



AMES PLANNING ASSOCIATES, INC.  
*A FINANCIAL LIFE PLANNING FIRM*

## What Is a Revocable Living Trust?

A **revocable living trust** is a legal arrangement by which an individual (or couple) shifts ownership of property (such as securities, a home, real estate, bank accounts, certificate of deposits, stocks, bonds, life insurance) from personal ownership into the legal ownership of the trust. A revocable living trust is just what the name implies--one that is created during an individual's life, but that can be changed or terminated at any time.

The person whose assets are placed in the trust is called the **trustor** or **grantor**. The grantor must actually change the title of ownership of each asset that will be placed in the trust from his or her name to ownership by the trust. Merely setting up a trust agreement does not place any property into the trust — a separate transaction is needed for each asset. Property that continues to be owned in your own name, held in joint tenancy, or owned as tenants-in-common is not owned by or disposed of by the trust and is generally subject to probate.

Life insurance and retirement plan benefits that name a beneficiary other than your living trust are not disposed of by the trust. Typically, a grantor reserves the right to amend the trust, change the beneficiaries, name a different trustee, change the date of termination, or ultimately, to revoke the trust and have the property titled back in his or her name.

A **trustee** manages the trust's assets according to the directions in the trust agreement. The trustee can be the person creating the trust, a friend or family member, several individuals, a corporate entity (such as a bank or trust company) or any combination of these. As the initial trustee, the grantor can maintain full control of the trust until his or her death or incapacity. When the grantor relinquishes the trustee role, a **successor trustee** takes over. The successor trustee has legal responsibility for administering the trust prudently and solely for its beneficiaries, and must keep the beneficiaries reasonably informed. Naming more than one successor trustees is advisable, given that a trustee may die or become incapacitated. The successor trustee should be trustworthy and have good business and management capabilities.

New in New Hampshire, once the trust becomes irrevocable, the trustee is required to make an annual accounting to the court system. Sometimes, as a check on one another, two or more co-trustees are appointed.

Some grantors prefer to make a financial institution their successor trustee, although this is often unnecessary. An institution, often costly, can assure stability in the trustee role. Many institutional trust departments, however, may not accept small trusts or trusts that

do not generate income. When selecting a financial institution as a trustee, the grantor should examine the financial credibility of the institution's trust department.

The trust agreement document contains instructions to the trustee regarding investment and management of the trust assets, who is to receive income from the trust, and what happens to the trust if the person creating the trust becomes incompetent or dies. **The trustee can do only what the trust agreement specifies.** Ultimately, the trust agreement will provide that the trust be terminated and assets distributed to the beneficiaries.

**Beneficiaries** are named by the grantor(s) and can be individual(s) who formed the trust, friends, family members, a college or university, hospital, library, charity or other organization. Unless the beneficiaries are the trust grantors, they have no control over the trust. The trust agreement should identify what is to be done with the trust property at the termination of the trust (often at the death of the last grantor) and what happens to a beneficiary's share if he or she dies before the trust terminates. The grantor may wish to consider writing safeguards into the trust so that beneficiaries do not receive unfettered access to funds at too young an age, cannot transfer their trust interest to a third party, or to protect beneficiaries' trust interests from creditor claims. The revocable living trust assets are not protected from creditor claims against the grantor nor does a trust insulate the grantor from claims of a surviving spouse.

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