

# BUSINESS LAW REPORT

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## Understanding Revocable Living Trusts

By Jay D. Fullman

If you have purchased your home, you have probably made the largest single investment you will make during your lifetime. Along with your home, you also purchased title insurance to protect you and your mortgage lender. To protect you and your lender, you also purchased property hazard insurance. To protect against claims from people who come into your home, you purchased liability insurance.

Now that you have taken steps to protect your lender, and others, what have you done to protect your family?

Establishing a Revocable Living Trust (“RLT”) creates a “win-win” situation for you and your family.

For a modest expenditure now, you can help preserve the investment in your home, save your heirs the expense, heartache, and delay of probate, and keep your assets from court and public scrutiny. You can control the disposition of your home and other assets, help minimize estate taxes, designate a guardian for children, and designate a conservator if you become incapacitated. All this can be done while giving you and your spouse complete freedom to use and control your assets.

**1. Preserve the Investment in Your Home.** With an RLT, your successor trustee will decide if, or when, your home must be sold, or whether title can pass directly to your designated

heirs. Without an RLT, the Probate Court will determine the value of your home and will likely require the home be sold, whether it is a good time to sell, or not. This cost to your estate could be enormous.

**2. Avoid Probate Expense.** A key benefit of establishing an RLT is to avoid probate. If you have a Last Will and Testament or die intestate (i.e., without a Will), but do not have an RLT, a probate is required to transfer the title of your home (and to transfer other assets with a total value of \$100,000 or more) to your heirs. Probate can be expensive, including statutory attorney fees, statutory executor fees, extraordinary fees, and the cost of appraisals, the cost of performance bonds, and other expenses. Dealing with the death of a loved one is difficult enough, without adding to it the difficulty, delay, and expense of going through the courts.

**3. Avoid Probate Court and Public Scrutiny into Your Affairs.** You have undoubtedly worked hard to acquire your home and other assets. The last thing most people want is “Big Brother” looking into their finances. Post-death administration of assets in an RLT is private. Without an RLT, probate is necessary. Since probate is a court proceeding, the records and information are open to the public.

**4. Control Disposition of Your Assets.** In an RLT (like a Will) you designate who will be your heirs, or beneficiaries. You decide who will receive title to your home and other property with an RLT. Without an RLT (or Will) the State has already decided for you how your home and other property will be distributed: ½ to your spouse, and ½ to your children.

**5. Minimize Estate Taxes.** An RLT can be written to take full advantage

of the laws relating to estate taxes, so that your estate will not pay more in death taxes than is necessary. Without an RLT, it is unlikely that any procedure will have been set in place to minimize the taxes on your estate.

**6. Designate a Guardian.** In an RLT you can include instructions regarding who you want to act as guardian to care for your children in your absence. If you desire, you can select different people for (a) physical custody, and (b) financial responsibility over assets you have left for your children’s care, education, and support. Without an RLT (or Will with similar instructions) the State Probate Court, after petitions and hearings, will decide who should look after your children and the assets you left.

**7. Designate a Conservator.** In an RLT you can include instructions regarding who you want to act as your conservator should you become incapacitated. An Advance Health Care Directive is often used in combination with an RLT to address your health care if you become unable to make decisions for your care.

**8. Freedom and Control.** An RLT can be freely changed, modified, or revoked by you during your lifetime. You can amend the RLT to meet your changing needs and wishes. The RLT does not interfere with your ownership and control of your home and other property.

**9. Peace of Mind.** An RLT results in a “win-win” situation because both you and your family will benefit from your advance planning, thoughtful care, and responsible decision-making.

If you have any questions regarding estate planning, call Jay D. Fullman A Professional Corporation at 1-562-694-6005.