

Women and the law

Revocable trusts:

What you should know



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By Mary Lynn Kirby, P.C.

Let me reaffirm something you already know: Georgia is a great place to live. Let me also tell you something you may not know: Georgia is a great place to die. Put another way: Georgia has very good probate laws. When you hear a seminar speaker who offers

you a free lunch and tell you that you need to "avoid probate," there is a good chance that speaker may be trying to sell you something you may not want or need.

The vehicle often used to avoid probate is called a revocable trust. Another name for the revocable trust is a "living trust." Below, I have described some of the circumstances which would indicate you may be a good candidate for a revocable trust. If your circumstances or desires are not described below, you may be better served by a good "Georgia will" and "power of attorney" and you may not need to spend the extra money for a revocable trust. Not only does a revocable trust usually cost more than a will and a power of attorney, additionally it must be "funded" with your assets. An attorney is usually required to put your real estate in the trust and you must retitle your other assets into the trust. This is the "funding" process. This funding should be done during your lifetime.

Anyone dealing with issues of incapacity may be a good candidate for a revocable trust, particularly if one has been diagnosed with a disabling condition. The trust does not become incapacitated. With a revocable trust, the trustee merely takes charge if one

becomes unable to manage his or her own affairs. Of course, anyone can become incapacitated at any time, but in most cases, a well-drafted power of attorney can be used to accomplish incapacity planning.


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One good reason to have a revocable trust is to avoid "bad probate" laws in other states.

Not all states have efficient probate laws as we do in Georgia. If you own property (particularly real estate) in a state other than Georgia, you may want to explore the revocable trust option. Retitling real estate in a revocable trust will allow your estate to avoid the other "bad" state's probate. Additionally, the revocable trust is a contract and it may travel across state lines more easily and be less likely to have to be changed, if you move from state to state.

Another reason to have a revocable trust: the trust is a private document and will remain private after your death. If you die and your will is probated, your will becomes a public document. For 25 cents per page, anyone can get a copy of your will once the will is filed for probate. In most cases,

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wills are rather boring, and who cares who reads them. In some cases, however, privacy is very important. If you are disinheriting a child, you may not want the world to know that. Many times people who don't have children, have beneficiaries in their wills who may not even be related to them. Often, these couples do not want this information available to the general public. The revocable trust will not be recorded in the probate records. Even if you have a trust, you will also have a "pour over will" which will not have private information in it and will basically say that everything will be distributed to the trust.

I hope this quick synopsis has helped to raise your awareness of both the pros and cons in regard to the use of the revocable trusts. I cannot end this article without reiterating the old adage... "there is no free lunch." When you are invited to attend a seminar with a free lunch, keep this in mind. *—Jiv*

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