

An Overview of Revocable Trusts



Revocable Trusts are used by people who need a way to transfer property after death without probate. A revocable trust allows a person to keep full control of the property during their lifetime and provides for property during any period of incapacity.

This guidebook provides a straightforward explanation of the key issues surrounding Revocable Trusts; namely:

- What a Revocable Trust is and how it works
- Who is involved in making and managing a Revocable Trust
- Why people use Revocable Trusts
- How a person's property is subjected to the Revocable Trust's management
- What documents are needed to create an effective and enduring Revocable Trust

Experience shows that many people talk about Trusts and Revocable Trusts but may misuse or misunderstand them. Because all Trusts are products of both long history and modern statutes, with a wide variety of uses, it's essential to consult your attorney about your specific needs before committing your time and resources to a Trust.

We hope this guidebook will provide a valuable first step in finding clarity and relief for your legal concerns about Revocable Trusts. If you have additional questions after reading this document, please share them with us at Service@ARAGLegal.com.

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Sincerely,
ARAG Customer Care Team

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Glossary

Agreement of Trust. A Trust document created by the Settlor, that names another as Trustee of the Settlor's Trust, and subjects selected property of the Settlor to management according to the Trust. Often the Settlor is a Co-Trustee.

Beneficiary of a Trust. The person(s) on whose behalf the property in the Trust is held, managed and ultimately distributed. Beneficiaries can have either a present interest (e.g., the Settlor of his or her own Revocable Trust) or a future interest (e.g., the persons entitled to Trust funds after the Settlor dies). Beneficiaries may be specifically named, or be members of a class (e.g., the Settlor's children), or be persons actually named by other persons in whom the Settlor has granted such naming power (i.e., beneficiaries by exercise of a power of appointment).

Co-Trustee. Every Revocable Trust has other Trustees to act with or in the place of the Settlor as designated in the Trust instrument. Since the Revocable Trust is intended to address periods of the Settlor's incapacity and the Settlor's death, all Revocable Trusts will have one or more Successor Trustees whose authority will arise once a triggering event occurs that is set out in the Trust instrument.

Declaration of Trust. A Trust document created by the Settlor, naming the Settlor as initial Trustee and primary Beneficiary, and subjecting selected property of the Settlor to management according to the terms of the Trust.

Fiduciary. A term used to describe a person who has a confidential relationship to another person, owing to that other person the duties of loyalty, fidelity, good faith, honesty, prudence, integrity and fair dealing. A Trustee is a Fiduciary owing to Settlor and Beneficiaries such duties as those of loyalty, prudent administration, impartiality and fidelity to the Trust.

Fund a Trust. A Trust only controls property that has been subjected to the terms of the Trust, and the process of doing so is termed “to fund the Trust.” Technically, this means that the Settlor transfers the property to the Trustee of the Revocable Trust. These transfers should be done during the Settlor’s lifetime, although it is possible to transfer property to the Trustee upon the Settlor’s death (e.g., through the use of a Pour Over Will or by a “transfer-on-death” provision of a non-probate transfer arrangement).

Living Trust. A term commonly used to describe a Revocable Trust.

Memorandum of Trust. A formal abstract of a Trust used to provide third parties proof of the existence of a Trust and of the identity and authority of the Trustee, and certain other relevant facts about the Trust; however, it will not contain any of the personal and dispositive provisions of the Trust. It is executed in such a way as to be recordable in a state’s land records if necessary. Many states prescribe the contents of a Memorandum of Trust.

Pour Over Will. A Will designed for use with a Revocable Trust that, on the death of the Settlor, “pours over” some or all of the Settlor’s property into his or her Revocable Trust to be managed and distributed according to the terms of the Revocable Trust. A Pour Over Will also addresses personal matters, such as guardian appointments for care of minor children.

Probate. Proving a Will’s authenticity in court. Unless otherwise provided by statute, a Will must be admitted to probate before a court will allow property to be distributed.

Revocable Trust. A Trust created by a Settlor for the management of property subjected to the Trust by the Settlor for the Settlor’s own lifetime benefit. The Trust can be changed or revoked by the Settlor without anyone else’s consent. The Trust also has provisions directing the management and distribution of the Trust funds after the Settlor’s incapacity or death.



Settlor of a Trust. The person who creates a Trust, directs what property is to be placed in the Trust and manages it according to the Trust's terms. Alternate terms used for the Settlor are Grantor or Trustor.

Successor Trustee. See Co-Trustee.

Testamentary Trust. A Trust set up in a person's Will which goes into effect only after the person's death.

Trust. A Trust is a formal arrangement created by a Settlor for the receipt and management of property, in which the Trustee is responsible for handling the Trust property for the benefit of the Trust's Beneficiaries in accordance with the terms of the Trust.

Trust Amendment. A change in the terms of part of the Trust. The Trust document is considered to be the original Trust Instrument as modified by each of the Trust Amendments. Trust Amendments are termed by their sequence. The initial Trust Amendment is termed the “First Trust Amendment” to the specific Trust named; the second is termed the “Second Trust Amendment” and so on.

Trust Drafter. The person who draws up the Trust language for the Settlor, generally an attorney.

Trust Instrument. The document created by the Settlor containing the terms of the Trust, including the original unrevoked Trust document and any partial amendments to the Trust.

Trustee of a Trust. The person(s) who administers the Trust and manages the property held in the Trust, according to the Trust’s terms and the governing law, for the benefit of the Trust’s Beneficiaries. When a Trustee acts with another as Trustee, s/he is known as a Co-Trustee. When a Trustee is only to act after a prior Trustee resigns or otherwise ceases to act, s/he is known as a Successor Trustee. In a Revocable Trust, the Settlor is the initial Trustee or Co-Trustee.

Trust Restatement. When a Trust Instrument has been extensively amended, or has had a number of Trust Amendments made to it, it becomes cumbersome to handle and interpret the pile of documents. A Trust Restatement is a complete rewrite of the Trust Instrument, where all the desired-to-be-retained amendments are actually incorporated in the text. The resulting document replaces the earlier document and is typically termed “The First Restatement” of the specific Trust named. Then, all users simply refer to the Restatement.

Introduction

Revocable Trusts, more commonly known as Living Trusts, are used as a substitute for a Will to pass property after death without probate – while still keeping full control of the person’s property during life and providing for management of the person’s property during any period of his or her incapacity.

Advantages

Revocable Trusts have grown in popularity and use because they are flexible, convenient and when properly funded, can avoid many of the processes and expenses of guardianships and probate.

Considerations

While flexible and convenient, Trusts also require a commitment to care, planning, timely funding and ongoing review.

This Guidebook will give you the information to determine if you:

- ✔ Can benefit from and need to set up a Revocable Trust.
- ✔ Are ready to make the effort to fund it with your property.
- ✔ Can commit to regular attention and review so the terms reflect your preferences.

If carefully drafted, funded and updated, a Revocable Trust is a superior tool for managing your life and post-mortem property preferences. An unattended, ill-fitted and unfunded Revocable Trust is useless at best and troublesome at worst.

What this document will and will not cover:

There are other types of Trusts (e.g., Life Insurance Trusts, Medicaid Income Trusts, Special Needs Trusts, Charitable Trusts, Pet Trusts, etc.) created by people, and other types of Trusts created by the courts (e.g., constructive Trusts, resulting Trusts). This Guidebook explains a Revocable Trust that is for a person who does not have a taxable estate. It does not cover how to plan for or avoid federal, state, estate or inheritance taxes. Asset protection Trusts are outside the scope of this guidebook.



What Is A Revocable Trust And How Does It Work?

A Revocable Trust is the property management and distribution arrangement that results from:

- ✓ A Settlor's creation of a Trust instrument containing the terms of the Trust
- ✓ The selection of Trustees to manage the Trust.
- ✓ The Settlor's subjection of some or all of his/her property to the management of the Trust's Trustees.

Unlike a **testamentary** Trust which is set up in a person's Will and goes into effect only after the person's death, a Revocable Trust is created by the Settlor during his or her lifetime. The Settlor is the initial Trustee (or at least a Co-Trustee) and sole beneficiary of the Trust during his or her lifetime. The Trust provides for the distribution of the Trust property to the Settlor's beneficiaries after the Settlor's death.

During the Settlor's lifetime the Settlor keeps the unilateral right to:

- ✓ Change the terms of the Trust instrument.
- ✓ Change the Trustees.
- ✓ Change the Trust's ultimate beneficiaries.
- ✓ Add or remove property from the Trust.
- ✓ Revoke the Trust entirely.

Generally, a Revocable Trust has a single Settlor and largely contains the Settlor's own property. (Although rare, other persons can make lifetime or post-mortem gifts of their property to another person's Revocable Trust.) The advantages of an individual Revocable Trust arrangement are clarity and simplicity because the sole Settlor decides all details of management and distribution, and is totally free to amend or end the Trust.

Revocable Trusts can have multiple Settlers (typically spouses or domestic partners, especially in community property states) and can be funded with the property of its respective Settlers. These Revocable Trusts are often called Joint Trusts or Family Trusts. Joint Living Trusts seem attractive since they reflect the living arrangements of the Settlers. However, Settlers need to think through the Trust's amendment or revocation provisions and how they want to deal with situations such as a divorce or break-up. Settlers also need to consider what options exist for the survivor after the incapacity and death of one of the Settlers.

Once both spouses agree to a distribution plan within the Trust, they'll need to decide if the Trust is amendable or non-amendable after the death of the first Settlor, that is, can the plan be changed by the survivor? Can the plan deny the surviving Settlor the right to withdraw Trust assets?

Joint Revocable Trusts can be a viable option for heterosexual couples who live together but are not married; for same-sex couples living in states that do not recognize same-sex marriages; and for couples who own property in a state where they do not have the legal protections for property available for married couples. Such couples might use multiple Joint Revocable Trusts to handle specific assets jointly acquired, while having their own individual Revocable Trusts for separate property and estate plans. The needs of the couple and the design of a Joint Revocable Trust need to be discussed with an attorney, especially in light of the evolving nature of laws respecting them. See the chart of Revocable Trust Terms at [ARAGLegalCenter.com](https://www.araglegalcenter.com).

Funding the Trust

A Revocable Trust only controls property specifically subjected to the terms of the Trust. The property transfer process to the Trust is critical. A Settlor will have to transfer property from the Settlor's name into the name of the Trustee of the Revocable Trust (even if, as likely, that Trustee is the Settlor). Property transfer is the only way that property will be subject to the Trust's management. The process of transferring property to Trust management is termed funding the Trust. A Revocable Trust can be funded with any property

of the Settlor, including the Settlor's rights or potential rights to receive property in the future. It can be funded either during the lifetime of the Settlor or after the Settlor's death, for example, with life insurance proceeds or by gifts to the Trust made by the Settlor's Will. As noted, others can gift property to the Trustees for the benefit of the Revocable Trust.

Once assets are in the Trust (that is held in the name of the Trustee for the Trust) then they can be managed by the Trustee. Since the Settlor is also the Trustee managing his or her own property, the Settlor-Trustee will be able to handle the Trust property the same as if it were in the Settlor's name as an individual.

For example, let's assume that James Jones, the Settlor, has transferred \$5,000 from his bank account into a new checking account for the Trust. When he writes checks from that account he'll sign them in his fiduciary capacity (i.e., as "James Jones, Trustee"). The same approach applies to the handling of other assets in the Trust: namely, the Settlor-Trustee will technically show himself/herself acting "as Trustee."

The same rule applies for Successor Trustees, namely, s/he signs as Trustee.

Generally, when third parties are dealing with the Trustee (even the Settlor-Trustee), they will want to see evidence of the Trustee's authority to act for the Trust. The Trustee could show the Trust document to the third party (who would likely want to make a copy of it for their records); however, to guard the privacy of the Trust purpose and most terms, the Trustee may want to use a Memorandum of Trust or Certificate of Trust. These documents contain only those portions of the Trust necessary to identify it, including the Trustee's appointment and the Trust management powers of the Trustee.

Trust Amendments

When the Settlor wants to change part of the terms of the Revocable Trust, the resulting document is a Trust Amendment. Trust Amendments are sequential, relating to the order in which they are made. They are read together with the original Trust document so that the currently in-force terms are understood.

For example, let's assume that James Jones wants to amend his Trust (titled the "James Jones Revocable Trust, Under the Declaration of Trust (UDT) dated 12/1/12"). This first amendment would be titled "The First Amendment to the James Jones Revocable Trust, UDT dated 12/1/12." The second amendment would be titled "The Second Amendment to the James Jones Revocable Trust, UDT dated 12/1/12" and so on.

Trust Restatements

When a Trust is going to be significantly amended, or has been the subject of numerous amendments, it is more convenient to create a Trust Restatement that keeps the Trust but restates it in its new terms. This Trust Restatement completely replaces the original Trust Instrument and all later amendments.

For example, let's assume that James Jones wants to completely amend his Trust (titled the "James Jones Revocable Trust, UDT dated 12/1/12"). This first restatement would be titled "The First Restatement of the James Jones Revocable Trust, UDT dated 12/1/12." The second restatement would be titled "The Second Restatement of the James Jones Revocable Trust, UDT dated 12/1/12" and so on.

Needless to say, it is best to carefully plan your Revocable Trust, its Trustees and Beneficiaries so that the need for frequent amendments is avoided.

Irrevocable Trusts

As long as the Settlor is alive and competent, the Trust remains completely revocable. Upon the Settlor's death, the Trust becomes irrevocable. In other words, the Trust becomes non-amendable and continues to exist until its distribution terms are satisfied. However, many states now have laws that permit beneficiaries and/or Trustees to seek judicial modification of the Trust after the Settlor's death if such laws' strict terms are met. For examples, Trustees may want to modify the Trust for tax reasons, if there is no longer a need for it, if its original purpose is impossible or impractical, or if it is no longer economical to administer.

Who Is Involved?

Every Revocable Trust has a set of players with distinct roles to play during the life of the Trust. Here are the people involved in making and managing a Revocable Trust.

Settlor

The most important player is the person who creates the Trust, called the Settlor. In some states and context, the terms Grantor or Trustor are used. The Settlor has the following tasks:

- ✓ Determines if a Revocable Trust is appropriate for the situation.
- ✓ Defines what terms direct the Trust's management.
- ✓ Chooses who will act as either Co-Trustee with the Settlor or as the Successor Trustee when the Settlor cannot act.
- ✓ Decides who will receive the benefit of the property in the Trust after the Settlor's death.
- ✓ Decides what property is going to be subjected to the Trust's management.
- ✓ Transfers property to the Trust.
- ✓ Ensures that the Trust's terms are kept current and consistent with the laws of the states where the Trust is administered.
- ✓ Ensure that the Co-Trustee or Successor Trustee is willing and able to serve in the fiduciary role assigned.
- ✓ Adjusts the ultimate post-mortem provisions and beneficiaries to reflect the Settlor's current estate plan.

Trustee

The player with the active role of managing the assets in the Revocable Trust is the Trustee. In a typical Revocable Trust the Settlor is the initial and primary

Trustee and the sole beneficiary during the Settlor's lifetime. The Settlor-Trustee can amend the Trust instrument at will and can act as s/he sees fit.

Co-Trustee or Successor Trustee

Every Revocable Trust has other Trustees. The Settlor may set up the Trust with a Co-Trustee to act with or in the place of the Settlor as designated in the Trust instrument. Since the Revocable Trust is intended to address periods of the Settlor's incapacity and the Settlor's death, all Revocable Trusts will have one or more Successor Trustees who gain authority once a triggering event occurs (as set out in the Trust instrument).

The Trustee is a fiduciary with enforceable duties to the Settlor and the beneficiaries. A Trustee has duties imposed both by the terms of the Trust instrument and by the law of the state where the Trust is administered.

Duties of the Trustee

The basic duty [of the Trustee] is the duty of loyalty, which requires the Trustee to manage the Trust solely for the beneficiaries and to avoid conflicts of interest between the Trustee's interests and beneficiaries' interests....Other fiduciary obligations include the duty of impartiality, the obligation of prudent administration, the obligation to incur only reasonable costs, and the obligation to apply the Trustee's special skills when there is reliance on those skills when the Trustee is named. A Trustee may delegate certain duties and powers, but is held to a prudent standard of appointment in so doing.

"Trust Code Summary" by Uniform Law Commission: <http://uniformlaws.org/ActSummary.aspx?title=Trust Code>

Each state has some form of Trust Code in which the powers, duties and liabilities of Trustees are set out. Some of the powers and duties may be changed by the Settlor in the Trust instrument. Trustees are entitled to reimbursement of their expenses and compensation for their services on behalf of the Revocable Trust. Trustees (other than the Settlor) may be challenged in court by the beneficiaries for breaches of duty or of the terms of the Trust.

Beneficiaries

The players who derive the benefit of the Revocable Trust are the beneficiaries. During the Settlor's lifetime, the Settlor is the beneficiary although the Settlor might name others to receive some benefit during the Settlor's lifetime. This is commonly true in Joint or Family Trusts. All Revocable Trusts name beneficiaries who will receive the benefit of the Trust after the Settlor's death. These post-mortem or ultimate beneficiaries may receive an outright distribution from the Trust, or their shares might be administered and distributed over time, depending on the terms the Settlor put into the Trust document.



Why Use A Revocable Trust?

There are several compelling reasons for having a Revocable Trust. The most common reason is to avoid probate, however, other reasons include:

- Create a formal structure for lifetime management of property.
- Create an alternative to guardianship or conservatorship in the event of incapacity.
- Provide a convenient, faster and less costly alternative to probate.

Lifetime Management of Property

Once the Settlor's property is transferred to the Trust, the Settlor-Trustee can manage the property with the same flexibility and discretion as the Settlor could as an individual as long as the Trustee's powers are written comprehensively. In addition to managing in accordance with the Trust's terms, the Settlor retains the ability to change those terms at any time, just in case more flexibility is needed. When a Successor Trustee is acting, the same flexibility and discretion exists, but without the Settlor's ability to change the Trust terms or withdraw assets from the Trust.

Trusts not protected from creditors

With the exception of special Trusts created in a handful of states (known generally as self-settled domestic asset protection Trusts) a Settlor's Revocable Trust does not protect assets in the Trust from a creditor's valid claims. During the Settlor's lifetime, assets in his or her Revocable Trust can be reached by creditors unless otherwise exempt by law if owned by the Settlor directly. Nevertheless, the Revocable Trust often has spendthrift terms in it that protect other Trust beneficiaries' interests from being subjected to their creditors.

Incapacity Alternative to Guardianship or Conservatorship

When a person becomes incapacitated, someone will need to take responsibility for protecting and managing that person's property. Court proceedings for establishing a guardianship or conservatorship for the person's property are costly and result in the court selecting who the guardian or conservator will be and then retaining oversight of these fiduciaries.

A person can reduce the need for these proceedings by appointing an Agent to act on his or her behalf. This is often done by using a durable power of attorney (DPOA). The DPOA can be used not just for medical or mental incapacity but for incapacity due to practical inability to tend to matters arising from the person's voluntary or involuntary absence from the scene. The DPOA clarifies what authority the Agent has; however, it offers little guidance on how the Principal wants the Agent to act.

A Revocable Trust gives the Settlor the ability to define and set measurements for the events which would trigger the authority of a Successor Trustee. It also can set out why, how and when the Successor Trustee is to distribute Trust income or principal for the benefit of the Settlor, and, if set out in the Trust instrument, for the benefit of the Settlor's ultimate beneficiaries. All these property management and distribution activities of the Successor Trustee can occur without advance permission of any court or any continuing accounting to any court unless and until a proper claim of breach of the Successor Trustee's obligations is made by an interested party (for example a qualified representative of the Settlor or the ultimate beneficiaries).

Alternative To Probate

If a person dies with property in his or her name, without any contractual arrangements to pass that property to a named successor, then the post-mortem estate settlement processes of the deceased's home state will be followed to pass his or her property to heirs (if the person left no Will) or to beneficiaries (as named in a Will). These processes vary in complexity, expense, level of court involvement, and the need for professional assistance—depending on the state, and on the size and composition of the deceased's

estate—and are known by a variety of names for which we can use the shorthand term probate.

In most states, for Settlers who die with all their property in a Revocable Trust, those probate processes will be unnecessary; instead, the Successor Trustee will follow the directions for post-mortem management and distribution and get the property to the Settlor's intended beneficiaries simply and directly.

Of course, if the Settlor left valid enforceable debts and a non-Trust Estate insufficient to pay these debts, then the Successor Trustee would usually be obliged to assist the representative of the Settlor's estate to pay such debts from the assets of the Trust.

If the Settlor died leaving property in his or her own name but intended that property to go to the Trust, then (depending on the amount of the property) the Settlor's Pour Over Will would have to be probated to have the Personal Representative distribute the property to the Successor Trustee. This probate can be avoided if the Settlor is careful to transfer property to the Trust during his or her lifetime, or uses a DPOA agent empowered to make such transfers during the Settlor's lifetime.



What Documents Are Needed To Create A Trust?

Here are the documents you need to create an effective and surviving Revocable Trust.

The Revocable Trust Instrument (either a Declaration of Trust or a Trust Agreement)

The most important document is the Trust document that contains the terms of the Revocable Trust. It identifies the Trust, the Settlor, the Trustees, the beneficiaries and the terms under which the Trust will be governed. It contains provisions regarding:

- ✔ The Settlor's rights to amend and revoke the Trust.
- ✔ How the Trust is to be administered if the Settlor becomes incapacitated.
- ✔ How the Trust is to be distributed to beneficiaries after the Settlor's death.

Generally, since the Revocable Trust instrument contains provisions which take effect either after death or while living, it is executed in the manner of a Will (that is, with witnesses and a notary acknowledgement).

Memorandum of Trust or Certificate of Trust.

Third parties such as banks, securities firms, lenders and public officials, will want proof that the Trustee actually has the Settlor's authority to deal with the Trust property. While a copy of the Revocable Trust Instrument can meet that need, most Settlers do not want such institutions to see personal information about who is inheriting different property. To preserve the Settlor's privacy, and to have a shorter document for presentation and recording purposes, Settlers usually have a signed and witnessed document that identifies the Trust, the Settlor, and Trustees, and recites the grant of powers to the Trustees. This supporting document is also called a Memorandum of Trust or Certificate of Trust.

Affidavit of Asset Transfer

A Revocable Trust must be funded with at least some of the Settlor's property. A Settlor also needs an Affidavit of Asset Transfer to inform others that personal property has moved to the Trust.

An Affidavit of Asset Transfer is the Settlor's signed, sworn, and notarized document listing specific items of property which the Settlor declares has been transferred to the Trustee of the identified Revocable Trust. It can list items in detail (for example, "my collection of Ernest Hemingway First Editions") or in more general terms ("my collection of books, magazines, manuscripts, and periodicals" or "my recordings, audio CDs, DVDs and videogames").

Pour Over Will

The chances that the Settlor will have transferred all property to the Trust by the time of death, especially after the Settlor enters advanced old age, are slim. Settlers generally die with property still in their own names – property that was intended to be disposed of according to the Revocable Trust's terms. A "Pour Over Will" acts as a final clean-up tool for the Settlor.

The Pour Over Will does what its name describes: it "pours over" the assets in the Settlor's estate into the Settlor's Revocable Trust. More precisely, it leaves those assets to the Trustee of the Settlor's Revocable Trust. Other functions of the Pour Over Will include:

- ✓ Names who may become guardians of the Settlor's minor or handicapped children.
- ✓ Leaves certain property outright without the Trustee's involvement.
- ✓ Takes advantage of a probate law's shorter time limits for presenting and ending creditor claims.

Durable Power of Attorney

The Durable Power of Attorney (DPOA) allows the Settlor to name an Agent, grant specific powers and define the circumstances that trigger the Agent's authority to act. For example, if the Settlor intends to transfer property to the Revocable Trust but becomes incapacitated and is unable to do so, the DPOA would allow an Agent to make the transfer. The Agent named could be the same as the Successor Trustee or another person. In essence, the Durable Power of Attorney (DPOA) acts as a Settlor's Revocable Trust facilitator. Keep in mind that the DPOA becomes ineffective at the Settlor's death, so the DPOA Agent would have to act before the death.

How Is Property Transferred To The Trust?

The Revocable Trust only affects property that is subjected to its terms. But how is property made subject to the Trust? Simply stated, property must be transferred by the owner of the property to the person acting as Trustee of the Trust. **The Trustee does not become the owner of the transferred property as an individual;** rather, the Trustee takes title “on behalf of the beneficiaries of the Trust.” Legally, this means that a Trustee holds bare legal title and the beneficiaries’ equitable title to the Trust assets. The beneficiaries are the effective owners of the Trust assets because they can compel the Trustee to manage those assets solely in the interests of the beneficiaries.

For example, James Jones, as the Settlor, wants to transfer his vacation lot to his own Revocable Trust. The deed Mr. Jones would have prepared would describe the grantee in such words as “James Jones, Trustee of the James Jones Revocable Trust, UDT dated 12/1/12.”

What this titling arrangement shows is that James Jones does not receive the title outright, rather he receives it as a Trustee. This titling arrangement also shows that the specific Trust for which the Trustee is taking title, namely Mr. Jones’s Revocable Trust, is shown Under Declaration of Trust dated December 1, 2012.

Re-titling documents

The specific document used to transfer property depends on the formal evidence used to show ownership of the property. Assets that are “titled” (that is, ownership is reflected by a formal document such as a deed, an account agreement or a security certificate) are transferred to the Revocable Trust by re-titling the asset from the name of the Settlor as an individual to that of the Settlor (or other Trustee) in the capacity as Trustee of the identified Revocable Trust.

- ✓ For land, this will mean a deed.
- ✓ For securities accounts and bank accounts, it will mean whatever document the institution uses (for example, account holder agreements or signature cards.)
- ✓ For individually owned stocks or bonds, it will mean the certificate and register.
- ✓ For titled personal property (e.g., cars, boats), it will mean the certificate of title.

Examples of Revocable Trust Naming Alternatives

Assume that James Jones is the Settlor of his own Revocable Trust, executed by him on December 1, 2012.

If Mr. Jones used a Declaration of Trust in which he was the sole Settlor and initial Trustee.

"James Jones Declaration of Trust" or "James Jones Declaration of Trust Dated December 1, 2012" or "James Jones Declaration of Trust dated 12/1/12"

or

"James Jones Revocable Trust" or "James Jones Revocable Trust dated December 1, 2012" or "James Jones Revocable Trust dated 12/1/12"

or

"James Jones Trust dated December 1, 2012" or "James Jones Trust dated 12/1/12"

If Mr. Jones used a Trust Agreement in which he was the sole Settlor and named another person as the initial Trustee (or Jones named himself as Co-Trustee).

"James Jones Trust Agreement" or "James Jones Trust Agreement dated December 1, 2012" or "James Jones Trust Agreement dated 12/1/12"

or

"James Jones Revocable Trust Agreement" or "James Jones Revocable Trust Agreement dated December 1, 2012" or "James Jones Revocable Trust Agreement dated 12/1/12"

or

"James Jones Trust dated December 1, 2012" or "James Jones Trust dated 12/1/12"

Assume that James Jones and his spouse (or partner) Sarah Jones are the Settlers of their own Joint Revocable Trust, executed by them on December 1, 2012.

James Jones and Sarah Jones would need to use a Trust Agreement to create their Trust in which both were Settlers and Trustees.

“James Jones and Sarah Jones Trust Agreement” or
“James Jones and Sarah Jones Trust Agreement dated
December 1, 2012” or “James Jones and Sarah Jones
Trust Agreement dated 12/1/12”

or

“James Jones and Sarah Jones Revocable Trust
Agreement” or “James Jones and Sarah Jones
Revocable Trust Agreement dated December 1, 2012”
or “James Jones and Sarah Jones Revocable Trust
Agreement dated 12/1/2012”

or

“James Jones and Sarah Jones Family Trust dated
December 1, 2012” or “James Jones and Sarah Jones
Family Trust dated 12/1/12”

or

“James Jones and Sarah Jones Joint Trust dated
December 1, 2012” or “James Jones and Sarah Jones
Joint Trust dated 12/1/12”

Examples of Terminology Used to Transfer Property to a Revocable Trust
Assume that James Jones created his own Revocable Trust on December 1, 2012.

Asset Type	Retitling from Settlor's Name to Trustee of the Trust
Bank Account	"James Jones as Trustee under the Declaration of Trust dated December 1, 2012" or "James Jones, Trustee, UDT dated 12/1/12" or "James Jones, Trustee of the James Jones Revocable Trust under UDT dated 12/1/12"
Real Estate Deed	"James Jones as Trustee under the Declaration of Trust dated December 1, 2012" or "James Jones, Trustee, UDT dated 12/1/12" or "James Jones, Trustee of the James Jones Revocable Trust under UDT dated 12/1/12"

A Revocable Trust may be appropriate for you if:

- Your asset holdings are more than insubstantial.
- You want to make it very easy for a trusted person to handle your holdings for you if you are incapacitated or away from your home for a substantial period of time.
- You want your beneficiaries to receive funds after your death quickly, without the delay of probate proceedings.

Is there a minimum asset level?

The answer varies with the amount, the location and the composition of your assets. It also depends on your concerns and discipline. The type of person that may need a Revocable Trust typically needs a computer program to track accounts and property, needs an accountant to handle taxes, has a mobile lifestyle, feels particularly vulnerable and has a trusted person to rely on. Keep in mind, however, that creating a Revocable Trust creates an artificial entity (almost like creating a corporation) and you will have to play a role in that entity for the rest of your life. That role requires keeping good records, being disciplined in transferring and managing assets in the Revocable Trust and keeping Trust documents up-to-date. Creating a Revocable Trust means creating a document package that fits you and your needs. Managing a Revocable Trust means exercising good judgment about the people who will help you.

The legal issues involved in any Trust are complicated. And there are legal issues “on the ground” in the application of the Trust for which you will require local legal advice. For example:

- If your state grants you special tax benefits for certain real estate you own and use, do you know if those benefits will continue if you transfer that property to a Revocable Trust?
- Would holding assets in a Joint Revocable Trust compromise you or your spouse’s Medicaid eligibility and planning?
- Will you be able to use Trust assets to secure a personal loan such as a mortgage?

In short, a planning consultation with an attorney for advice on the specifics of your situation is the absolute minimum if you consider a Revocable Trust. Even if you create the Trust documents yourself, you should have an attorney review them with you to make sure they fit your situation.

Let us help you

If you need additional help or guidance, ARAG is here for you. Simply contact a Customer Care Specialist who can help you understand the benefits available to you. For more information:



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Preparing to Meet Your Attorney

If you decide to consult an attorney about your legal matters, we suggest you complete the following worksheet prior to your meeting. By preparing this information ahead of time, you have the opportunity to clearly think through your needs and the attorney will have the necessary information to provide you with the highest level of legal service.

Start by thinking about your current situation, the communications you have received and any history you have about the legal matter. Summarize your legal needs in a few sentences. Use this as a starting point when you make your first phone call to an attorney.

List the names, dates and pertinent details about your legal matter so you will be ready to discuss it with your attorney either over the phone or during an in-office visit. Gather as much information as you can about the debt, what you've paid, what you feel you owe, and any contact between you, the creditor and any collector.

List and attach any documents or background information you think will be helpful in the first meeting with an attorney. This should include all written communications you have from the collector or the creditor, any final invoices on the claimed debt, any receipts of payment of the disputed amount of the claimed debt, and any notes about contacts you have had with the creditor and/or the collectors about the claimed debt.

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