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REVOCABLE TRUST VS. WILL - ADVANTAGES AND DISADVANTAGES

	REVOCABLE TRUST		WILL	
	Advantages	Disadvantages	Advantages	Disadvantages
Death Taxes	A REVOCABLE TRUST DOES <u>NOT</u> SAVE DEATH TAXES; the rules are the same regardless of whether the assets are held in a revocable trust or by an estate.		A Will also does not save death taxes. Regardless of whether a person's assets are disposed of pursuant to a Will, a revocable trust, or under the statutory laws (i.e., if the person dies without a Will), the rules are the same.	
Re-Titling Assets		If a revocable trust is created to avoid probate, substantially ALL of the trust creator's assets (particularly real estate) must be transferred into the name of the trust, and, moreover, the trust creator must remember to put all assets subsequently acquired into the name of the trust. There are some exceptions, but the trust creator should consult his/her attorney to be sure the exceptions apply. If this is not done, the estate will need to be probated anyway. At the same time a revocable trust is created, a Will providing that any assets not in the trust's name will go to the trust should be signed.	There is no need to re-title assets.	

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Court Supervision	<p>The probate process is avoided and there is little or no public record of the estate assets and beneficiaries.</p> <p>No court costs; there may be nominal costs in connection with transferring title to real estate and transferring other assets.</p>	<p>Beneficiaries must take the initiative to enforce their rights</p>	<p>Court supervision to protect the rights of beneficiaries</p>	<p>The probate process requires some additional paperwork and there is a public record of estate assets and the beneficiaries.</p> <p>Court costs must be paid; they will amount to approximately 0.5% of estate assets.</p>
Fees	<p>Because the estate is not subject to the statutory maximum fee, smaller estates may find it much easier to find attorney assistance.</p>	<p>Setting up a trust will incur substantial legal fees, and the trustee may also need the assistance of an attorney to transfer assets at the trust creator's death. There is no court supervision limiting legal fees at the death of the creator of the trust.</p>	<p>Legal fees are limited to amounts approved by the court, typically about 2% of estate assets.</p>	<p>It may be difficult to get an attorney to handle a smaller estates, because the work the attorney puts in may exceed statutory maximum fee allowable by the court.</p>
Asset Management	<p>Asset management may be provided during the lifetime of the creator of the trust. The creator of the trust can name someone else to manage assets during his/her lifetime and if the creator of the trust is the trustee, someone else may also take over management of the trust if the trust creator becomes incapacitated.</p>	<p>Additional documentation may be needed to complete financial transactions, because the institution being dealt with may request proof of the authority of the Trustee.</p> <p>May add complexity when the trust assets are distributed to beneficiaries for the same reason.</p>		<p>The Will does not address asset management during the life of the person making the Will. An investment advisor can be hired and/or a power of attorney can be signed giving someone else the power to manage assets in the event of incapacity. However, there is still a possibility that the power of attorney may not completely protect the assets.</p>

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Length of Administration	Administration is typically quicker.	There is no statutory limit on how long it might take to fully transfer assets of a trust after the grantor's death	There are statutes requiring that a decedent's estate be fully administered within 3 years.	Court appointment of the estate administrator is necessary. The estate must remain open at least four months.
Creditors		<p>ASSETS ARE <u>NOT</u> PROTECTED FROM CREDITORS.</p> <p>Unknown creditors are allowed one year to file claims if a decedent's assets pass via a revocable trust unless notice is published. If notice is published, unknown creditors have four months to file claims. The people to whom assets are distributed during that one year period may be liable if a creditor files a claim.</p> <p>Known creditors should be given mailed notice; however, this may not always be done because there is no specific requirement.</p> <p>Notices in more than one county may be required.</p>	Unknown creditors claims are barred four months after notice is published.	Known creditors must be mailed notice.

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Real Estate in More Than One State	The preferred vehicle for transferring real estate located in a state other than the decedent's residence is a revocable trust, because an ancillary estate in each estate where real estate is held can be avoided.			If the decedent holds real estate in more than one state, an ancillary estate may be required in each state where real estate is held. This can be avoided, however, by holding the real estate in joint tenancy, a life estate-remainder, or a revocable trust created for the specific purpose of holding the out-of-state real estate.
Residency	The preferred vehicle for a person who may change their state of residence or where residency is ambiguous.			
Tax Returns	If the creator of the trust is the Trustee, a separate tax return need not be filed for the trust; the grantor of the trust uses his/her own social security number for the trust assets.	If the creator of the trust is not the Trustee, a separate income tax return must be filed for the trust; and the trust must have a separate tax identification number under which the income is reported.		