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REVOCABLE LIVING TRUSTS (RLTs)

The Revocable Living Trust (“RLT” or often referred to simply as a “Living Trust”) has been a popular estate planning tool for many years. It is a trust which is created during your lifetime, which you can revoke, modify, or amend at any time; so, in other words, you maintain full control of the Revocable Living Trust during your lifetime as the initial Trustee. If you become incapacitated, your successor Trustee then maintains control of the Revocable Living Trust and spends the trust funds on your behalf, pursuant to terms, whether on your care needs or otherwise.

The Trust becomes “irrevocable” only upon your death, in which case the Trust is drafted to include all of the provisions you would normally include in your Will as to who gets your assets upon your death. While it is not required that the Trust actually holds all of your assets during your lifetime, we establish the estate plan so that the appropriate assets are directed to the Trust upon your death. Despite popular misconception, including a Revocable Living Trust in your estate plan with our law firm is not substantially more expensive than just having a Will that makes all distributions of your assets upon death.

Who Should Consider a Revocable Living Trust

These days, we are finding that most of our clients need or will benefit from establishing a Revocable Living Trust as part of their estate plan, especially clients with the following situations:

- Clients will require trusts be established upon death for certain beneficiaries who cannot receive funds directly. Typically, there are Trusts established for younger beneficiaries, such as children and grandchildren, typically under the age of 30, for education, health, maintenance and support. Trusts are also required for disabled beneficiaries, in order to prevent such beneficiaries from losing certain benefits. Trusts can also be established for beneficiaries who may be: undergoing a financial crisis such as divorce, a lawsuit, or bankruptcy; battling addiction or illness; are detained or outside the United States; or beneficiaries who otherwise cannot receive funds directly for any reason.
- Clients own out-of-state properties or intend to move outside New Jersey, whether still maintaining New Jersey residence or not.
- Clients wish for their distribution terms upon death to remain private (remember that Wills are “probated” or recorded, and become public record).

- Clients wish for their distributions of assets to their beneficiaries be efficient and quick, as opposed to distributions under a Will, which can take 9 months or more from date of death.
- Clients have non-probate assets (such as life insurance, payable on death or transfer on death, retirement accounts, etc) that require easier coordination of beneficiary designations, as explained below.
- Clients wish to avoid probate, both in New Jersey and out-of-State, as explained below.
- Clients are concerned that their Wills will be challenged or contested, as it is much more difficult for a disinherited or excluded heir to challenge a Revocable Living Trust than a Will.
- Client wishes that his or her assets in the trust continue to be managed on client's behalf, even if the client becomes mentally incompetent, thereby avoiding the need for a Guardianship and/or Conservatorship in most cases.

Pertinent Benefits of a Revocable Living Trust

1. Avoiding the New Jersey Estate Tax Lien: Under current New Jersey estate tax rules, upon your death, there is an automatic estate tax lien placed on all of your assets, even joint accounts, upon your death. This lien prohibits the release of all such assets until a tax waiver is obtained from the Division of Taxation, or until the Executor can prove that no tax waiver is required via an Affidavit process. To obtain the tax waiver, a New Jersey Estate Tax return must be filed and it can take 1 year or more to get the tax waiver. Certain assets are exempt from this lien, such as personal property and real estate held with a spouse as tenants by the entirety. There is also a blanket waiver that allows for the release of 50 percent of the funds in each account prior to obtaining the tax waiver. However, assets that are held in a Revocable Living Trust are not subject to the lien, although they still must be listed on the estate tax return. Therefore, if you want to make sure that a particular asset will not be frozen by the New Jersey Estate Tax Lien, then you may wish to change the name on such asset to a Revocable Living Trust. *Note however, that assets held in the Revocable Living Trust are still part of your gross estate for estate tax purposes – therefore, placing assets in a Revocable Living Trust does NOT avoid estate taxes.*

2. Coordination of Beneficiary Designations: A Revocable Living Trust also helps coordinate the beneficiary designations on your life insurance, retirement accounts, and other payable upon death (“POD”) or transfer upon death (“TOD”) accounts. Assets with beneficiary designations are not subject to the jurisdiction of the probate court and are not changed by your Will. This can be a problem when you have beneficiaries who should not receive these assets directly, such as minor or disabled children, or if you need these assets to go into a trust to minimize estate taxes. If you set up a Revocable Living Trust, you can simply name the Trust as the beneficiary of all of your assets. Thus, upon your death all of your assets will be paid into the Revocable Living Trust and the terms of the Trust will control who receives all of your assets. An exception to this is that for any tax deferred retirement accounts, there is a significant income tax advantage to naming your spouse as the primary beneficiary. For such accounts, it is still possible to name the Revocable Living Trust as

the secondary beneficiary, although additional language may need to be added to the beneficiary designations to avoid adverse income tax consequences.

3. Avoiding Probate: Revocable Living Trusts were initially created primarily to avoid probate. In some States, the probate process can be very cumbersome with substantial fees and court approval required in order to transfer your assets. In New Jersey, it is not necessary to avoid probate entirely. The process of probate consists of bringing an original Death Certificate and the Will, if there is one, to the county Surrogate's Court and paying a filing fee. If there is no Will, the Administrator must obtain a surety bond, which can delay the qualification for a few weeks. Once the Executor or Administrator is qualified, he or she is then left to carry out duties with little to no court supervision. When the estate administration is complete, the heirs then each sign a document called a Refunding Bond which is filed with the Surrogate's Court for another nominal fee and probate is finished. However, probate in New Jersey and elsewhere can be considerably more complicated if your Will sets up any Trusts upon your death. The most common Trusts are for Disability or for minor or young beneficiaries. The Trustee named in the Will must qualify with the Court in order to become Trustee and then will be required to file an accounting with the Court with fees paid to the Court if the Trust is closed out or if the Trustee changes. The costs of these accountings can be substantial, even several thousand dollars. Therefore, in New Jersey, it is useful to use a Revocable Living Trust to avoid probate whenever you would otherwise include Trusts in your Will.

4. Avoiding Ancillary Probate for Real Property Outside of New Jersey: If you own real estate outside of New Jersey, or if you later purchase such property, then ancillary probate will be required in the other jurisdiction to transfer the property upon your death. For a married couple, this ancillary probate will be required upon the death of the first of you if the property is held individually and on the death of the second of you if the property is held jointly. Ancillary probate may or may not be difficult depending upon the rules in the state where the property is located. You can avoid ancillary probate by transferring the property into a Revocable Living Trust or jointly between two Trusts for a married couple. For any such property you currently own, this will require that a new Deed be prepared by an attorney or title company in the state where the property is located. Also, for a married couple, this will mean that another new Deed will be required upon the death of the first of you since Revocable Living Trusts cannot hold property with survivorship since they do not die. Therefore, if you want convenience upon the death of the first of you, you should hold all such properties jointly with right of survivorship. If on the other hand, you want to avoid ancillary probate for your heirs, then you should hold all such properties in your Revocable Living Trusts.

5. Revocable Living Trust Tax Returns: During your lifetime, any asset held in the name of your Revocable Living Trust can use your Social Security Number. Since the Trust is revocable, any income the Trust earns is reportable on your personal tax return and no separate tax returns for the Trust should be required. Upon your death, your Revocable Living Trust becomes irrevocable and your successor Trustee will need to obtain a separate tax ID number for the Trust and file any necessary federal and state tax returns.

We Recommend the Revocable Living Trust for You: In light of all of these advantages, we recommend Revocable Living Trusts for most of our clients. One exception to this would be for clients who have minimal assets with designated beneficiaries. Another exception would be for clients who do not need any Trusts in their Wills.