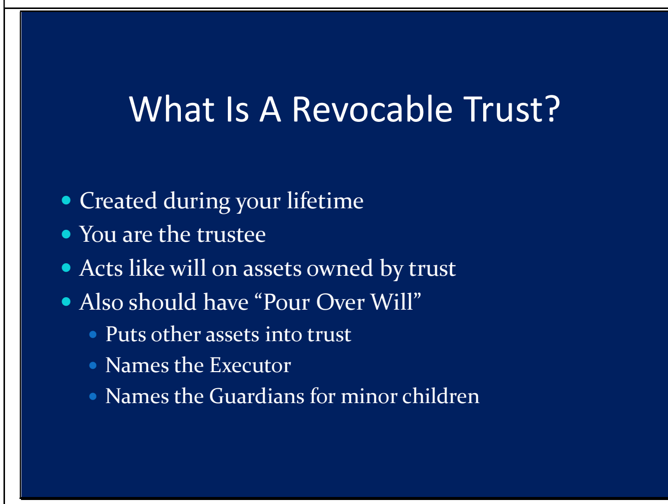
Should I Use A Revocable Trust?

My name is Kendall Brown. As an attorney I have practiced in the estate planning area for over 40 years. One of the questions my clients often ask me is should I use a revocable trust? The purpose of this tutorial is to answer that question for you.



The first step in determining whether you should use a revocable trust is to understand what a revocable trust is. A revocable trust can also be called a revocable trust or a living trust. It is a trust that you create during your lifetime. You are the trustee of the trust so there is no need to have a bank involved. A revocable trust acts like a Will on those assets that are owned by the trust. It determines who receives those assets and when they receive them. In addition to the revocable trust you should also have a pour over Will. The pour over Will accomplishes a number of things. First, in the event you have forgotten to put certain assets into the name of the trust, it will say that those assets pass into the trust upon your death. The second thing a pour over Will does is to name the executor of your estate. Your trust will have a successor trustee after your death as well. Finally, and perhaps most importantly, the pour over Will names a guardian for any minor children you have.

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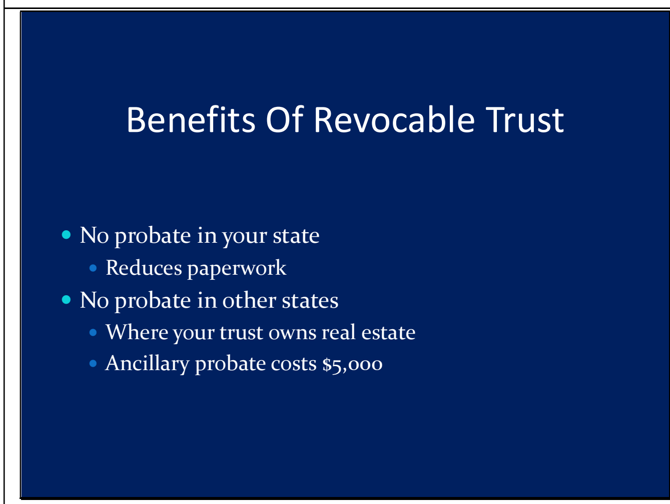
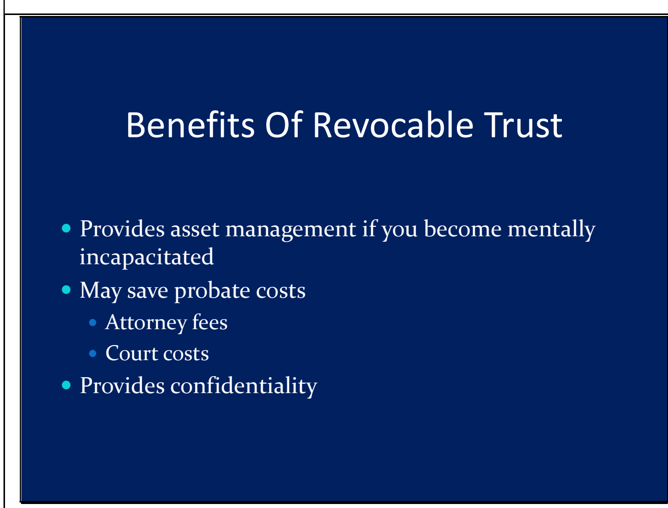
A revocable trust is very flexible. You can modify the trust at any time, just like your Will. You can change the terms of the trust. You can revoke or terminate the trust without any income or gift tax consequences. You can also deal with the assets owned by the trust as if they were owned by you in your own name. You can withdraw any asset from the trust. You can buy and sell assets owned by the trust. You can even give the assets owned by the trust to your children or other beneficiaries.



The second step in determining whether you should use a revocable trust is to understand the benefits of a revocable trust over a Will. With a revocable trust there is no probate in your state of residence. What that means is there is substantially less paperwork involved in your estate. One of the significant benefits of using a revocable trust is that you don't have to probate your estate in either your state of residence or any other state. So, if your trust owns real estate in another state, such as a vacation home, you don't have to probate your estate in that other state to get title to the real estate transferred to the right people. Probating in a second state is called an ancillary probate and generally costs $5,000 or more.



Another significant benefit of using a revocable trust is that it provides who will manage your assets (your successor trustee) in the event you become mentally incapacitated, such as having a stroke. This will avoid the necessity of having a conservator appointed for you. A revocable trust also may save some probate costs because there is less paperwork involved and your estate is better organized. Probate costs that might be saved include attorney fees and court costs. Finally a revocable trust provides confidentiality because you don't have to file the revocable trust with the court, just the Will.

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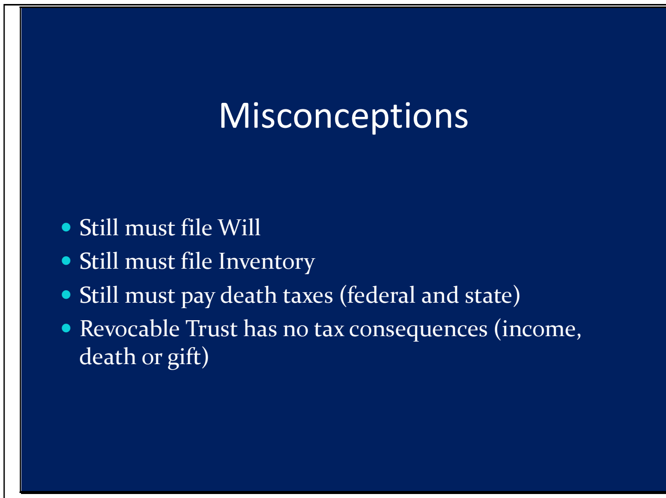

There are some common misconceptions regarding revocable trusts. You still must file your Will with the court, although the Will merely says everything passes to your revocable trust. You still must file an Inventory with the court or taxing authority, listing your assets and liabilities. If your estate is large enough, you still must pay death taxes, both federal and state death taxes. Finally, a revocable trust has no tax consequences. All of the income of the trust is taxed to you, so there are no income tax consequences. The assets owned by the trust are included in your estate, so there are no death tax consequences. No gift is made when you transfer ownership of assets from your name to your name as trustee of your revocable trust, so there are no gift tax consequences.

The final step in determining whether you should use a revocable trust is to understand the requirements for setting up such a trust. The first step, of course, is to create the trust. In most states a husband will have a separate trust from his wife. In community property states often the trusts are combined and there is only one trust. You and/or your spouse are the trustee of your trust. You should also have a Pour Over Will which will transfer any assets which you have forgotten to put into the trust into the trust upon your death. The second thing you must do is to fund the trust. What I mean is you must transfer ownership of your assets from your name to your name as trustee of your trust. The trust controls only the assets owned by the trust.

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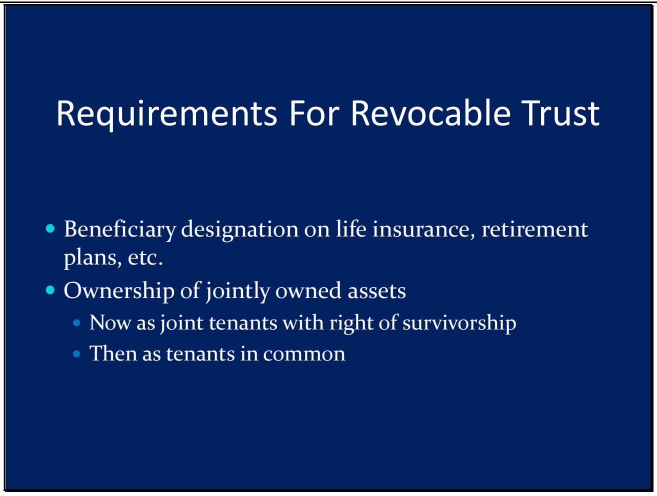
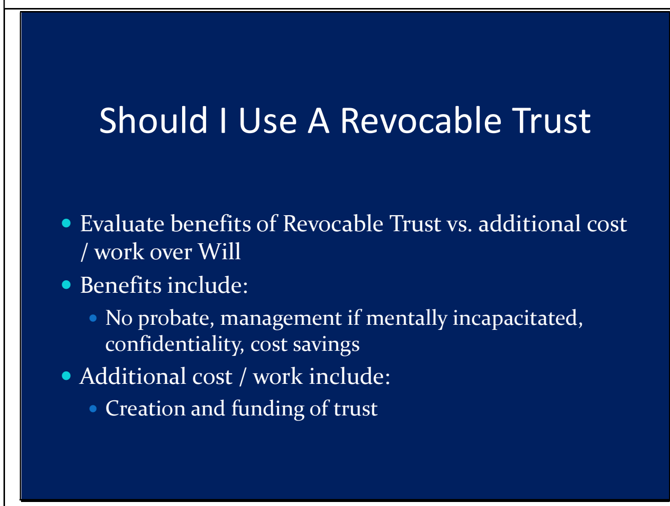


While you transfer ownership of most of your assets into the name of your revocable trust, it is not necessary to transfer assets which have beneficiary designations such as life insurance, retirement plans and the like. The beneficiary designation determines who is to receive those assets upon your death, and it could be your family members or it could be your revocable trust. The other area of confusion you run into is ownership of jointly owned assets. As an example, your house, if you are married, probably is owned as joint tenants with right of survivorship with your spouse. When you have ownership of that house in your revocable trust it should be held as tenants in common, not as joint tenants with right of survivorship. So it is fine to have jointly owned assets in your revocable trust but they should be held as tenants in common.



It's now time to determine whether you should use a revocable trust. In making that decision you need to evaluate the benefits of using a revocable trust versus the additional cost and work involved in setting up and funding a revocable trust over a Will. The benefits we have discussed include having no probate in your state of residence or any other state. This is particularly important if you own real estate in another state. The revocable trust also provides management if you become mentally incapacitated. This is more important as you get older because your chances of a stroke increase. Another benefit is the confidentiality because your Will does not have the provisions of your estate plan and that is the only document that needs to be filed with the court. And, finally, there are cost savings because there is less paperwork involved if you have a revocable trust. The additional cost and work involved include not only creating the revocable trust in addition to the Pour Over Will but also funding that trust by transferring ownership of your assets from your name to your name as trustee of your revocable trust.

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In this tutorial we have discussed what a revocable trust is and the benefits of a revocable trust. We have also talked about the requirements to set up a revocable trust - the fact that you need not only to create the trust but also to fund it by transferring ownership of your assets from your name to your name as trustee of your revocable trust. I hope that this tutorial has answered the question for you of whether you should use a revocable trust.