

FS-6313-GO

1994

[To Order](#)College of Agricultural,
Food, and Environmental Sciences

The Revocable Living Trust

Transferring the Farm Series: #12

Erlin J. Weness

[Copyright](#) © 1998 Regents of the University of Minnesota. All rights reserved.

Estate planners often advise farmers to put property into living trusts. Though these trusts have been available for years, they are enjoying renewed popularity because they can save probate costs.

Trusts established during a person's life are called living trusts. They can be revocable or irrevocable. The revocable trust can be amended or discontinued at any time. An irrevocable trust cannot be modified or discontinued.

Individuals who use the revocable living trust transfer title of their property into the trust. They, as grantor, appoint themselves as the trustee (manager of the trust) and the beneficiary (receiver of the income).

To set up a living trust, you transfer the title of your assets into the trust from you, as an individual, to yourself as trustee of the trust. No income taxes are due on this transfer.

Setting up a revocable living trust does not constitute a gift, so there are no gift tax consequences in setting it up. Once established, everything transferred to the trust then belongs to the trust, but as trustee, you maintain control. You can buy and sell trust assets, and even give them away.

Positive Aspects to Using the Revocable Living Trust

- Your heirs may save estate settlement and probate costs. You may be able to avoid attorney and court costs associated with taking inventory, distributing assets, and court costs. The transfer may also be speedier. But a relatively large part of the estate settlement cost is the filing of estate tax returns and asset transfer costs, which must be done with or without a trust.
- Having property in a living trust will avoid heirs having to disclose your holdings in the public

probate process. A living trust is a private document, not open to the public.

- A living trust can continue after your death, with income and principal distributed as described in the trust instrument.
- A living trust can provide for management of assets in the declining years when the grantor may not be able to physically or mentally manage his or her property. A successor trustee is named in the trust document who can manage, invest, sell, and liquidate its assets. Select a successor trustee in whom you have confidence. Make sure your trust document stipulates any restrictions, conditions, or intentions you wish to make known to the successor trustee. A successor trustee is usually compensated for services rendered.

Disadvantages of the Revocable Living Trust

- You do not save estate or state inheritance taxes. IRS views you as full owner of the property if held in a revocable living trust. Consequently, assets in your trust do receive a stepped up tax basis at your death. Heirs can then sell the property if desired for little or no income tax gain or loss.
- The cost of setting up and maintaining the trust is immediate. Probate costs are not paid until after your death. Setup costs of a trust can range from several hundred to several thousand dollars and are paid upon completion of the trust documents.
- If you transfer your property to a trust, the annual Section 179 depreciation deduction can't be used on your tax return. Instead, all capital items must be depreciated.

The drafting of the trust document is a very important function. It should completely cover your wishes regarding distribution of your property. Try to cover all contingencies.

The trust document may be used to protect your farming heirs by giving them rental or purchase rights to property. It can specify price and terms of an asset purchase.

It is important to formally transfer all assets to the trust. This can be a time-consuming task. Most assets can be transferred into the trust without adverse tax consequences, but if you have some unusual assets, you had better check out the tax effects.

A Form 1041 Tax Return has to be filed for the trust unless the grantor individual is both beneficiary and trustee. In that case it's not necessary to file Form 1041 and all income and expenses are shown on the individual tax return of the grantor.

Those with a living trust still should have a will. It is called a "pour over" will and transfers any individually owned assets into the trust that were not previously transferred.

There is no perfect solution to every transfer or estate situation. If you decide to use a living trust, find an attorney who is well-versed in drafting living trusts.

Caution: *This publication is offered as educational information. It does not offer legal advice. If you have questions on this information, contact an attorney.*

Other Fact Sheets in This Series:

1. [Questions to Ask Before You Start Transferring the Farm Business](#) (FS-6302)
2. [When to Transfer the Farm](#) (FS-6303)
3. [Major Tax Considerations When Transferring Assets](#) (FS-6304)

4. [Selling the Crops and Market Livestock](#) (FS-6305)
5. [Transferring Breeding Stock and Machinery](#) (FS-6306)
6. [Should You Sell Your Real Estate?](#) (FS-6307)
7. [Gifting Farm Assets](#) (FS-6308)
8. [Protecting the On-Farm Heirs](#) (FS-6309)
9. [How to Be Fair With Off-Farm Heirs](#) (FS-6310)
10. [Developing a Written Transfer Plan](#) (FS-6311)
11. [Farming Together](#) (FS-6312)
12. The Revocable Living Trust (FS-6313)
13. [Financial Help for Beginning Minnesota Farmers](#) (FS-6314)
14. [Using a Farm Partnership to Transfer Assets](#) (FS-6315)
15. [The Farm Corporation - Is It for You?](#) (FS-6316)

Or Order All 15 Fact Sheets in the Series:

[Transferring the Farm](#) (PC-6317)

Erlin J. Weness
Area Extension Educator
Farm Management

Produced by Communication and Educational Technology Services, University of Minnesota Extension Service.

In accordance with the Americans with Disabilities Act, this material is available in alternative formats upon request. Please contact your University of Minnesota county extension office or, outside of Minnesota, contact the Distribution Center at (612) 625-8173.

The University of Minnesota Extension Service is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, color, creed, religion, national origin, sex, age, marital status, disability, public assistance status, veteran status, or sexual orientation.

 [Previous Page](#)



[University of Minnesota Extension Service Home Page](#)