

Revocable Trusts: Avoiding Probate and Streamlining Your Estate

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Estate tax planning is a common topic of conversation with clients, but often that planning has less to do with estate taxes and more to do with the ease of transferring assets after someone passes away. You may already be aware that many states have a process known as probate, where a court reviews a will to determine its validity and authenticity and then rules on how assets will be divided and distributed. Probate laws vary from state to state and the probate process can be a costly, drawn-out one. Understanding how probate impacts your family and how you can avoid unnecessary probate can streamline your estate and simplify the process of distributing assets to your beneficiaries.

*“It does not do to leave a live dragon out of your calculations, if you live near one.”
– J.R.R. Tolkien*

Challenges of the Probate Process

Probate proceedings are not always required upon death, but are typically essential when someone has left behind an estate of high value. Certain assets bypass probate, for example, those that have a beneficiary designation or that transfer automatically like retirement accounts, annuities, life insurance and joint or payable on death accounts. But for those assets that are subject to probate, the process often involves tasks like filing numerous forms, identifying assets and creditors, and obtaining the authority to act on behalf of the estate, all of which add up to a long, arduous responsibility.

Other potential challenges of probate include:

- **Publicity.** Probate is also a public process in almost every state. This means anyone can see your will and all the forms that are filed throughout the process.
- **Delays in Asset Transfer.** Oftentimes, assets are frozen until they go through probate, so your loved ones are unable to access those funds for what could be months or even years.
- **Geography.** Assets must be probated where they are located. If you have homes in states other than the one where you reside, your estate may have to undergo probate in multiple locations, causing additional hassle and delays.

- **Cost.** There is a cost to probate as well. In addition to attorney's fees, you also pay filing fees, which vary depending on the state and county. The more complex or contested an estate is, the more time it will take to settle and the higher the cost of probate is likely to be.

Bypassing Probate with a Revocable Living Trust

There is a way to avoid the probate process however, and that is by having both a revocable living trust and a will instead of just a will. With a revocable living trust, also known simply as a revocable trust or living trust, you can direct the distribution of your assets at your death while avoiding probate.

A revocable trust or living trust is typically set up by you, with you as your own trustee and beneficiary. The trust can be changed at any time while you are alive and competent and assets can be transferred in and out as you see fit. During your lifetime, assets in the trust are controlled by you. The trust outlines how assets in the trust will be distributed after your death. Meanwhile, your will would indicate that anything you didn't transfer into the trust while you were alive is transferred in at your death. Upon your passing, any assets that were transferred to the trust before your death can pass to beneficiaries without probate.

Remember that creating a revocable trust created is just the first step. Equally important is retitling your assets so that they are owned and controlled by you as the trustee of the revocable trust. For investments and bank accounts, retitling is usually just a matter of a few forms. Retitling real property and other assets such as private company shares can be a more involved process, but may sometimes be worth the work

Key Takeaway

Regardless of the size of your estate, creating a revocable trust and transferring assets into it allows you to maintain control over these assets during your life and distribute them to your beneficiaries after death without probate. While the retitled assets are technically owned by the trust, you can continue to use them as you normally would. Taking on the task of establishing a revocable trust now can ease the burden on your beneficiaries later by avoiding the stress, publicity, time and cost of probate. To learn more about how revocable living trusts can be a valuable part of your estate and overall wealth planning strategy, talk to an experienced financial advisor.

About the Author



Michael Aronson is a Financial Advisor, Family Wealth Advisor and Head of the [Flagler Group at Morgan Stanley](#). The Flagler Group helps accomplished families and individuals navigate the challenges and complexities of wealth. Mike leads the team in expanding our understanding of each of our clients, looking for risks and opportunities, even beyond their investment portfolios. Our mission is to help our clients achieve a feeling of comfort and preparedness, knowing they can address the important financial decisions that will impact them and their family. Mike can be reached by email at Michael.D.Aronson@MorganStanley.com, or by phone at 561.820.2347. His office is located at 777 S. Flagler Drive, Suite 700E, West Palm Beach, Florida, 33401.

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