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## HOW DO I KNOW IF A REVOCABLE LIVING TRUST IS RIGHT FOR ME?

Many of our clients have attended seminars on Living Trusts. Everyone has seen newspaper advertisements, some have received solicitations in the mail, and others have even had someone come to their homes. These salesmen make their product sound so attractive, and part of this pitch is to make probate sound terrifying. How do you know what's right for you?

Bogutz & Gordon prepares many Revocable Living Trusts (RLT) for our clients, but RLTs are not for everyone. In many cases there are other, cheaper, more efficient alternatives. Here is some background information, and some questions to ask yourself.

1. An estate planning package involving an RLT is generally 3-4 times more expensive than a similar package using a Will as the primary testamentary document. Modest estates (less than a few hundred thousand dollars) usually don't justify the formality of an RLT.
2. An RLT must be "funded" to be effective. This requires you to retitle most or all of your assets into the name of the Trust you create, and to make sure subsequently acquired assets are titled in the name of the trust.
3. Probate in Arizona is not nearly so evil, or expensive, as many people are led to believe. Probate applies only to assets owned in your name alone, and without a "beneficiary designation". The probate court does not get involved with assets in joint tenancy, POD (Payable On Death) accounts, beneficiary deeds, life insurance policies, or IRA and 401(k) accounts, because each of these names a beneficiary or automatic successor.
4. It is true that a Living Trust normally avoids the cost of administration through the probate court, but even a Living Trust does not avoid all legal costs upon a death. Assets still need to be transferred, final income tax returns still need to be filed, creditors still need to be paid, and family members will usually need advice regarding inheritance and trust issues.

What a Living Trust avoids is the necessity of involving the court if there are no disputes among family members, creditors, beneficiaries, and other interested parties.

5. One client recently told us a non-lawyer trust salesman quoted her \$16,000 to \$20,000 for a probate administration; in an ordinary case this would be outrageous! Certainly there are probate cases which cost that much, but those are unusual situations involving Will contests between heirs, deaths in unusual circumstances (e.g. homicide), disputed creditor claims, etc.
6. An ordinary probate administration in Arizona should probably cost \$2,000 to \$6,000, depending upon the size and complexity of the estate. Of that, approximately \$500 to \$1,500 would be the additional probate court related costs; most of the other costs would still be incurred during administration of an RLT.
7. Both Federal and Arizona estate taxes do not take effect until the level of \$2 million dollars per person (for decedents dying after December 31, 2005). Merely putting assets into an RLT does not avoid estate taxes, because, the \$2 million dollar value includes all assets under the control of the decedent, including IRAs, life insurance death benefits, assets in a RLT, and assets owned individually controlled by a Will. A properly-drafted RLT can be used in some cases to minimize estate taxes, but other methods are also available. If your assets fall well below this amount, you don't need an RLT for purposes of avoiding estate tax.

Here are some of the factors we generally look at in determining whether or not to recommend a Revocable Living Trust:

- A. Do the clients own real property in more than one state? If so, it's possible to avoid multiple probates with one Living Trust.
- B. Are the assets large or complicated? Are there lots of different assets in different locations, different accounts, different brokerages? If so, a Revocable Living Trust will provide a good means of getting everything organized.
- C. Does one of the parties suffer from dementia, Alzheimer's disease, or physical disabilities? If so, having someone else in position to serve as Trustee, or contingent Trustee, is often useful.
- D. Are the estate planning wishes of husband and wife different due to a second marriage or other considerations?
- E. What are the clients' ages? Are they young and still acquiring property which would have to be managed in a Living Trust for many years? Or are they older and at the point where they are starting to dispose of their assets?

- F. When a husband and wife own all of their assets jointly, even without an RLT there will usually not need to be a probate when the first spouse dies. Perhaps the better time to consider an RLT is later.
- G. Are there assets which have appreciated in value, such that there would be a substantial capital gains tax due if the asset(s) were sold? An RLT is a very convenient method of taking advantage of the “double step-up” in basis offered to community property.
- H. Are all of your beneficiaries compatible, and do you expect the transition of your assets to the next generation to go smoothly? If so, an RLT will probably work well.
- I. Or are there potentially adverse parties who would raise objections to the administration of your estate? If so, the certainty of having the probate court grant final approval of your administrator’s actions may be valuable.

If you are seriously considering doing a Revocable Living Trust, be careful whom you work with:

1. Non-lawyers are generally selling a form or a “one size fits all” product. How much flexibility is there in the documents offered? Were other alternatives to probate discussed, such as joint tenancy, POD/TOD/ITF accounts, beneficiary deeds, life insurance/IRA beneficiary designations?
2. How do you know if the salesman, or his company, will be there in five, ten or twenty years when you really need assistance?
3. Legal fees for professionally prepared trusts are often no more than fees quoted by document preparers, or “Living Trust Mills”.
4. Only a lawyer who specializes in this area will know all of the options, and be able to answer your questions (even the ones you don’t know to ask) and put together an estate plan that is right for you.
5. Living Trusts which are not properly tailored to the client’s circumstances, or which are just poorly drafted, often require significantly more time and effort (and cost) to administer. A well-drafted trust can certainly facilitate handling your affairs, but a poorly-drafted trust may make things worse than if you didn’t have any estate plan at all.