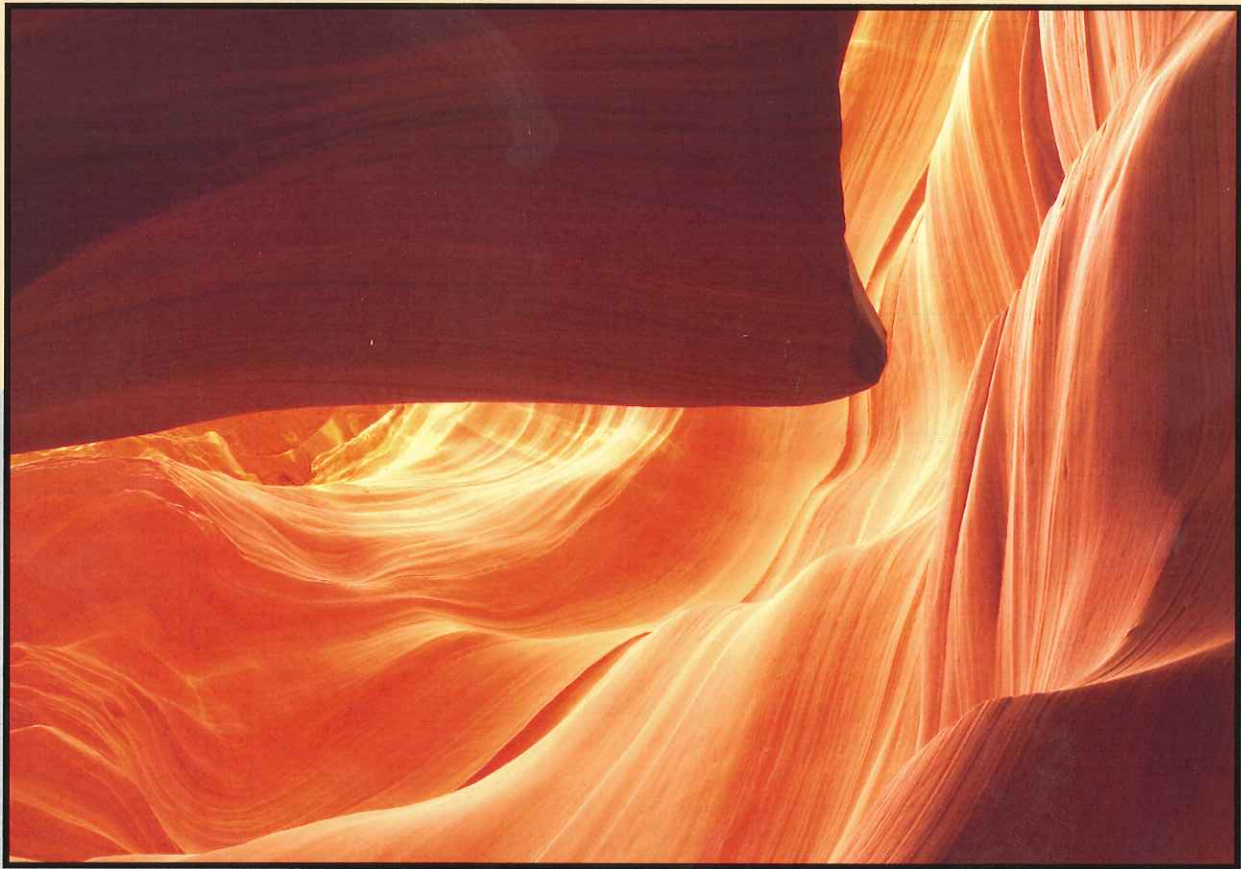


# Understanding the Revocable Living Trust



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## Understanding the Revocable Living Trust

Estate planning consists of arranging for the management and transfer of your assets (all personal property, accounts, investments and real estate) in anticipation of death or incapacity. An estate plan aims to preserve the maximum amount of wealth possible for your intended beneficiaries and maintain flexibility for you during your lifetime. An estate plan also allows you to plan for your healthcare and asset management in the event of your disability or incapacity. If we fail to plan by establishing in writing how our assets are to be managed and disbursed, we are authorizing others to allocate our wealth and manage our affairs. If you plan properly, however, you can ensure that your assets are managed for your care in the event of disability and passed to your family and loved ones based upon your wishes.

### The Benefits of a Revocable Living Trust

The Revocable Living Trust is the primary legal document in a typical Estate Plan and controls the management and transfer of your assets. An Estate Plan will also include a Will, Durable Power of Attorney, Health Care Power of Attorney, and Living Will. A Revocable Living Trust is designed to accomplish several things, including:

- Provide the security to know that your affairs are in order.
- Reduce the burden on your family in the event of your disability or death.
- Provide for management of your assets by a Successor Trustee in the event of your incapacity and avoid the need for a court appointed conservator.
- Allow children and loved ones to grieve without conflict and the added stress of a probate proceeding and the decisions as to how to divide your assets.
- Ensure that your wishes as to the transfer of your assets at the time of your death are honored and carried out.
- Hold your assets in Trust following your death for your minor children and avoid the need for a conservatorship court proceeding.
- Provide for the management of your assets in Trust following your death for the benefit of a disabled child, or an adult beneficiary who needs oversight over finances.
- Provide for the protection of your assets following your death from your children's or beneficiaries' potential creditors.
- Leave specific gifts.
- Implement planned giving strategies and/or leave specific gifts to charity.
- Provide for simpler and quicker asset distribution - avoiding probate on all assets transferred to the Trust.
- Avoid or reduce estate taxes (depending on the size of your estate).
- Protect the privacy of your estate plan.

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## Creating a Revocable Living Trust

A Revocable Living Trust allows you to hold title to your assets in the Trust while still maintaining complete control over your assets while you are alive and competent. The creator of the Trust is referred to as the Settlor (also referred to as Grantor or Trustor). A Trust is managed by a Trustee or Co-Trustees. The Trust will also have one or more Beneficiaries who are entitled to receive the income and/or principal of the Trust.

Generally, you as the Settlor will act as the initial Trustee (if married, you and your spouse will often be Co-Trustees) and you will be the initial Beneficiaries of the Trust. You retain all control over your assets as long as you are alive, willing, and able to do so. You can amend or revoke the Trust at anytime while you have the capacity to do so. All income generated by the assets in your Trust are taxed for income tax purposes to you during your lifetime. Upon your death, the Trust becomes irrevocable and your assets are distributed to your family, loved ones or charities as you have designated. The assets transferred to your Trust will avoid probate, but will be included in your taxable estate for estate tax purposes.

When preparing your Trust, you will also choose one or more Successor Trustees to manage the Trust upon your incapacity or death. If you become incapacitated, the Trust allows your Successor Trustee to manage your affairs without the need to seek a court appointed conservator. It can be costly to seek court appointment and the conservator once appointed has to provide an annual accounting to the court. Your Successor Trustee, however, can make payments from or distributions of the Trust for your benefit without court oversight. All Trustees have a duty to follow the instructions of the Trust very carefully. A Trustee acts in a fiduciary capacity and must follow both the letter and the spirit of the Trust document.

It is important to remember to fund your Trust – transfer title to real property, investment accounts, bank accounts, stock, business interests and other property to the name of your Trust. If married, you transfer community property and sole and separate property to the trust and it retains its character as either community or sole and separate property. Unmarried individuals can also create a Trust together and can transfer jointly owned and separate property to the Trust, which shall also retain its original character. The Trust has the power to operate only on assets and property which you transferred to the Trust. Unless there is a document which shows the ownership of a particular asset in the name of the Trust, that property will probably not be considered to be owned by the Trust. If you have property which you did not transfer to your Trust, your family may still need to open a probate proceeding at your death.

A Trust can provide married couples with the additional benefit of reducing or eliminating estate tax. If the assets of the married couple exceed the applicable estate tax exclusion, then upon the death of the first spouse, the Trust is divided into two or more sub-trusts. A portion of the deceased spouse's assets up to the applicable estate tax exclusion will be held in an irrevocable trust generally for the benefit of the surviving spouse. The surviving spouse will receive income and such amounts of principal as may be necessary from the deceased spouse's sub-trust. The deceased spouse's sub-trust, however, does not become part of the surviving spouse's estate and therefore, as a result will not be subject to estate taxes at the death of the surviving spouse and greater assets are left to the children or other beneficiaries.

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## Additional Estate Planning Documents

In addition to a Trust, an estate plan should always include a Last Will and Testament and Powers of Attorney. Other estate planning documents may be necessary depending upon your particular financial and family circumstances and objectives.

### Last Will and Testament

Even with a properly drafted and funded Trust, you should still have a Will. A Will sets out your wishes as to the transfer of your assets at the time of your death. If you also prepared a Trust, you will generally have what is referred to as a "Pour-Over Will" - because it pours all of your assets not owned by the Trust into the Trust when you die. Your assets will then be distributed pursuant to your wishes as set out in your Trust. A Will is also where you set out to whom you wish to have guardianship of your minor or disabled children.

### Powers of Attorney

To ensure that you are adequately taken care of in the event of your disability, your estate plan must also include a durable financial power of attorney, a health care power of attorney and living will.

### Conclusion

When properly prepared, a Trust and Estate Plan is a great gift to leave your family and loved ones. It clarifies your wishes and simplifies the process of managing and transferring your assets. It can provide you with the security to know that you and your family will be taken care of in the event of your disability or death - your family protected and provided for and your wishes honored.

**Hillary P. Gagnon** is a partner at the law firm of Jennings, Haug & Cunningham, LLP. Her law practice includes estate planning and probate law. Particularly, Ms. Gagnon assists clients develop and prepare a personalized estate plan appropriate for their individual and family needs. An estate plan may include, among other things a will, revocable living trust, special needs trust for a disabled family member, irrevocable trust, life insurance trust, estate tax planning, power of attorney, health care power of attorney, and living will. Ms. Gagnon also assists families and individuals with guardianships, conservatorships and post death administration of estates and trusts. In addition, she maintains a general civil practice, including general civil litigation, commercial law and contract law. Ms. Gagnon is a graduate of Wheaton College in Massachusetts (B.S. 1994) and Suffolk University Law School (J.D. 1997). For more information on Jennings, Haug & Cunningham and the legal services provided, see our website at [www.jhc-law.com](http://www.jhc-law.com).



**The information and materials presented are not intended as legal advice, but are provided as a basic overview and for general guidance only. These materials do not cover all aspects of or estate planning and are not designed to meet the estate planning needs of any particular individual. The law is constantly changing and each person and families' individual needs differ. Consult with an attorney to make sure that your individual needs are met.**