MICHAEL A. KOENECKE
ATTORNEY AND COUNSELOR
P.O. BOX 830190
RICHARDSON, TEXAS 75083-0190
972-387-2904 MIKE@KOENECKELAW.COM

ESTATE PLANNING: USING A WILL VERSUS A REVOCABLE LIVING TRUST

Summary*:* The following shows the pros and cons of a revocable living trust, which are (PRO) keeping your matters private, avoiding probate, and avoiding guardianship proceedings, and (CON) potentially high costs, funding a trust can be a pain, you'll still need a will, and your heirs have longer to contest a trust.

1. **ADVANTAGES OF REVOCABLE LIVING TRUSTS.**

   a. ***Keeping Things Private****.* Some people are not comfortable with the idea of their will becoming a matter of public record. A revocable living trust, on the other hand, can be kept private, which can be helpful if there are sensitive family issues involved. *Counterpoint: I*n most cases, where assets are distributed or held in trust for one's descendants, there is no real need for that level of privacy, and having everyone see the will is not a problem.

   b. ***Avoiding Probate****.* Assets held in a trust avoid probate because the trust itself doesn't die with its creator—called the "grantor" or "settlor." The trust remains up and running after the death of the grantor, and it can transfer its property to anyone the grantor has provided for in the trust documents, according to the grantor's own terms. There's no need for court oversight or involvement.

      Probate avoidance can be particularly important if you own real estate in more than one state because your loved ones would have to deal with two or more probate proceedings if you just leave a will. Each property would have to be probated where it is located.

      A revocable living trust can also give your loved ones almost immediate access to cash during a difficult time. Otherwise, they are typically unable to gain access to your bank accounts until a probate estate has been officially opened. They may not have readily available funds to pay for funeral costs and other necessary expenses otherwise. Opening a probate estate can take several weeks.

      Counterpoint: probate proceedings here in Texas are usually pretty simple and efficient, and banks and investment houses are far more comfortable honoring Letters Testamentary from a court, as opposed to working with a successor trustee under the terms of your trust. In the latter case, there may be delays as their legal department reviews the documentation.

c. ***Avoiding Guardianship Proceedings.*** One thing a will cannot do is take care of problems which may come up during your lifetime, such as where one spouse becomes so incapacitated that he or she cannot act for him or herself, and has property or investments which need management. Without any planning, you generally have to go through guardianship proceedings, which are lengthy and expensive. One way to handle this is through placing your assets into a revocable trust which names you and your spouse trustees, and if one spouse becomes incapacitated, the other can act as trustee to manage the property alone. This is sometimes helpful where, for instance, property which is held in the names of both husband and wife might have to be sold, or investments need to be managed. ***Counterpoint:*** There are other ways of accomplishing this, as through powers of attorney.

2. **DISADVANTAGES OF REVOCABLE LIVING TRUSTS.**

a. ***Potentially High Costs Up Front.*** It generally costs more time and money to set up and fund a revocable living trust than to simply write a will. It is more like moving some of the costs of probate to the present as opposing to eliminating them entirely. You have to create new deeds and other documents to transfer ownership of your assets into the trust after you form it. You'll have to contact your bank, investment and insurance companies, and transfer agents. You'll have to change account and stock ownership and update beneficiaries. New stock certificates must be issued. Cars and boats must be retitled.

This is the major drawback to using a revocable living trust for many people, but it's not worth the time, money, and effort to create one if the trust isn't fully funded. The type of assets you own and what must be done to get them funded into the trust should be carefully considered before you decide to use this estate-planning tool.

b. ***You Will Still Need a Will.*** Your trust might only be partially funded when you die if you acquire new assets and neglect to move them into the trust. It can be surprisingly easy to forget to transfer title to newly acquired assets to your trust as time goes by.

You'll need a special type of will called a "pourover" will to handle assets not transferred into the trust during your lifetime. The will "pours" them into your trust at the time of your death, as the name suggests. Your pourover will must be probated, but it can still be a useful worst-case-scenario backup tool.

Also, some assets cannot be owned by a trust. These include certain retirement plans and assets you might hold jointly with someone else.

c. ***Your Heirs Have Longer to Contest a Trust.*** In Texas, a will can only be challenged within two years after it is admitted to probate. A trust can be challenged for four years after it becomes irrevocable upon death.