I keep getting mail about Revocable Living Trusts. Do I need one?
By R. Douglas DeNardo, Esquire

Every week, our estates and trusts attorneys receive calls from clients who have received mailings from various companies regarding revocable living trusts (RLTs). Often, the revocable living trusts are touted as a way to safeguard your estate from the horrors of probate and as a way to minimize taxes. While RLTs can be part of your estate plan, they are not the “be all and end all” that marketers would have you believe. Before you spend the money to set one up, make sure you understand what you are getting and assess whether you really need it. The vast majority of people in Pennsylvania simply don’t need an RLT.

What is a revocable living trust?
A revocable living trust is a device whereby an individual (the “grantor” or “settler”) can hold or transfer assets to an individual, group of individuals, or a corporate fiduciary (“the trustee(s)”). The grantor can manage the assets or have the trustee manage the assets for the benefit of the grantor, family members, friends, or a charitable organization. When a grantor transfers assets to a trust for the primary benefit of the grantor, he or she is said to be creating a revocable living trust (RLT). This type of trust allows the grantor to observe the administration of the trust during his or her lifetime, and as the trust continues, the grantor has the power to alter, amend or revoke the trust, in whole or in part, at any time, depending on the grantor’s personal desires.

The advertisement I received says that a revocable living trust will avoid probate. Is that true?
This is frequently cited as a reason to favor the RLT. However, this advantage will only be gained if all of the client’s assets are retitled to the name of the RLT. If even one asset in the grantor’s name is excluded from the RLT, probate will be required. Keep in mind that certain assets, such as stock in a professional corporation, some foreign stock, etc., may not be appropriate assets to transfer to an RLT. There will also be costs inherent in transferring assets to the RLT. Finally, probate in Pennsylvania is not as cumbersome or time-consuming as marketers would have you believe or as it may be in other states. Often, delays in probate are not inherent to the system, but inherent to the professionals representing the fiduciaries of such estates – the very same professionals who would be administering the
RLT. Also, keep in mind that assets that are jointly held or have a designated beneficiary are not subject to probate.

The advertisement I received says that a revocable living trust will reduce federal estate and Pennsylvania inheritance taxes. Is that true?
No. A RLT itself has absolutely no effect on state or federal death taxes. Any tax savings will be based on the contents or wording of your estate plan documents– not the vehicle itself. In other words, an RLT can achieve nothing in the way of tax savings that you cannot similarly achieve by using a will.

Here are some other common misconceptions

If I have an RLT, I don’t need a will.
Untrue. A simple will is necessary for unexpected, inherited, or non-RLT assets so they end up in your RLT.

An RLT will shelter my assets from creditors.
Untrue. Since the RLT is revocable, assets will not be sheltered. In fact, in Pennsylvania, an individual generally cannot place assets into a trust for his or her own benefit and shield them from creditors.

An RLT will prevent a challenge by embittered heirs or a spouse who has been omitted.
Untrue. An heir or spouse can still challenge an RLT by alleging lack of testamentary capacity, undue influence, fraud, etc.

My beneficiaries won’t need to hire an attorney to distribute assets from the RLT after my death.
Untrue. An attorney will probably be needed to prepare state and federal death and fiduciary income tax returns, Accounts and Petitions for Distribution, as well as to handle retitling of assets, etc. A CPA can prepare the necessary tax returns, although an attorney may want to review them.

When should I consider a revocable living trust?
• In certain states, such as California, New York and Florida, it may be advantageous to avoid probate. If Pennsylvania is not your primary residence, or you hold real estate in other states, you could benefit from an RLT.
• If you use a bank to manage your assets and bills.
• If you have a need for privacy. Wills are a matter of public record, but an RLT may protect your privacy.

While revocable living trusts can be a part of a good estate plan, don’t be fooled by marketers into thinking you must have one. If you are unsure whether you would benefit from a revocable trust, call your attorney, who can assess whether you truly need one before you spend hundreds, if not thousands, of dollars to set one up.

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