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VERMONT REVOCABLE LIVING TRUST: WHY IT’S NOT ALWAYS ENOUGH



STEPHEN A. UNSWORTH
VERMONT ESTATE PLANNING ATTORNEY

Many believe that a revocable living trust will protect their assets. While there are many reasons – and good ones, at that – these types of trusts are important, asset protection isn't necessarily one of them. Creditors can and will seek to recoup their losses from these financial vehicles.

So if it doesn't protect your assets from creditors, you may be wondering what purpose it serves. A revocable living trust is often included in an estate plan with the goal of protecting your loved ones by avoiding the lengthy probate process after your death. You can place your property into the trust, thereby eliminating much of the confusion and the overwhelming legal process of probate.

In a traditional trust agreement, the owner provides specifics associated with the trust and how it will operate. Further, it also



puts into place protective mechanisms for whomever you choose to oversee the trust, such as defining the parameters for managing, investing and distributing the assets. These parameters may be as specific as you wish or it can provide a wide latitude in the decision making process. Historically, clients incorporate a combination of both.

You can fund your trust with your assets during your lifetime or you may elect to wait until your death for it to be funded. These are referred to as “unfunded trusts”.

Because it’s a revocable trust, you may change it in any way you wish,



including revoking it in its entirety. You have the option of adding or reducing the assets, providing for a lot of flexibility.

Generally, there are estate tax savings that come with a revocable trust. It’s the ability to plan for the unexpected, the

privacy (since probate is eliminated) and versatility that really serves as an enticement for many clients.

Subtrusts are options that many married couples elect. A subtrust can be created by a couple to hold their assets in a unified tax credit while another can be used to hold those assets that qualify for a marital estate tax deduction. Each can have its own management and distribution parameters. Your estate planning lawyer can help with those distinctions if it’s a solid choice for you.

As you can see, there are a number of reasons as to why a revocable living trust is a great solution, but it’s not for everyone. In a revocable trust, you remain the owner of the assets that define it. Because of that, if you’re sued, your trust is considered an asset that can be targeted by creditors.

If this is a possibility, you may wish to consider other planning tools – and there are many.

Remember that those same assets you're trying to protect are also taxable



as long as they're in a revocable designation. Any income that is due to any of those assets will have to be included on your personal taxes.

As mentioned, there are reasons why a revocable trust isn't enough in

some instances; however, when paired with an irrevocable trust, it becomes a far better financial vehicle. If you're at risk of being sued, you can set aside those assets in an irrevocable living trust. While it protects your assets, it also means you give up control of those assets. They're available for your heirs after your death, but once it's part of these type of trust, your decision making powers are no longer.

A trust can actually accelerate the estate administration process, which can do a lot to ease the stress in an otherwise difficult time. Another reason many opt for trusts is because it's difficult for other family members to contest them. Disgruntled family members are far less likely to challenge your final wishes in court if they know they're not likely to win. Finally, it also allows you to keep your family affairs private since it's never filed with

a court clerk. You control that aspect of it, in that only those involved with the actual trust administration are privy to your affairs. It can keep family dynamics intact while ensuring those you've distanced yourself from don't have a way in.

Also, remember these aren't your only options. There are family limited partnerships, which allow you to designate a limited liability company, which for some families, is an ideal vehicle.



When it comes down to it, your best efforts should include meeting with an estate planning

lawyer. Remember that laws change – both federal and state – and while you may need to make changes to keep up with those laws, an estate planning lawyer can help ensure there are no vulnerabilities in your overall estate plan. This is one of those times in life when a shortcut can have less than ideal repercussions for your overall financial planning.

We all want to leave our children and grandchildren a solid foundation from which to build their lives. Don't allow federal and state laws, and the legalities of trust designations, to keep that from happening.

About the Author



Stephen A. Unsworth has over 30 years of experience in estate planning and business law. His mission is to provide quality estate planning services, including assistance with Living Trusts, Wills, Medicaid Planning, Probate, Trust Administration, Powers of Attorney, Special Needs Planning, and Family Limited Partnerships.

Stephen is admitted to practice law in both Vermont and Maine. He is a member of the Vermont Bar Association, the Chittenden County Bar Association, the American Academy of Estate Planning Attorneys, the National Academy of Elder Law Attorneys, and the Vermont Bar Association's Elder Law and Probate & Trust Sections.

Unsworth Law, PLC

www.unsworthlaw.net

Railroad Avenue Partners, Professional Building

26 Railroad Ave.

Essex Junction, VT 05452

Phone: (802) 879-7133