



Estate Planning

What is a basic estate plan?

1. Revocable Trust
2. Pour-Over Will
3. Financial Power of Attorney

What if I die without a will?

- Property held in joint tenancy with right of survivorship automatically passes to the surviving joint tenant.
- Property that is subject to a beneficiary designation (e.g., life insurance policy) passes to the beneficiary designated.
- The rest of the decedent's property is distributed under the State's rules of intestate succession.

The rules of intestate succession are similar in every State and generally provide:

1. If the decedent was married and had no descendants (children, grandchildren, etc.), then all property passes to the surviving spouse.
2. If the decedent was married and all descendants are also descendants of the surviving spouse, then all property passes to the surviving spouse.
3. If the decedent was married and had descendants who are not the surviving spouse's descendants, then \$75,000 plus one-half of the property passes to the surviving spouse and one-half passes to the descendants.
4. If the decedent was not married and had descendants, then all property passes to the descendants.
5. If the decedent was not married and had no descendants, then all property passes to the surviving parents, and if the decedent's parents are not living, then all property passes to surviving siblings.

What is a revocable trust?

A revocable trust is a trust that can be cancelled or changed at any time. The grantor (i.e., creator) of a revocable trust has full control of the trust's property. A revocable trust has the “**who gets what**” provisions. Upon the grantor's death, the successor trustee distributes the property in accordance with the revocable trust's “**who gets what**” provisions.

What does A revocable trust accomplish?

1. Probate can be avoided. Upon the grantor's death, property held in the revocable trust bypass probate, meaning the property can pass to heirs without involving the courts, which can be time-consuming and expensive.
2. Court-Supervised Conservatorship. If the grantor becomes incapacitated, then property held in a revocable trust bypass a court-supervised conservatorship, meaning the property is managed by the successor trustee without involving the courts, which can be time-consuming and expensive.
3. Privacy. A probated will is a matter of public record, while a revocable trust is private.

What is probate?



Probate is a court-supervised process by which a deceased person's creditors are paid and the decedent's property is distributed to the persons who are entitled to it.

How does a revocable trust avoid probate?

Property that is titled in the decedent's name at the time of death must pass through probate (unless it was held in joint tenancy with right of survivorship or subject to a beneficiary designation).

Property that is held in a revocable trust is not titled in the name of the decedent. It is titled in the name of the trust. It is therefore not subject to probate. The decedent's property must be held in the revocable trust (i.e., titled in the name of the revocable trust) to avoid probate.

Property that is not held in the revocable trust will have to pass through probate, unless it is held in joint tenancy with right of survivorship or subject to a beneficiary designation.

What is a pour-over will?

A pour-over will is a will that transfers the decedent's property to the revocable trust. Upon death, property held in the revocable trust bypass probate. Ideally, the decedent titled all property in joint tenancy with right of survivorship, property subject to a beneficiary designation or in the name of the revocable trust. Often time, the decedent still had some property titled in his personal name, which is subject to probate. At the end of the probate process, the personal representative of the decedent's estate will distribute the probated property to the revocable trust pursuant to the terms of the pour-over will.

What is a financial power of attorney?

If a person becomes incapacitated, then property that is titled in the person's name will need to be managed by someone. A financial power of attorney designates a person with the authority to manage the incapacitated person's property. Without a financial power of attorney, the property would be subject to a court-supervised conservatorship, which is an expensive and burdensome process.

Summary of a revocable trust.

The grantor has complete control over the revocable trust and property held in the revocable trust while the grantor is alive and mentally competent. No court involvement is required.

If the grantor becomes incapacitated, then property held in a revocable trust is managed by the successor trustee. No court involvement is required.

Upon the grantor's death, property held in the revocable trust is managed by the successor trustee. The successor trustee executes the process of paying creditors, paying taxes, and distributing the property in accordance with the revocable trust's **"who gets what"** provisions. No court involvement is required.

What are the general mechanics of a revocable trust?

I generally recommend the following **"who gets what"** provisions for a person who is married and has children.



1. Upon the grantor's death, the revocable trust authorizes the successor trustee to make distributions to the surviving spouse. The goal is to ensure that the surviving spouse has adequate support for her living needs.
2. Upon the surviving spouse's death, the revocable trust authorizes the successor trustee too make distribution to the surviving children. The goal is for the successor trustee to make distributions to the surviving children for their best interests, while promoting responsible financial habits and stewardship.

Who should be named as the successor trustee of the revocable trust?

A person that you trust and has a personal relationship with your family. Married couples usually name their spouses as the successor trustee.

Who should be named as the agent of the financial power of attorney?

A person that you trust and has a personal relationship with your family. Married couples usually name their spouses as the successor trustee.

Who should be named as the personal representative of the pour-over will?

A person that you trust and has a personal relationship with your family. Married couples usually name their spouses as the successor trustee.