

MAKING CHOICES NOW ABOUT OUR LATER YEARS: REVOCABLE LIVING TRUSTS

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Some of us may be able to manage our affairs through our later years. That is a wonderful thing – not ever needing assistance in getting bills paid, tax returns files, investments organized, and even just getting to appointments on time. It's a blessing not to be a burden on spouses, family and close friends late in life.

Unfortunately, it doesn't always work out in such a storybook fashion. Frequently, along with physical frailty comes evolving difficulty in such things as tending to homes and handling financial matters. Sometimes a mature couple has a family and/or friend support system that can step in when help is needed, but that perfect-world scenario doesn't always come together so well.

Planning for our estates and the disposition of assets at death has historically involved having a will – ideally one that has been updated within the last five years. When a person uses a will as the primary planning tool, an Attorney-in-Fact also may be named, using a Durable Power of Attorney appointment document. An Attorney-in-Fact can step in to manage a person’s affairs, should that become necessary. The Power of Attorney document typically names one or two successors in case the first named person is unable or unwilling to serve. If the line of successors gets to an end, a court may appoint an Attorney-in-Fact or a conservator. A conservator may be a family member, a professional, or a nonprofit agency, and is there to protect you and do the things that need to be done while you are alive. Frequently, a Last Will and Testament will establish trusts that are funded when the management of an estate is complete.

An alternative estate planning tool is a Revocable Living Trust (RLT), which allows a professional trustee to take over management of a person’s affairs while he or she is still alive. A Power of Attorney is generally not needed with an RLT, because the professional trustee can handle a person’s financial affairs during his or her lifetime. Trustees can pay bills, make sure tax returns are filed and track investments. If a person also has an investment advisor, the trustee can work closely with the advisor in making investment decisions. The trustee of an RLT also can serve as executor of the estate and as trustee of any trust that continues after death. Such trustees are well-positioned for these jobs since they will have worked with the trustor during life and be familiar with his or her estate.

There are many reasons to consider establishing an RLT, including:

- Because you don’t want to burden your children with the task of managing your affairs while you are alive
- Because you aren’t comfortable choosing from among your children to be your Attorney-in-Fact
- Because you don’t have anyone other than yourself to manage your affairs, and want to plan for the day when you are no longer capable of doing so
- Because you would like to keep your assets and inheritance plans private. During the probate process that occurs with every death in Tennessee, wills become part of the public record; however, trusts do not.

There is no single best way to plan for our later years and subsequent death. Discussing these options with your family and attorney, and assessing your personal circumstances should lead you to the right decision. Knowing that things will be taken care of as your capacity declines can reduce the stress that accompanies the transition from the independence we have known all our adult years to a time when we might be dependent on others.