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General

Frequently, people become concerned about how to handle their personal and financial affairs as they grow older. Clearly, wills and certain forms of property ownership, such as joint tenancy, are often used to assist in this planning process.

However, the **Revocable Living Trust** can be more useful and inexpensive solving certain problems that other vehicles cannot. A Revocable Trust is a legal entity which operates somewhat like a regular business or a corporation. This outline is designed to provide a very general abbreviated overview of what a Revocable Living Trust is and how it can be helpful in the estate and financial planning process.

The Settlor

The **Settlor** (sometimes called the Trustor) is the person who forms the Revocable Trust and initially conveys property to the Revocable Trust. You can be the Settlor under a Revocable Trust. As a practical matter your spouse can also have a separate Revocable Trust. Or, you and your spouse can act jointly on the same trust. Each option needs to be examined closely.

The Trustee

The **Trustee** is the person who is in charge of the Revocable Trust and manages its assets. You can be the initial Trustee under the a Revocable Trust as long as you live and are competent.

A Revocable Trust can provide that one or more **Successor Trustees** would take over if the Trustee can not serve. You can designate your spouse or your children as the Successor Trustees under a Revocable Trust and they would become the Trustees upon your death or incapacity. In the event that either Successor Trustee is unable or unwilling to serve as Trustee, then the remaining Trustee would serve as the sole Successor Trustee.

The Beneficiaries

The **Primary Beneficiary** is the person who benefits from the assets and income of the Revocable Trust. You (and perhaps your spouse) would normally be the Primary Beneficiary under a Revocable Trust.

The **Contingent Beneficiaries** benefit from the Revocable Trust after all of the Primary Beneficiaries pass away. Normally if your children survive you, they will become the Primary Beneficiaries under the proposed Revocable Trust.

Trusts are formed for many reasons:

- Estate Planning
- Incapacitation
- Eliminate Probate
- Asset Protection

"Consideration should be given to changing the beneficiary of any life insurance policy which you might own or for which you are the insured."

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If your children do not outlive you, then your grandchildren (or whomever you select) become the Primary Beneficiaries.

Purposes of Trusts

A Revocable Trust is formed for one or more reasons. Commonly a Revocable Trust is formed to assist in *estate planning* to allow you to designate how your heirs will own your assets following your death.

A very useful aspect of a Revocable Trust is to provide for your care and the management of your property should you become *incapacitated* for any reason without the need for a guardian or conservator.

A Revocable Trust can also save money following your demise by limiting or *eliminating the need for the probate* of your estate. A Revocable Trust does not eliminate any estate taxes, however. A Revocable Trust can help *protect your assets* which pass to your children after your death from your children's creditors.

Trust Agreement

Certain instruments are required or are desirable when forming a Revocable Living Trust. Several of these documents are not mandatory; however, our experience is that most are helpful, if not essential. The *Revocable Trust Agreement* is the document that the Settlor and Trustee execute to form the Revocable Trust.

Deed and Bill of Sale

A *Quit Claim Deed* and *Bill of Sale* are the instruments used to convey the property you own into the name of the Revocable Trust.

Power of Attorney

The *Durable Power of Attorney* is the instrument used to authorize someone else such as a spouse or child to do anything which you could before your death provided you become incapacitated. It is only of minor utility to you with or without the Revocable Trust; however, it could be useful in allowing your spouse or child to do certain things for you if you should become disabled.

Last Will and Testament

Technically, if all of your property is held in the name of the Revocable Trust, it will not be necessary to probate your will in the event of your death. However, we strongly recommend that such a *Last Will and Testament* be prepared, because you may overlook certain assets or perhaps even inherit assets shortly before your death requiring a probate of only limited assets.

Management of Trust

Once the Revocable Trust is formed it is designed so that either you or Successor Trustees can manage the assets of the Revocable Trust. This will include renting land, paying bills and even selling assets.

". . . We strongly recommend that a Last Will and Testament also be prepared."

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The Revocable Trust should provide for Successor Trustees. This will ensure that someone can manage your affairs if you become incapacitated and can terminate the Revocable Trust following your death. It is essential that the Successor Trustees understand the Revocable Trust and your desires and be willing to serve.

Incapacity

In the event you become incapacitated for any reason, the Revocable Trust Agreement should provide that the Successor Trustees can manage the Revocable Trust just as you could prior to your incapacity.

To invoke this provision the Successor Trustees will normally be required to obtain an affidavit from one or more medical doctors asserting that you are incapacitated and unable to manage your affairs. This should preclude the need for a conservator or guardian to manage your financial affairs if you transfer all of your assets into the name of the Revocable Trust.

Revocation of Trust

Since the Trust is revocable, you can revoke the Trust anytime you desire prior to your death or incapacity. You should consult with competent legal counsel should you desire to do this.

Death of Settlor

In the event of your death, the Revocable Trust will become irrevocable and then will be required to file an income tax return, sometimes called a fiduciary tax return.

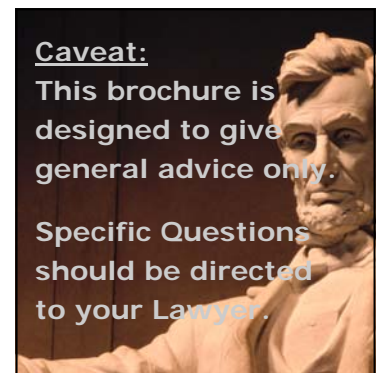
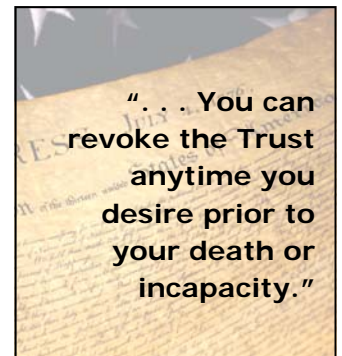
To terminate the Revocable Trust, the Successor Trustees must normally file a certified copy of your death certificate with the Registrar of Deeds, file an estate tax return, pay all of the debts of the Revocable Trust as well as any tax out of the assets of the Revocable Trust and then convey the remaining Trust assets to the Contingent Beneficiaries.

Your heirs will not have to probate your will if you have conveyed all of your assets into the name of the Trust prior to your death. This could save them substantial money.

Tax Returns and Tax ID

If you are both the Settlor and the Trustee of your Revocable Trust, the Trust will not be required to file a trust tax return during your lifetime. All income and expenses flowing through the Revocable Trust should be included in your individual income tax return.

Your Revocable Trust will not require a tax identification number until it is required to file a federal income tax return as discussed above. Your individual Social Security Number can be used in all instances where the Revocable Trust is required to provide a tax identification number.



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by

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The Author

Larry D. Lahman, the author of this publication, was born in Carmen, Oklahoma. He attended Northwestern Oklahoma State University receiving a Bachelor of Science in Chemistry, Mathematics and Physics in 1965.

Lahman subsequently attended graduate school at OSU and later received a Juris Doctorate Degree from the OU Law School.

He is admitted to practice before all state and local federal courts including the United States Supreme Court.

Lahman served as President of the Garfield County Bar Association and numerous other organizations.

He was a parachute officer with the U.S. Army Special Forces – the Green Berets – in Vietnam and retired as a Lieutenant Colonel in the U.S. Army Reserves.

Our Law Firm

P.C. Simons, who served as Attorney General of Oklahoma Territory, organized the predecessor to **Mitchell & DeClerck** in the early 1900's.

The Firm has been in continuous existence for more than 90 years and is the oldest law firm in Enid, Oklahoma, while also one of the oldest law firms in the state of Oklahoma.

For decades the Firm has held the highest possible "A" rating by the Martindale-Hubbell Legal Directory.

The Firm has long been listed in the "Bar Register" of preminent law firms in the United States and "Best's Directory of Recommended Insurance Attorneys."

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Title to Assets

Title to assets (including real property) which are to be transferred to the Revocable Trust will be titled something like "Richard Roe, as Trustee of the Richard Roe Revocable Living Trust, dated May 1, 1999."

Checking and Other Accounts

Checking accounts for the Revocable Trust should be established and the bank's records should show the account in the name of the Revocable Trust as described above. You may want to have Trust checks printed with a less descriptive name such as "Richard Roe Revocable Trust" or "Richard Roe, Trustee".

Consideration should be given to transferring all certificates of deposit and savings accounts which you own to the Revocable Trust. Consideration should also be given to transferring all stock and other securities to the Revocable Trust.

Life Insurance

Consideration should be given to changing the beneficiary of any life insurance policy which you might own or for which you are the insured.

Summary

A revocable trust has many advantages; however, it must be properly established and managed. While not inexpensive, a Revocable Trust can easily pay for itself many times over by avoiding a guardianship, a conservatorship and possibly even probate. We cannot emphasize too strongly the importance of trustworthy Successor Trustees.

It is important that you have absolute trust and faith in the holder of a power of attorney and a trustee has tremendous discretion over your property.