



## Issues In Elder Law

**Q: *When should an estate plan include a revocable living trust instead of a last will and testament?***

**A:** A revocable living trust (RLT) avoids the expense and delay associated with probate. Consider the following cases where an RLT may be the better choice for your clients:

- When an individual owns real estate located in more than one state, an RLT can usually avoid ancillary probate procedures in the second state.
- If it is expected that a last will and testament (LWT) will be contested, an RLT can provide relief. Use of an RLT does not provide heirs an opportunity to dispute the will through the probate process. The contesting party would have to file a lawsuit on the basis of contract law, which is a more difficult procedural task than contesting a LWT. Additionally, the person disputing the trust has the burden of rebutting its validity.
- If privacy is a concern, note that an RLT is not required to be filed in court (unless there is a rare judicial challenge). Consequently, the trust and its accompanying assets are not a matter of public record.

Note that a “pour-over” will is always needed in conjunction with an RLT to address assets that have not been previously retitled to the name of the trust (e.g., an inheritance received immediately prior to death).