

A Review of Steven Merkel's Article, *Establishing a Revocable Living Trust*

Click here to link to Merkel's article: <http://www.investopedia.com/articles/pf/06/revocablelivingtrust.asp>

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Steven Merkel does a fair job at presenting the positive aspects of the Revocable Living Trust, but inappropriately ends his article published on Investopedia.com on a sour note. Merkel improperly minimizes the dramatic improvement in estate planning that results for the vast majority of Americans who adopt revocable trusts in their estate plan when he says that "some" will benefit.

In the "Disadvantages" section of his article entitled *Establishing a Revocable Living Trust*, perhaps (in his defense) Steven Merkel is just trying to offer balance relative to his enthusiasm for the technique in the first part of his article. However, I strongly disagree, after years of direct experience with advising regarding the use of revocable living trusts and helping clients administer their trusts, that the disadvantages are numerous or as negative as Mr. Merkel makes them sound.

My experience, to the contrary, is that it is relatively straight forward to adapt to the use of the living revocable trust. After adopting a revocable living trust, life goes on pretty much as before, with the added huge benefits of living trust ownership of assets.

Here is my view of Mr. Merkel's so-called disadvantages based on 25 years of practice as a trusts and estates lawyer:

Recording-keeping is no different than what you would do for yourself (as long as you are managing your own assets for yourself and not for anyone else). If you are a trustee for someone else (or someone else is for you, you're darn right you're going to need good record keeping, and so you should - but not *onerous* record keeping).

Trusts proliferate yearly. There is no substitute for good trust counsel. Knowledge on how to manage and account for assets held in trust abounds in most major metropolitan areas.

Retitling of assets – this is not difficult, just detailed. Most clients will retitle assets before they die anyway, in one way, shape or manner (as a spouse dies, as we change our holdings, as advisors change, etc.) and at such times, we have to retitle many assets anyway. Having said that, following instructions today – clearly spelled out by competent counsel, while you are competent and have the time to do the changes methodically – should not be a hassle, and will prevent having to retitle the assets later when you are less capable perhaps, and when the changes would have occur through the services of the probate court! And when inevitable events occur in your life that otherwise would require changes to title and beneficiary designations for assets (when there is a death or a change in holdings) trust ownership will minimize the changes needed.

Comparing the expense of planning using a trust today with that of *probate* an estate later, the cost pales in comparison. What Merkel should be doing is a cost-benefit analysis, in which case the trust comes out way ahead.

Regarding asset protection, just because revocable trusts offer little protection for the creators of those trusts is not a reason NOT to do one! Furthermore, well drafted trusts will afford you protection of assets at the time of your incapacity, and will greatly improve the protection of those assets for the next generation. Try to do that with a will!

Administrative expenses for a revocable living trust are practically nil while you are living. Yes, you should consult your attorney occasionally – our clients do so once a year as a rule. If you are incapacitated, your costs for going through “living probate” – court supervision of the management of your assets, will be far more costly and will still be likely to include professional fees that Merkel says you are going to pay.

If you don't need professional assistance with managing assets, you won't need it under trust ownership either. Looking ahead, if you don't have family members that can (or are willing and able to find the time) do an adequate job managing assets for you while you are incapacitated, or for your heirs after you are gone, you or your estate will have to incur professional administration fees then as well, whether the assets are in a trust or not. The presence of the trust agreement should make the management easier and certainly no more expensive, and probably less.

Owning assets under a revocable living trust does not create additional tax filings for you, either.

Unpredicted problems??? You're not talking about suddenly having unusual, weird, or even *unpredicted* problems just because you own assets under a trust agreement. We have never had trust ownership cause a problem for clients of the kind Merkel warns about. The title insurance issue (*title to real property* not be insured for following a transfer to a trust should not happen under the existing title insurance policies and since 2007 under revised title insurance policies issued by the vast majority of companies – those that adhere to the universal standard of “ALTA” policies – this is a very esoteric problem).

Consistent good advice from trust counsel will assure you that you are in compliance with laws and procedures affecting your ownership of assets in trust.

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