



Beau Ruff

J.D.*, LL.M in Taxation
Director of Planning

Matt Riesenweber

CFP®, CMFC

President &
Wealth Advisor

Matt Wiser

MBA, CMFC

Vice President &
Wealth Advisor

Distinguishing the Revocable Living Trust From the Will-Based Estate Plan

You've likely heard finance experts say it. In fact, Suze Orman wrote about it in the July issue of the Costco Connection (2015). It is this piece of estate planning wisdom: "a revocable living trust is a document all families should have." Is this true? Do you need a revocable living trust here in Washington State?

The two primary methods to pass property to your heirs are the Will and the Revocable Living Trust (RLT). Most of us are familiar with the Will. But, the RLT sounds so interesting, exotic, and esoteric. Do you need one?

First, let's understand the RLT. It is a separate entity. In a sense, it is like setting up your own corporation. The attorney drafts the shell (the trust), and you transfer in all your assets. For example, you deed your house from Beau Ruff to Beau Ruff, Trustee of the Beau Ruff Trust dated January 1, 2016. Now, Beau Ruff is not the owner of the house any longer, but Beau Ruff in his fiduciary capacity is the owner of the house. And the RLT dictates how the trust is administered during life and death. Largely, during life, you would have unfettered access to the trust and its assets just as you have access to your assets without the trust.

Does the RLT offer advantages over Will-based planning?

For income tax purposes, the RLT is a grantor trust, meaning it is treated as if the trust didn't exist at all. This means there is not a single income tax advantage or tax planning opportunity to the arrangement.

The Beau Ruff Trust doesn't die like Beau Ruff eventually will. This means that the property in the RLT is not generally subject to the dreaded "probate." People often fear the word...probate. Most are not sure what it is, but want to avoid it at all cost. With a properly structured RLT, "probate" is avoided. But, in Washington, the probate process is much simpler and less expensive than other states. It is not a process to be feared. Further, the RLT is administered through a process called "Trust Administration." Since about 2013, the administration of a RLT through the trust administration process is substantially similar to the probate process for a Will. For most people, the perceived advantages of avoiding probate are not realized.

The Will is generally simpler to draft, less expensive, and less complicated. And, to the extent the RLT is not properly "funded" (that is, all the assets must be properly titled in the name of the trust), then there is the possibility you would go through both trust administration *and* probate to properly administer the estate.

There is no estate tax savings when comparing an RLT and a Will (with associated testamentary irrevocable trusts).

There is no creditor protection for an RLT above and beyond that achieved with a Will-based plan (with associated testamentary irrevocable trusts).

The Will is public, meaning it is filed at the county courthouse upon death. The RLT is typically not filed at the courthouse. This “privacy” is typically of limited value. Most people do not venture to the courthouse to read wills. And, if someone does happen to read a will, it is usually pretty bland. In some cases, with celebrities or politicians or sensitive bequests (“I give \$1000 a month to my son John Smith who is a meth addict, but only so long as he can pass a urinalysis exam to show he is clean of meth at the time of distribution”), the privacy might be important. Most people don’t find value in the privacy proposition offered by Trusts.

So, the RLT costs more, it is more complicated to set up, the advantages so far seem small. Why would anyone set up the RLT?

In my opinion, there is really one major factor that weighs in favor of the RLT- the amount and nature of real property owned outside of the State of Washington. If there is a lot, consider the RLT. If there is not, you are probably just as well off with a Will-based estate plan.

Ask your trusted estate planning attorney which he or she prefers. For me and my attorney wife (Diana), we could choose any plan we like. We have a will-based estate plan.

Note - don’t confuse the RLT with other types of trusts like *irrevocable trusts* which can have real income tax, estate tax, and creditor protection attributes that don’t exist in the revocable variety. Also, please note that other states laws are different and in other states you can achieve real creditor protection through a RLT and avoid expensive probate costs.

Cornerstone Wealth Strategies

8905 W Gage Blvd, Suite 110

Kennewick, WA 99336

509-396-0588

www.cornerstonewealthstrategies.com



Content in this material is for general information only and is not intended to be a substitute for specific individualized tax or legal advice. We suggest that you discuss your specific situation with a qualified tax or legal advisor.

Securities offered through LPL Financial, Member FINRA/SIPC. Investment Advice offered through Cornerstone Wealth Strategies, Inc., a registered investment advisor and separate entity from LPL Financial.