Avoiding Probate with a Revocable Living Trust

The Concept...

A revocable living trust is one created during the grantor's lifetime. The grantor maintains control over the terms and can change them at any time.

Individuals use these trusts to:

- avoid probate, publicity and expense
- retain rights to the trust property during life
- ensure eventual asset distribution according to their wishes

Some Definitions...

- Probate is the legal process of validating a will and administering the decedent's estate.
- A trust is a legal entity created by a grantor who selects a trustee to manage assigned property for the trust beneficiaries.
- The trustee is a person or entity administering the trust.
- The trustee takes legal title to the property transferred into the trust and manages it according to the grantor's instructions in the trust agreement for the benefit of the trust's beneficiaries.
- A revocable living trust is created during the grantor's lifetime and can be altered, amended or revoked by the grantor during the grantor's life.

- A revocable living trust isn't created to give tax advantages to the grantor while living, but can ease administrative concerns at the grantor's death by removing probate assets from the grantor's estate.
- When the grantor dies, the trust either becomes irrevocable or terminates, and the trust property is distributed, either immediately or in the future, according to the trust agreement.

Revocable Living Trust: The Objectives...

- Avoid probate on assets transferred into the trust during the grantor's life.
- Manage the trust assets if the grantor becomes incapacitated.
- Receive life insurance proceeds on the grantor's life when the grantor dies.
- Receive probate assets pouring over into the trust at the grantor's death under the terms of the grantor's will.
- Control the disposition of trust assets through the terms of the trust.
- Keep the terms of the grantor's disposition of property private (unlike a will in probate.)

Funding Methods...

- Transfer specific assets to the trust when it's established.
- Name the trust as beneficiary of the insured grantor's life insurance policy or policies.
- Arrange to transfer assets later, such as when there's an increasing risk of death, disability or incapacity.
- Name the trust as beneficiary of certain assets or of the entire net probate estate in a will.

The Process...

- An attorney well versed in estate tax matters prepares the trust agreement to meet the grantor's objectives.

- The trust agreement establishes who will receive the income and how long payouts will last or, if no payout, how long income will be accumulated.
- The trust agreement stipulates who is to receive distributions of the trust principal and when the distributions are to be made.
- The trust agreement indicates when the trust will terminate.
- Since the trust is revocable, it may be amended at any time.
- Unlike a testamentary trust which becomes public when a will is filed for probate, the revocable living trust remains private.
- In a "pourover" trust, insurance death benefit proceeds on the grantor's life are paid into the trust, along with assets passing under the will after probate.
- A pourover trust becomes irrevocable when the grantor dies.
- A trust may be a "shell," meaning inactive, during the grantor's lifetime, but prescribes what will happen when the grantor dies.
- The trust may also be active during the grantor's lifetime, with the trustee responsible for investment decisions, tax payments and other administrative functions.

Some Disadvantages...

- The grantor receives no federal income tax or estate tax benefits from the trust.
- A trust can be more expensive to establish than a will, requiring legal fees to draft the trust and, in some cases, additional fees to have it administered by a professional trustee.
- Trust assets are subject to claims of the estate's creditors when the grantor dies.

The Bottom Line...

A revocable living trust is an efficient way to obtain professional asset management, bypass the probate process, create efficient estate distribution and assure privacy—all in a single document.

Graphic: Avoiding Probate with a Revocable Living Trust

1. The grantor establishes a revocable living trust during his or her lifetime and transfers legal title to specific property to the trust.

2. The grantor may make the trust a "pourover" trust, naming the trust as beneficiary of life insurance on the grantor's life and the sole or residuary beneficiary of assets passing under the will after probate.

3. The trustee administers the property according to the trust provisions, making any required distributions of income and principal to the trust beneficiaries. The revocable living trust does not reduce income taxes, but can save on probate costs and may be structured to reduce estate taxes by creating a bypass trust.