

STRATEGY SPOTLIGHT\*

# Revocable Living Trusts

Many attorneys advise their clients to use a Revocable Living Trust (RLT) as their central estate planning document to distribute assets to their heirs. The RLT can be a very useful planning device. The trust is effective immediately and generally is designed for the grantor's benefit while living. But is it for everyone? To answer this question, you need to understand some of the rules surrounding the distribution of assets after death.

## KEY POINTS



**Provides freedom from active management and investment of property titled in the name of the trust.**



**Helps reduce attorney fees and costs.**



**Distributes assets to family with little or no delay.**

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When people think of how they are going to distribute assets to their loved ones after death, the first document that usually comes to mind is a Last Will and Testament (a will). This is precisely the function of a will. At your death, it can provide specific instructions on how your property should be distributed. However, a will does and can do several other things that can be just as important as the distribution of your property. It can designate an executor(s) (referred to in some states as a personal representative) to administer your estate. This individual is responsible for gathering and protecting your assets and making sure all creditors are satisfied prior to distribution and then follows your will's instructions to distribute your assets to your heirs. A will can also nominate a guardian(s) to care for your minor children and also create trusts to hold and manage assets for your heirs. However, assets that are distributed through your will must first go through the probate process. This is a public process that could be time consuming and potentially expensive. Probate is the reason why many attorneys advise their clients to use RLTs to distribute their assets instead of wills.

## **What is a Revocable Living Trust and What Benefits Can It Offer?**

A RLT is a type of trust established during the grantor's lifetime to hold the grantor's assets. The grantor is usually the initial trustee of this trust which allows the individual to control their assets during their life just as they did prior to creating the trust. Like a will, a RLT includes instructions on how to distribute the grantor's assets at their death. However, unlike a will, assets titled in a RLT will avoid probate because a trust is the owner of the assets and not the grantor individually. The probate court only has jurisdiction over individually owned assets. By avoiding probate, the grantor's estate can avoid the publicity, expense and distribution delay that is common when an estate is probated. Trust distribution provisions are also private. Unlike a will, a RLT is not filed with the court so there are no public court proceedings to validate it like there is with a will. Also, since probate is a court proceeding, an attorney is needed to assist during the process. Furthermore, assuming the grantor transfers assets to the trust during their lifetime, attorney's fees for probate will be much lower and, depending on the circumstances, the trustee may be able to distribute the trust assets to the beneficiaries in a matter of weeks instead of months or years.

Additionally, unlike a will, which only operates after the death of an individual, a RLT works during the grantor's life. This means that if the grantor no longer wants to manage their trust property or becomes incapacitated, the successor trustee designated in the trust can step into the grantor's shoes and use and manage the trust assets for the grantor's benefit (and the benefit of their family as indicated in the trust) without any court intervention.

Creating and funding a RLT does take some effort. The cost to set up an RLT will be greater than that of a will. Property must also be transferred into a RLT during the grantor's life to make it effective. Additionally, the beneficiary designation for any life insurance policy can be changed to the RLT. It is important to note that you should not change the beneficiary of an IRA or qualified plan to your RLT without consultation with your personal tax or legal advisor. At the death of the grantor, the successor trustee will step into the grantor's shoes and follow the trust's distribution instructions.

## Probate Avoidance

As mentioned previously, assets titled in an RLT avoid probate. Probate is the legal process of proving the validity of a will and transferring estate assets subject to probate. Three potential downsides of probate are the publicity, expense, and distribution delay.

1. Since probate is a public process, not only are the court proceedings public, the will is filed with the court and becomes public record for anyone to examine. An internet search will turn up any number of famous people's wills.
2. Probate can be expensive, including attorney's fees, court costs, and possibly executor fees. In many states, courts determine whether probate fees are "reasonable." In a few states, the fees are based on a percentage of the asset value of the probate estate. If there is a will contest or some other dispute during the probate process, costs can be significantly higher.
3. Generally probate assets cannot be distributed from the probate estate until the estate is closed, except for an allowance for support for a spouse and dependent children. This can take up to nine months and in many cases, 12-18 months. In contrast, where assets are transferred or retitled to a RLT the process of distributing the assets are private, the costs of settling the estate may be greatly reduced, and the access to assets as the speed of distribution may be increased.

## Probate and Creditors

During the probate process the executor must publish notice of the decedent's death, giving creditors a limited amount of time to file a claim against the estate. A creditor cannot file a claim after the deadline. This can be advantageous for an individual who had litigious occupation such as a doctor or lawyer. This also helps to ensure a timely settlement of the estate. Creditors may have a longer period to file claims against a RLT if no probate proceeding takes place.

## If a RLT is used to Distribute Assets, is a Will still Needed?

Yes. However, a different kind of will is used. It is called a pour-over will. It acts as a safety net in case the grantor does not transfer all assets into the RLT during his or her lifetime. Those assets go through probate and get distributed to it by the pour-over will. This keeps the RLT as the central distribution document.

In summary, a RLT is a legal document that includes your instructions for how you want to distribute your property at your death. It may also provide the following benefits:

- Avoid probate and thus prevent your heirs from waiting months or years to receive their inheritance.
- Eliminate or reduce probate costs.
- Keep your wishes private and not part of the public record.
- Allow the successor trustee to manage the grantor's property during a period of incapacity.

Revocable Living Trusts are an efficient way to distribute assets, but whether you should use a RLT instead of a will to distribute your assets will depend on your individual discussions with your personal tax and legal advisors.

## Additional Resources

[Estate Planning - Strategies for Getting Started](#)

[What Type of Planning Do We Really Need Strategy Snapshot](#)

[Importance of a Will Strategy Spotlight](#)

[Health Care Power of Attorney and Living Will Strategy Spotlight](#)

[Financial Power of Attorney Strategy Spotlight](#)

[Probate Strategy Spotlight](#)

