

DO I LOSE CONTROL OF ASSETS IN A REVOCABLE LIVING TRUST?

“We will look at revocable living trusts and the matter of control.”



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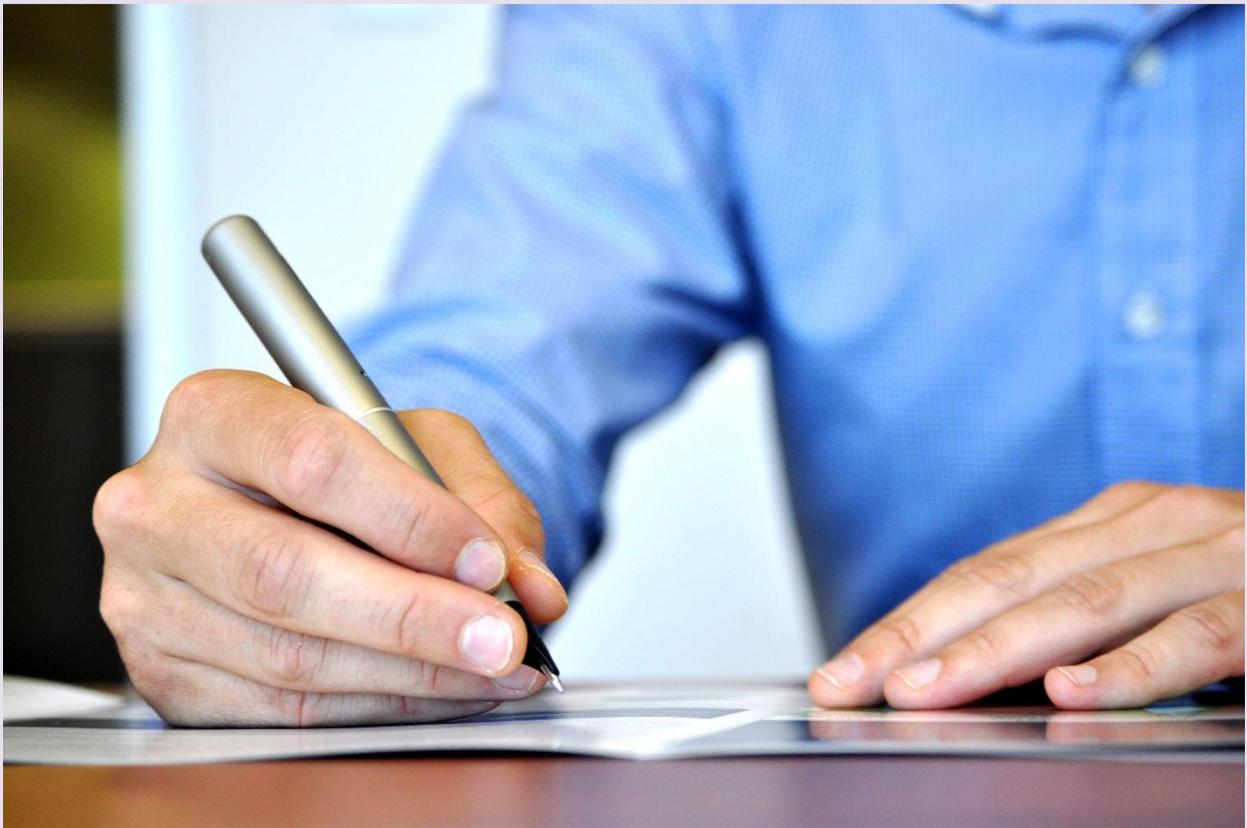
There are certain misconceptions that some people harbor when it comes to trusts. One of them is the notion that you surrender all control of assets that you convey into any type of trust.

In this paper we will look at revocable living trusts and the matter of control.

REVOCABLE MEANS REVOCABLE

When you convey assets into a revocable a living trust, you do not lose control of the resources.

The individual who creates a revocable living trust is referred to as the grantor of the trust. There is a trustee who administers the trust, and there is a beneficiary who can receive monetary distributions from the trust.



If you create a revocable living trust, you are the grantor, but you can also act as the trustee and the beneficiary while you are alive and fully capable of handling your own affairs. As the trustee, you can control the actions of the trust. It is up to you to make investments and otherwise handle the resources.

Since you are the beneficiary, you can also receive monetary distributions out of the trust.

When you look at the name of the trust, you see another level of control. Since it is revocable, you can dissolve or rescind the trust at any time. If you were to revoke the trust, it would no longer exist, and the assets that had been conveyed into the trust would become your direct personal property again.

You name a successor trustee and a successor beneficiary (or beneficiaries) in the trust agreement. After you pass away, the successor trustee distributes assets to the successor beneficiary or beneficiaries in accordance with your wishes.

FURTHER BENEFITS

The retention of control is one of the benefits that you gain when you create a revocable living trust. Probate avoidance is another benefit.

When the successor trustee distributes resources to the beneficiary or beneficiaries, the asset distributions take place outside of the legal process of probate. This is the major advantages that you gain when you create a revocable living trust.

Probate is a legal process that an estate must pass through before personally owned property can be distributed to the heirs. This process can

be very time-consuming, and there are considerable expenses that present themselves during probate.



Assets transfers through the terms of a revocable living trust are not subject to the probate process.

There is an incapacity planning benefit as well. Many seniors become incapacitated late in their lives. If you take no steps to prepare for possible incapacity, the state could be petitioned to appoint a guardian to handle your finances, and you would become a ward.

You can prevent a guardianship when you use a revocable living trust to transfer your assets. When you create the trust agreement, you can empower the successor trustee to administer the trust in the event of your incapacitation.

IRREVOCABLE TRUSTS

In addition to revocable living trusts, there are also various types of irrevocable trusts. These trusts are used for asset protection, estate tax efficiency, and Medicaid planning purposes.

If you were to convey assets into an irrevocable trust, you would be surrendering direct personal control, because you cannot revoke the trust.

SUMMARY

There are revocable trusts, and irrevocable trusts. If you convey assets into a revocable living trust, you continue to control the resources. While you are living, you can act as the trustee, and you can also accept distributions from the trust as the beneficiary.

If you want to, you can dissolve the trust entirely, and you can change the terms of the trust as you see fit.

These trusts are used because they provide probate avoidance, and you can also account for the possibility of incapacity.

There is another type of trust called an irrevocable trust. You do surrender ongoing control when you create this type of trust. Because you surrender ownership, assets conveyed into an irrevocable trust would not be part of your taxable estate, and they would be protected from litigants.

Irrevocable trusts are also used by people who want to divest themselves of assets prior to applying for Medicaid.

To learn more about trusts, contact a licensed estate planning attorney to set up a consultation.

REFERENCES

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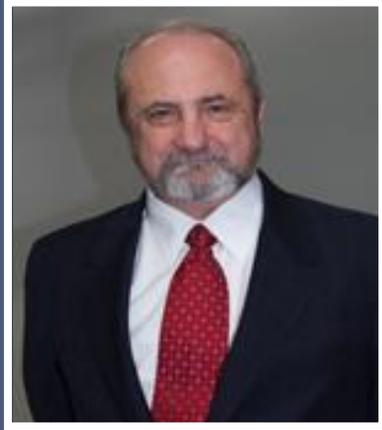
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About the Author

Barry D. Horowitz



Barry D. Horowitz is a founding partner in the law firm of Nirenstein, Horowitz & Associates, P.C. He received his diploma from the Loomis Chaffee School and his Bachelor of Arts from Bennington College, where he dual majored in philosophy and music.

Mr. Horowitz was awarded his Juris Doctor degree with honors from the University of Connecticut School of Law. While attending law school, Mr. Horowitz received the American Jurisprudence Award in Legal Ethics and the Nathan Burkan Award.

After graduation from law school, Mr. Horowitz continued his legal education at New York University School of Law where he received a Post Doctorate Law Degree in Taxation. He has also recently received a national achievement award.

Mr. Horowitz is admitted to practice before all the state courts in the State of Connecticut and the United States District Court. He is a member of the Hartford County Bar Association, a charter member of the American Academy of Estate Planning Attorneys, and has recently received the American Academy Award. Mr. Horowitz is also an active member of the Connecticut Bar Association where he is a member of the Elder Law Section, the Estate Planning and Probate Section, and the Professional Ethics Committee. Mr. Horowitz practices exclusively in the area of Estate Planning where he has earned a reputation as a dynamic and entertaining speaker. He also has recently published a book entitled "Guiding Those Left Behind in Connecticut."

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