



David M. Goldman

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## Using Quicken to prepare a trust: The good, the bad, and ugly!

I recently receive a copy of Quicken Willmaker 2009. I have previously written about many articles about the unintended results that occur with [Do It yourself and Free Estate Planning Documents](#) created by individuals without the advise of council and the problems with online document preparation services like [LegalZoom](#) and [RocketLawyer](#).

I decided to try out a few of the documents in Quicken to see if they had improved the quality and accuracy of their Florida documents. Last week I wrote about problem with the [Quicken Willmaker 2009 Durable Power of Attorney](#). This week I will be looking a the Revocable Living Trust. I have previously written about the many problem is [using Quicken to create a Firearms Trusts](#) but for this article I will be focusing on the typical issues with regular estate planning and living trusts.

**1. No free updates and old language,** in order to keep your trust up to date, you need to purchase the software every year and hope they have dealt with changes in your state laws. Quicken seems to be slow at incorporating small or significant changes in the law. The changes in the new trust code from Florida in the years 2006 and 2007 have not been incorporated into the software. Quicken does not let you know what years statutes its language is based upon. Quicken states that when their users report problems they try to fix the program. Unfortunately, their users are not lawyers, and their users never find out about the problems. Their family may find problems when it is to late to make changes, but they have no way to ask, nor to they attempt to ask the beneficiaries to report problems.

**2. Review your document** is advise given to the users by Quicken. Quicken's instructions also state to make sure that your document says exactly what you want it to. Although Quicken recommends that you have your document reviewed by an attorney, they neglect to mention that useful advise in their instructions under the review section. Living trusts are complicated documents, how the state law interprets the language you choose is complicated. Lawyers have differing interpretations, how can a non-lawyer pretend to understand what the outcome of the language they choose will be. Want proof of this, check out [Do It yourself and Free Estate Planning Documents](#) and see some of the results that have occurred when users attempted to make their own trusts and wills.

**3. Register your trust with the court?** Quicken incorrectly advises that you must register your living trust with your local court. Although there are some states that do require this they state that it is

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### ELDER LAW

a requirement in Alaska, Colorado, **Florida** Hawaii, Idaho Maine, Michigan, Missouri, Nebraska, and North Dakota.

**4. Quicken WillMaker Doesn't Provide Legal Advise.** The instructions for the Quicken published legal forms that are useful in many situations but they can not tell you whether or not a form is right for you, given your circumstances. Only a lawyer can do this and you should consult a licensed attorney in your state.

## The Trust

**5. Part 2 of the trust** declares that the assets mentioned in the trust have been delivered. While this may work for an assignment of interest, anything requiring a deed can not be transferred by this language. Individuals should not rely on this misleading statement and believe that their assets are transferred because they sign a sheet of paper that states that they have.

**6. Revocation and Amendments:** The Quicken trust allows revocation after one of the grantor's dies. Typically a revocable trust becomes irrevocable and cannot be changed once a settlor or grantor dies. Quicken does make this distinction when dealing with an amendment and states that the trust cannot be amended once a Grantor dies. I am not sure why or how they allow a trust to be revoked by not amended after the death of a Grantor.

**7. Amendment by power of attorney:** Florida case law states that a trust must specifically allow for amendment by a durable power of attorney, and the durable power of attorney must authorize the act specifically. The quicken trust includes language that the trust shall not be amended by an agent unless the document creating that power authorizes the amendment. This may or may not comply with the case law. It would be simple to ensure that it did comply compared to the language that is used.

**8. Income.** The Grantors are required to take all income from the trust at least annually. It would seem that this creates assets that are subject to probate and may not be what the individuals desire.

**9. Successor Trustee.** The successor trustee is chosen automatically but there does not appear to be an ability for someone else to choose a more appropriate trustee at the time one is needed. Quicken does give the last serving trustee the ability to appoint a new trustee if the successor trustee is unable or unwilling to serve. What happens if the trustee ceases serving because of death, who would have the power to appoint a new trustee? Quicken leaves this question unanswered.

**10. Compensation.** While Quicken allows for several choices for compensation, their *no compensation* choice does not contemplate the need to have a professional or corporate trustee.

**11. Powers.** The Quicken trust states that the trustee has all the authority and powers allowed or conferred on a trustee under Florida law. They do not tell you what these powers or authorities are or where to find a list of them. Also are they the powers granted when the document was signed, or when one goes to use the powers. While this may not seem important one should consider the substantial changes made in the area of a trustee's powers within the last 2 years in Florida.

**12. Incapacity:** Quicken gives the power to determine incapacity to a person, rather than a court conservator or guardian, or physicians. Under this trust it would be very easy for your children or whom ever you select to declare you incapacitated, remove you a trustee, and appoint a successor trustee of their choice.

**13. Beneficiaries.** Although quicken does appear to do a better job of checking the names of a beneficiary to make sure it is not a grantor, they only look for an exact match and do not question names that are close or provide a warning for any name. I found that it was possible to name yourself as your own beneficiary using a slightly different name, misspelling, or middle initial. This creates several problems and can void the trust.

**14. Survivorship.** The quicken trust voids a gift to a beneficiary if that beneficiary dies within 120 hours. This can cause some big problems when there are large unpaid medical bills related to the death of a beneficiary. To deal with this issue completely you should contact an estate planning lawyer.

**15. Spendthrift provisions.** Quicken does not make a mistake in this area because they do not address the concept.

**16. Property transfer.** Quicken does not address the potential for a re-evaluation of property taxes upon the transfer of a piece of property into the trust when the names on the title are different than the current title on the property. Nor does quicken address the requirement that taxes may be assessed.

## 17. Choice of law, venue, arbitration, required notices under Florida Trust code.

Quicken does not address these, perhaps they are not important. Whether that is true depends on your circumstances and what happens in the future, where you live when you die, where your beneficiaries

Enhanced Life Estate Deeds

Long Term Care Insurance  
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http://www.jdsupra.com/post/DocumentViewer.aspx?file=88a04369f-74e-890d-ce57f7ff611f  
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GST Trust

Grantor Retained Annuity Trust

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Living Trust

Living Will

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## NFA TRUST

## PROBATE

Administration

Ancillary Administration

Annual Gift Tax Exclusion

live when you die. I personally feel that every trust should address these issues including the requirements of the new Florida Trust code, but if you use Quicken you will not have the benefit of these provisions either.

<http://www.jdsupra.com/post/documentViewer.aspx?fid=bb88a0cd-b69f-471e-890d-ce57f7ff6111> Document hosted at JDSUPRA™

There are many mistakes in the Quicken documents, most disturbing might be some of the things that are not included in a Quicken trust. Quicken gives none of the flexibility to a trust that make it useful for the common person. A trustee under a Quicken trust could not do anything without creating liability to a beneficiary because by default they must act as a prudent trustee. If you have a trust created by Quicken 2009, 2008, 2007 or a previous version, you should have it reviewed by an [estate planning lawyer](#). If you are in Jacksonville or anywhere in Florida [Contact](#) us about reviewing your Quicken Revocable Trust.

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## TRUST LITIGATION

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