MassMutual Ascend
Life Insurance Company

Revocable Living Trusts
A Three Part Series

What Annuity Professionals Need to Know

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Part I: The Basics

Revocable living trusts (RLTs) have become a widely used tool in Americans' estate plans. As far as trusts go, the way that RLTs work is fairly unique as will be explained more fully, below.

RLTs have primarily been touted as a mechanism for assets to avoid probate at death. They also provide privacy when compared to assets transferred through the will or intestacy. More recently, some express the value of RLTs as permitting the relatively continuous management of assets for an aging or incapacitated grantor.

This is the first in a series of three white papers. The Basics explains revocable living trusts and how they work. It also explores the difference between individual ownership and revocable living trust ownership.

The second and third white papers in this series will explore retitling a non-qualified annuity contract ("annuity contract") into a revocable living trust:

- **To avoid probate**
- **In case of future incapacity**

Vocabulary Chart	
Grantor	The person who creates a trust and transfers assets to it
Corpus	Trust assets, also referred to as trust principal
Trustee	Holds legal title to trust property; owes fiduciary duty to trust beneficiaries

What is a trust?

Let's start with a quick refresher on what a trust is and how trust ownership differs from individual ownership.

A trust involves three elements: a trustee, who holds legal title to the trust property and must manage it for the benefit of one or more others; one or more beneficiaries, to whom and for whose benefit the trustee owes fiduciary duties regarding the trust property; and trust property, which is held by the trustee for the beneficiaries.[1]

A TRUST INVOLVES THREE ELEMENTS:

1. **A trustee**
2. **One or more beneficiaries**
3. **Trust property**

A trust is normally created in a legal document, signed by the person who creates the trust (who is also the person who typically contributes property to the trust) and by the trustee. A trust creates a unique relationship between the trustee and trust beneficiaries when it comes to trust property: it separates legal ownership from beneficial ownership. The person who holds legal title to the property and is considered its owner, the trustee, is not necessarily the person who is entitled to benefit from that property. The person who is entitled to benefit from the trust property, the beneficiary, is not the legal owner of the property and thus has no control over the property. The trust document sets out the parameters of the relationship between the trustee and the trust beneficiaries and the "rules" by which all parties must abide.

Contrast trust ownership to individual ownership. Let's say you're single and purchase a vacation home. The deed to your vacation home is in your name ("John Smith")—you are the legal owner of the home and can control what happens to the home (e.g., sell it, rent it, add a deck, etc.). You also have the right to benefit from your home—you live there, and so are also considered the beneficial owner of the home. Individual ownership allows complete and unfettered access to and control of property—legal and beneficial title reside (pun intended!) in one person.

What's a revocable living trust?

A revocable living trust can be amended, revoked or terminated by its creator.[2] Secondly, it's created during the creator's lifetime, hence the use of the word "living" to describe this trust. Third, it's a trust, and we just reviewed the basic premise of trusts.

In an RLT, one individual can be the grantor, trustee and beneficiary.

The structure of an RLT is what makes it so unique. The individual who creates the trust and transfers property into it also serves as the trustee and remains the sole beneficiary of the trust. While that arrangement may seem unusual at first, it is a defining characteristic of an RLT and distinguishes it from most other types of trusts.

Why would someone do this? The primary reason has been to ensure that assets transferred to the RLT avoid probate. RLTs also provide privacy, and the American Bar Association takes the position that:

A living trust, if properly prepared and administered, can be a very effective tool to manage assets in the event of illness, disability or the effects of aging. In light of the aging population, the use of living trusts to minimize the risk of elder financial abuse and address similar issues, should be an important consideration in an estate plan.[3]

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[1] See Restatement (Third) of Trusts.
[2] An RLT becomes irrevocable at the creator's death.
[3] See, The Probate Process, from the American Bar Association, available at: https://www.americanbar.org/groups/real_property_trust_estate/resources/estate-planning/probate-process/.

How do revocable living trusts work?

Just signing the RLT legal document is not enough. For an RLT to "work," the creator also has to move assets into the trust. This process is referred to as funding the trust. Practically speaking, ***the creator needs to retitle each asset that they want to move into the RLT into the name of their revocable living trust.*** Once retitled, each asset is technically considered trust property.[4]

Let's return to the earlier example. If you were single and owned your vacation home individually ("John Smith"), assuming you had a will, it would be subject to probate at your death. However, if you wanted your vacation home to avoid probate at your death, you could transfer ownership of your home from yourself, individually, to yourself as trustee of your RLT; i.e., from "John Smith" to "John Smith, Trustee of the John Smith Revocable Living Trust". To accomplish a transfer of real property to an RLT, you will likely have to go to the relevant local government office and record a new deed reflecting trust ownership.

Recall that you are not only the trustee of your RLT. You are also the only beneficiary of the RLT during your life. There really isn't much meaningful difference to you, during your life, of being the individual owner of your vacation home versus owning your vacation home as trustee of your RLT. The difference will occur when you pass and potentially if you become incapacitated.

In the trust document, you would name a successor trustee. This person would take control of your vacation home after your death, just like an executor would if your vacation home was going through probate. However, the successor trustee does not have to get court approval in order to exercise control over your vacation home. The successor trustee does not have to go to court at all. The successor trustee will review the trust document, determine who you named as the remainder beneficiary to receive the vacation home after your passing, and facilitate the transfer of title to that person. Alternatively, the trust document may instruct the successor trustee to sell your vacation home and distribute the proceeds from the sale to the beneficiaries. Whatever you wanted to happen to your vacation home and whoever you wanted to benefit from my vacation home after your death would be articulated in the RLT legal document and followed by your successor trustee.

Alternatively, if at age 90 you begin to suffer from dementia and can no longer manage your personal affairs, the successor trustee named in your RLT may potentially be able to manage and control your vacation home on your behalf. For example, if you satisfied the definition of "incapacity" in your RLT, you could be removed as trustee. If you had capacity, you could resign as trustee. The successor trustee would have all the rights and responsibilities as the owner of trust property, and have a fiduciary duty to use the trust property for your benefit.

In many RLTs the successor trustee would begin to serve upon written certification by a medical professional of the creator's condition. Every RLT document needs to be consulted as each RLT may address the incapacity of the creator differently. However, with many RLTs, in the case of incapacity of the creator, the RLT can avoid a conservatorship proceeding. A power of attorney document would not be necessary to manage those assets transferred to the RLT.

The successor trustee may not need to go to court to exercise control over trust assets.

[4] It should be noted that it is possible for two people (normally spouses) to create a joint revocable living trust. Whether it is more prudent for each spouse to create their own RLT or for spouses to create a joint RLT is something that should be explored with an attorney and will depend on the unique facts and circumstances of a particular couple.

Final thoughts on revocable living trusts

RLTs are a unique and popular estate planning tool. Hopefully after this basic introduction you are beginning to get a better idea about what they are and how they work.

Even if you intend on using an RLT as your primary estate planning document, almost all attorneys would recommend that you also execute a will that works in conjunction with your RLT. In the case that you forget to retitle certain assets in the name of your RLT during your life, or otherwise end up with any probate assets at your death, your will is there as a backstop, to "pourover" any remaining probate assets into your RLT at your death.

And even if you intend on using your RLT as an asset management device in the case of your future incapacity, almost all attorneys would recommend that you also execute a power of attorney. Your agent under a power of attorney will have primary responsibility over the assets and other obligations that are in your individual name, whereas your successor trustee would take primary responsibility over the assets and other obligations that are associated with the assets in your RLT.

In the next part of this three-part series, we will explore the pros and cons of moving an annuity contract into a revocable living trust to avoid probate. In the final part of this three-part series, we will explore the pros and cons of moving an annuity contract into a revocable living trust to provide asset management in the case of incapacity.

Your clients should always discuss their estate planning strategy with a qualified attorney who can best address the legal and tax implications of their decisions.

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About the author Allison Anne Hoyt

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For the past 15 years, Allison has been working with some of the country's top insurance carriers. She is a proven leader in the financial services industry and joined MassMutual Ascend in 2025, designing and leading a new advanced sales team. She brings a unique blend of technical expertise, sales acumen, and thought leadership to MassMutual Ascend's Advanced Sales Consulting team.

Allison is currently a member of LIMRA's Advanced Sales committee, The American College's Industry Advisory Council, Franklin University's Financial Planning Advisory Board, the Society of Trusts and Estates Practitioners, and has been a professional mentor and judge on the Financial ConNEXTion Cruise for the past three years.

Allison earned her JD (juris doctor) from St. John's University School of Law and holds the Chartered Life Underwriter (CLU) designation. Allison resides just outside of Columbus, Ohio with her husband and two young children. Originally from Long Island, New York, she is a long-suffering New York Mets fan and loves "caw-fee" and New York bagels.

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