

# WHY WOULD I WANT A REVOCABLE LIVING TRUST IN NEW YORK?

*Understand the Benefits of Revocable Living  
Trusts in New York in Greater Detail  
and How It Can Protect Your Assets*



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There are different types of asset transfer vehicles that you can use when you are planning your estate. You can choose to use a last will to state your final wishes, but you do have other options.

Why would you want to consider an alternative to a last will? Let's begin by answering this question.

## **THE DRAWBACKS OF PROBATE**

Let's say that you maintain personal possession of your property throughout your life. You create a last will expressing your final wishes with regard to the distribution of these monetary resources.



When you create a will you should include the nomination of an executor. This is the person who is going to administer the estate after your passing.

The executor does not immediately start distributing inheritances after the death certificate has been issued. The will must be admitted to probate. During probate the Surrogate's Court must determine its validity and supervise the administration of the estate.

We would like to emphasize the fact that the state of New York provides an efficient, effective, and streamlined probate process. This being stated, there are inherent drawbacks that simply cannot be avoided.

Probate is going to take a certain amount of time to run its course. At minimum it will take months, and complicated cases can take years. There are costs that accumulate during probate as well. Lastly, probate records are available to the general public, so there is a loss of privacy.

It is possible to arrange for the transfer of assets outside of the process of probate.

## **REVOCABLE LIVING TRUSTS & PROBATE AVOIDANCE**

If you were to create and fund a revocable living trust, you could facilitate the transfer of your assets to your heirs outside of probate.

You as the person creating the trust are referred to as the grantor. The anatomy of a trust will include a trustee who administers the trust, and a beneficiary or beneficiaries who will receive monetary distributions out of the trust after you die.

You may be reluctant to create a trust because you are concerned about losing control of the assets while you are living. In fact, you cannot lose control of the resources when you fund a revocable living trust.



Think about the name: the trust is *revocable*. If you want to, or if you have to for some reason, you can revoke or rescind the trust at any time and it would no longer exist. The assets that you funded into the trust would once again become your direct personal property.

Of course you are creating the trust for a reason, so it is very likely that you will not want to revoke it. However, even while the trust is intact you retain control of the assets.

You can act as both the trustee and the beneficiary while you are still alive and well. Successors that you name when you create the trust agreement assume

these roles after you pass away.

## **INCAPACITY PLANNING**

There is another advantage that you would gain with a revocable living trust. When you are planning your estate you should consider the possibility of incapacity late in your life. A significant percentage of seniors become unable to handle their financial affairs eventually.

When you create a revocable living trust you can name a disability trustee. This individual or entity would be empowered to administer the trust if you were to become incapacitated. The disability trustee would be guided by the instructions



that you set forth in the trust agreement.

Incapacity is quite common among people who have reached an advanced age, so this is something to take seriously. One out of every eight senior citizens has

Alzheimer's disease, and over 40 percent of those who are 85 years of age and up have contracted Alzheimer's.

Alzheimer's is not the only cause of incapacity. When you combine all of the possible causes of incapacity with Alzheimer's disease, you can see why incapacity planning is a must.

## **CONCLUSION**

When you use a last will to facilitate the transfer of your assets after your

passing, the will must be admitted to probate.

Probate is a legal process that takes place under the supervision of the Surrogate's Court in the state of New York. While probate provides certain protections, it is time-consuming, it can be costly, and it is a public proceeding.

If you were to arrange for the future distribution of your assets through the terms of a revocable living trust, these distributions would be made outside of the process of probate.

To learn about the benefits of revocable living trusts in greater detail, arrange for a consultation with a licensed estate planning attorney.

## **REFERENCES**

American Bar Association

[http://www.americanbar.org/groups/real\\_property\\_trust\\_estate/resources/estate\\_planning/revocable\\_trusts.html](http://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/revocable_trusts.html)

New York City Bar Association

<http://www.nycbar.org/get-legal-help/legal-referral-service/practice-areas/wills-trusts-and-estates/living-trustsrevocable-and-irrevocable>

## About the Author



### Mark S. Eghrari

Mark S. Eghrari is an attorney in private practice in Smithtown, New York. He has been in practice since 1988. Mark S. Eghrari provides extensive estate and tax planning services to individuals and businesses. Mr. Eghrari's primary focus is helping clients avoid probate, minimize or eliminate Federal and State Estate taxes and protect their assets from the high cost of nursing care, if they become ill. Mr. Eghrari's expertise is in providing unique and innovative estate planning solutions that create a secure future for his clients and their loved ones. Mr. Eghrari is a member of the American Bar Association and New York State Bar Association as well as the National Academy of Elder Law Attorneys and the American Academy of Estate Planning Attorneys.

Mr. Eghrari completed his undergraduate work at Lafayette College in Easton, Pennsylvania and received his MBA in banking and finance from Hofstra University on Long Island. He earned his Juris Doctorate from the Hofstra University School of Law, where he was a member of the Law Review. While in law school, Mr. Eghrari gained practical experience in the corporate tax department of Citicorp in New York city.

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