

Revocable “Living” Trusts

- One of the most common estate planning tools today.
- An efficient and flexible method of administering the assets of a person who becomes disabled and it provides certain advantages in administering the Estate after death.
- In Arkansas, trusts created before Sept. 1, 2005, were deemed irrevocable absent specific language setting forth revocability.
- Arkansas’s new trust code now states that a trust is revocable unless provided otherwise in the document.

Revocable “Living” Trusts, cont.

- Typically, the Trust provides for the payment of income to the Creator during his lifetime and sets forth the disposition of assets upon his death.
- Alternatively, upon the Grantor’s death, the Trust could provide that the remaining trust property will “pour over” or “pour up” to the Grantor’s Will and be disposed of as part of the Testamentary Estate.
- The Grantor may be the initial Trustee, but it is generally wise to name a co-trustee or successor who can act in the event of the Grantor-Trustee’s incapacity and can exercise discretionary powers.

Advantages of a Revocable Trust

- Privacy
 - When a will is filed for probate, it becomes a public record.
- Avoidance of Probate
 - So long as every asset and/or interest in which the Decedent had an interest was transferred to the Revocable Trust during the Grantor's lifetime, probate can be avoided.
- No annual accountings are required.
 - This is unlike a guardianship or conservatorship.
- The legal expense of creating a trust should be less than the legal expenses required for the judicial hearings involved in the appointment of a conservator or committee.

Disadvantages of a Revocable Trust

- All trusts become public records when an interested person brings a suit or proceeding and also when an accounting proceeding is commenced.
- Like a Will, a Revocable Trust can be defeated.
 - In Arkansas “a person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor’s death within the earlier of: 1) three years after the settlor’s death; or 2) 90 days after the trustee sent the person a notice informing the person of the trust’s existence, the settlor’s name, the trustee’s name and address, the time allowed for commencing a proceeding, and a description of the beneficiary’s interest, if any.”
- Not a tax-saving device.
 - The assets will be treated as those of the Grantor, who will be taxable on all income and capital gains during his lifetime.
 - At death, the assets will be includible in the Grantor’s gross estate for estate tax purposes.

Disadvantages of a Revocable Trust, cont.

- Expenses
 - Attorney's fees for the creation of the Trust and fees for transferring assets to the Trust.
- Annual fiduciary income tax returns must be filed if the Grantor is not a Trustee.
- Arkansas law requires an annual accounting to be sent to all beneficiaries of a trust, unless the trust document specifically waives this requirement or the beneficiaries waive the requirement.