Living Trusts and powers of attorney are two of our most useful estate management tools. Many non-lawyers feel that the Revocable Living Trust (RLT) is the answer to your estate planning dreams. The question is what can it do for you?

During your life, an RLT provides investment management and can help you and your family handle your affairs in case you can't. After you die, the RLT serves all the functions of a Will, but it avoids probate. An RLT is easier to change than a Will, so it offers you a chance to test-drive your estate plan.

ABOUT TRUSTS

To understand an RLT, you must first understand what a Trust is. A Trust is a legal relationship under which you, the *Grantor*, give money or property to your *Trustee*, to manage for one or more *beneficiaries*. With an RLT you and your spouse may be both Trustees and beneficiaries.

A "revocable" Trust is one that you can change or cancel. A "living" Trust exists during your life.

You may be the Trustee of your RLT as long as you are willing and able to be. You should name someone to succeed you when you are no longer willing and able to serve as Trustee. Your Trustee may be a person or a corporation. As Trustees, Corporate Trust departments offer skill, continuity and relative economy. With smaller Trusts, an appropriate relative may be a better choice.

You create a Trust by executing a Trust agreement, which controls the Trust's operation. A typical RLT agreement names you as Trustee and pays Trust income to you or your spouse during your lives and thereafter pays your children. Eventually, at a time you select, the Trustee ends the Trust and distributes the Trust property to each remaining beneficiary.

In designing a Trust agreement, there are many choices. A skilled estate planner must ask the right questions and help you find the right answers. For example, is your trustee a good investor? You can suggest an investment advisor. You may protect a beneficiary with a "spendthrift provision," which protects the trust property from a beneficiary's creditors, even from a divorcing spouse. You may tell the Trustee to: (1) keep certain pet investments. (2) Save income or divide it among the beneficiaries; or (3) Hold property in Trust while a beneficiary is a minor.

ASSET MANAGEMENT

By naming a Corporate Trustee or an investment manager for your RLT, you can avoid managing your investments yourself. This is handy if you retire, wish to travel, or simply don't wish the responsibility.

The RLT can manage the investment of large sums such as retirement and life insurance benefits, *if* you make them payable to the RLT. Special drafting prevents unpleasant tax consequences.

The Trust agreement allows you to reach "beyond the grave," managing and protecting your property for family members or others without investment skills. Such persons include minor children, grandchildren, the elderly or the handicapped.

PLANNING FOR INCAPACITY

There is a high risk that you will one day lose your ability to handle your affairs, through sickness, accident or old age. Without planning, you will need a court appointed guardian, a costly and embarrassing experience. There are better alternatives.

If you already have an RLT, your successor Trustee can manage your property. However, your Trustee cannot otherwise act legally for you. The Trustee cannot sign contracts or authorize medical procedures in your name. For this reason, a durable general power of attorney (DPOA) makes a good complement to the RLT.

With a DPOA you choose an "attorney in fact," who can take virtually all legal actions on your behalf. A specially drafted DPOA permits medical decisions. The DPOA is inexpensive, requires no court proceedings and works even if you lose mental capacity.

However, a DPOA, alone, has limits: (1) it stops working at your death, unlike the RLT. (2) Financial institutions regard it with suspicion. (3) You may fear to give such power to another. To limit the DPOA, you may delay its effect until your incapacity, but such a provision further impairs its authority. (4) The DPOA gives no specific directions as to investments and beneficiaries, as you can with the RLT.

So together, the DPOA and RLT are a winning team for dealing with incapacity. Your attorney in fact can transfer any stray property into the RLT. Your successor Trustee can manage your property. Your attorney in fact can handle all other legal affairs.

BYPASSING PROBATE

After your demise, the RLT may do virtually anything with the Trust property that you could do with a Will. Yet you've had a chance to test drive the RLT while you were Trustee.

A much advertised advantage of an RLT is that it avoids probate. The Trust therefore bypasses the following problems (1) inventorying and accounting requirements, (2) suspended cash flow, (3) the inability to sell estate property until your Executor resolves tax claims, (4) publicity about your estate, and (5) interruption of your going business, if any.

One drawback of an RLT is that whereas Probate cuts off your creditors within six or seven months unless they prove their claims, an RLT does not.

In addition, probate will be necessary if any property remains in your name, alone, at your death. This can be a trap for stray stock certificates. So I make a backup Will to dispose of these.

Furthermore, bypassing probate does not eliminate all costs of handling an estate. Your Trustee will need legal counsel to carry out many of his duties. He must file Federal and state income, estate and gift tax returns and handle tax audits. He must find trust property maintain or dispose of it. This will require correspondence with the Government, banks, brokers and insurance companies. He must handle debts, expenses and taxes. Finally, he must satisfy trust beneficiaries.

TAXES

The RLT is neutral, tax wise. During your lifetime, you pay taxes on Trust income. If you are Trustee, the Trust need not file a tax return or get a separate tax identification number. At your death, the Trust property is part of your estate, unless we add Trust provisions to reduce estate taxes.

THE COST

How much does an RLT cost? It may cost two or more times as a Will.

A Will merely transfers your property after you die. An RLT protects you and your property during your life and after.

Probate savings, alone, often pay for the cost of the RLT package.

Is an online living trust a good deal? Yes, if you just use it for information, before meeting with us! An online document is impersonal. It can’t ask the right questions to help you meet your needs. It can't fully advise you of your state's law. Its authors aren't legally responsible for its results, like we are

I advise against drafting your own document. This approach invites court challenges! It's cheaper for us to draft a good Trust document than to fix a defective one.

1 An Accredited Estate Planner (AEP) is a professional estate planner who is an attorney, CLU, CPA, CFC’s, ChFC’s or CTFA and a member of the National Association of Estate Planners & Councils (NAEPC) who the NAEPC determines meets stringent requirements of experience, knowledge, education, professional reputation, character, ethics and teamwork . See www.naepc.org

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