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## Avoid the Uncertainty of Incapacity and Death by Using Revocable Trusts

*by Tara M. Walsh and Leena Ketkar*

Having a proper trust set up in the event of incapacity or death that describes your desires and defines incapacity, as well as other important terms, can ensure that your assets are managed how you want them to be throughout your lifetime and after your death. The importance of having a proper trust set up is best illustrated by the woes of Sumner Redstone, currently 93 years old and suffering from dementia. With Redstone's fortune estimated at \$5 billion, many people have been battling over whether Redstone is in fact incapacitated and to what extent he is unable to control the assets in his trust. Such troubles could have been easily avoided through the use of a proper trust.

The benefits and drawbacks of establishing a trust vary depending on the type of trust that is established: irrevocable or revocable. Generally, irrevocable trusts cannot be modified or terminated without the permission of the trust beneficiaries; however, irrevocable trusts protect your assets from creditors during your life and allow you to minimize death taxes when you pass away. Revocable trusts can provide even modest estates with more control. Unlike irrevocable trusts, with revocable trusts you retain certain rights to the assets in the trust, and the property must be used and managed for your benefit during your lifetime, if you so desire. Upon your death, the trust becomes irrevocable and the terms remain as is. The following discussion outlines the many benefits of establishing a revocable trust in your estate planning.

### 1. Provides Flexibility

A revocable trust provides you with the flexibility necessary to address unexpected life changes while also giving you the protections of having a trust. You may decide to alter the terms of the trust agreement, appoint a new trustee or beneficiary, or even revoke the trust and withdraw your assets from the trust at any time. In the event that something unexpected happens, you have the flexibility to adjust the trust in response to your life changes and any life changes of the individuals affected by your trust.

### 2. Protects You in the Event of Incapacity

In the event of incapacity, you want to ensure that your property is used to your benefit during your lifetime and is managed properly. This can be done by creating a trust. Incapacity should be specifically defined in the trust, along with who determines when you are incapacitated, in order to avoid court intervention. If the court must become involved, you may lose control over who will manage your property and how it will be managed. However, if this information is explicit in your trust agreement, the trustee may make quick decisions regarding your assets and approve distributions of income once you are deemed incapacitated. While a durable power of attorney may remedy this concern, it still provides a modicum of uncertainty about whether third parties will honor the power or attorney under certain circumstances and whether the agent appointed in the power of attorney will be able and willing to act. A revocable trust avoids these

issues while giving you control over your property when you are physically or mentally unable to make these decisions.

### 3. Protects Your Family

A revocable trust ensures that your family will be well taken care of and protected after your death. In the event of remarriage, or if you have children from a prior marriage, a revocable trust is one way to ensure that your estate will not end up in a heated legal battle over the distribution of your assets. Setting up a trust leaves the decisions regarding the distribution of your assets completely up to you and helps your family avoid disputes following your death.

A revocable trust can also protect your minor children and guide their life decisions long after you are deceased. With a revocable trust, you can determine at what age(s) your children receive their share of your estate and guarantee that they do not receive their entire share in one lump sum. Further, you can authorize distributions of their share for specific expenses, such as college tuition.

### 4. Avoids Probate

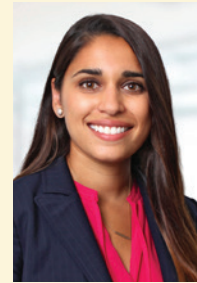
Probate is the process that is required in order to prove the validity of a will. However, a revocable trust avoids the probate process completely. Although assets in the name of the deceased person must pass through probate, assets held in a trust at the time of a person's death avoid the probate process. Avoiding probate allows you to speed up the process of settling your estate while also avoiding potentially costly and lengthy probate proceedings, depending on the jurisdiction in which you reside.

### 5. Keeps Your Estate Plan Private

Wills and probate proceedings are a matter of public record. Thus, any individual who is interested in the disposition of your estate at the time of your death can easily gain access to this information at the local courthouse. By setting up a revocable trust, you ensure this personal information remains private, since your executor or trustee is not required to lodge your revocable trust with the county.



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### 6. Avoids Ancillary Probate

When you pass away, if you own a piece of real property located in a jurisdiction other than the state in which you resided during your lifetime (e.g., an out-of-state shore property or other vacation home), your executor will likely need to probate in both the jurisdiction in which you resided during your lifetime and the jurisdiction in which your second home is located. This additional probate requirement is called "ancillary probate" and adds another layer of cost and complexity to the probate process. To avoid ancillary probate, you can transfer your out-of-state property into a revocable trust during your lifetime. At your death, if the trust holds the out-of-state property, then such out-of-state property, generally, will not be subject to ancillary probate.

Please contact us to make sure all your estate planning documents are in place and up to date, so your assets can be handled in the manner you wish.

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