



You may have been named by a Settlor as a Trustee, successor to a Trustee, or as a co-Trustee of a revocable trust, but during the Settlor's lifetime, as long as the Settlor is competent to do so, the Settlor can remove or replace you. During a Settlor's lifetime, if you are a Trustee you serve at the pleasure of the Settlor. After a Settlor dies, the Settlor's revocable trust becomes irrevocable and his beneficiaries have rights of inheritance that did not exist during the Settlor's lifetime. For a Settlor who is legally and financially competent, the revocable trust serves as an alter-ego during life, and as a Will substitute upon death. Although there are three roles — Settlor, Trustee and Beneficiary — the Settlor is the only party in interest.

A trust is a relationship between a person forming the trust ("Settlor" or "Trustor"), the person holding the trust assets under the terms of the trust ("Trustee") and the person or persons entitled to the benefits of the trust ("Beneficiary").

A revocable trust is a widely recognized estate planning tool with unique characteristics that distinguish it from other types of trust relationships. Importantly, in contrast with other types of trusts, the revocable trust is fully revocable and amendable by the Settlor for so long as the Settlor is living and is legally and financially competent. Very frequently, the assets are held in the revocable trust by the Settlor serving as his or her own Trustee, for the Settlor who is also the Beneficiary.

One purpose of a revocable trust is to serve as a disability planning tool during the Settlor's lifetime. The Settlor may appoint someone else to serve as the Trustee or co-Trustee so that, without missing a beat, another person can control the property held in the revocable trust for the Settlor if they become legally and financially incapable of managing the trust themselves, or for any other reason.

Another purpose of the revocable trust is as a substitute for a Last Will and Testament ("Will"). A "testator" is a person who has executed a Will. During a testator's lifetime, no one named in a Will has any rights to the property of the testator. A person can and frequently does change his or her Will many times during their lifetime. Beneficiaries have a wish for or expectation of inheritance, but there is no property value to such a wish. In exactly the same fashion, only the Settlor has rights to the property in a revocable trust during his or her lifetime.

After the death of a Settlor of a trust, clients and family will often ask about the decedent's Will. When a decedent's primary testamentary document is a revocable trust, their Will may play a far smaller role or no role at all. This depends in part on whether or not the decedent fully funded their revocable trust with all their probate assets and kept their trust funding current. As a general rule, ownership of property or an asset is identified by who holds title to the asset. If a person named as the Trustee under a revocable trust holds title to the asset, even if the Trustee has died or resigned, that asset is "in title" to the Trustee. If an asset is in title to the Trustee on the Settlor's death, that asset is a trust asset that is funded to the revocable trust on the decedent's death. The same is true of liabilities of a decedent titled to the Trustee.

If the decedent's revocable trust is fully funded with all their probate assets, there will be no probate of the decedent's Will. One hallmark of the probate administration process is the court appointment of a person to be the "Executor" or "Personal Representative" of the probate estate. Probate is a legal process whereby a court oversees the distribution of certain classes of assets in accordance with a deceased person's Will, or in accordance with state law if they died without a Will. Most important in this context: property which is properly

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titled to the Trustee of a revocable trust is excluded from probate. As a result, if the property of the decedent is properly titled to the Trustee, the property does not pass in accordance with the decedent's Will. Instead, it passes without the need for court intervention in accordance with the terms of the decedent's trust. Probate assets also generally do not include other assets that pass by operation of law, such as life insurance proceeds, transfer on death (TOD), pay on death (POD) and retirement accounts (unless the beneficiary designation requires distribution to the deceased person's "estate") as well as property passing to a survivor with rights of survivorship.

If there are no probate assets, then the decedent's Will is not administered at all. In that instance, in your role as Trustee, you will be responsible for managing the administration of the decedent's estate in accordance with the terms of the trust and state and federal tax laws.

