSION** - The return of property to the former title holder.

**REVOCABLE TRUST** - A trust used as an alternative to a will and as a vehicle to avoid probate. The trustor creates the trust and remains in complete control as trustee. The trustor has use of all trust assets during his or her lifetime, and also retains the power to amend or revoke the trust , and change the successor beneficiaries.

**TRUSTOR** - The person who creates and funds a trust (also called grantor or settlor).

**SIMPLE TRUST** - An income tax classification describing a trust wherein 100% of earnings is distributed each year, but without any allowable distribution to charity.

**SITUS** - The legal location or domicile.

**STATUTORY WILL** - A will on a preprinted form approved by the State. A statutory will must go through probate.

**STEPPED UP BASIS** - When property is inherited , the person who inherits that property receives a new basis in the property (See BASIS OF PROPERTY). The new basis is the value of the property at the date of the owner's death.

**SUCCESSOR TRUSTEE** - A person or institution appointed, usually by the trustor, to assume the responsibilities of trustee if the previous trustee ceases to serve in that capacity.

**TESTAMENTARY TRUST** - A trust , created by the will of the trustor, that comes into being at the death of the trustor.

**TESTATOR** - A person who leaves property to heirs by will.

**TRUST** - A legal entity that is created by contract between a trustor (creator) and a trustee, wherein the trustee is directed to hold and manage property in trust for the benefit of one or more beneficiaries. A trust (acting through its trustee) can do anything a person can do. In the case of a revocable living trust, the trustor, the trustee and the beneficiary are usually the same person during the trustor's lifetime. Successor trustees and successor beneficiaries are named in the trust instrument. Holding title in trust gives the successor trustee the power to distribute assets to the successor beneficiaries after the trustor's death without a probate proceeding.

**TRUST AGREEMENT** - A written document setting forth the terms and conditions of a trust (also called a Declaration of Trust, Deed of Trust, or Indenture) .

**TRUSTEE** - The person who manages and controls the assets in a trust. Often the trustor and trustee of a revocable living trust are the same person.

**TRUSTOR** - The person who creates a trust (also called a grantor or trustor).

**UNLIMITED MARITAL DEDUCTION** - an unlimited amount of property can be left to a non-alien spouse tax free so long as the marriage is legally recognized in the state, and so long as title can be totally and unconditionally vested in the spouse.

**WILL** - A written document wherein a person determines the disposition of his or her property at death. Wills can be changed during the person's lifetime. All wills go through probate.

## Don't Be Without One!

If you've read this document, you know WHY the Revocable Living Trust is such a highly desirable and flexible planning tool. In addition to avoiding probate and avoiding or reducing death taxes, you have many other benefits and estate planning options available. In short, you have full "power of the pen" to decide anything affecting the preservation and disposition of your estate within the limits of the law. Also, you can revoke or amend the trust as needed during your lifetime.

It's a truly wonderful estate-protecting, money saving tool that will be deeply appreciated by your surviving loved ones, especially when faced with the alternatives -- the stressful and agonizingly complex probate and death tax system.