TRUST

What is accomplished by a trust?

If you want to avoid the probate process entirely, and/or accomplish specific goals (like controlling distribution of the assets over time, or helping a charity or a disabled relative) you can create a trust. This can be an attractive option if you have a larger estate, because probate can cost up to seven percent of the value of your estate.

In an irrevocable trust, you give up control of your assets during your lifetime. They are managed instead by a trustee. In an irrevocable trust, your assets are protected from creditors. There are tax advantages.

In a revocable Living Trust, you retain control over your personal assets during your life. Such trusts are commonly used as a substitute for a will in estate planning. You can change the terms, by adding or removing beneficiaries, or cancel the trust entirely. The assets are not protected from creditors and lack the tax advantages of irrevocable trusts. Your assets transfer automatically and quickly to your beneficiaries at the time of your death.

What is the purpose of a trust?

There are many types of trusts, but irrevocable and revocable trusts are the most common. An irrevocable trust involves giving up control of your assets during your lifetime. You name a trustee who manages the trust and the assets you place in it. You can manage a revocable trust yourself. One might be more suitable for you than the other, depending on what you’re trying to achieve.

- Trusts Avoid Probate – Many people include trusts in their estate plans for the purpose of avoiding probate. Both irrevocable and revocable trusts bypass the probate process. This can be an attractive option if you have a large estate, because probate can cost up to 7% of your estate’s value. There’s a catch, however. You must transfer ownership of your assets to your trust before your death. The assets you own are subject to probate when you die, because probate is the legal process that transfers ownership of your assets to your beneficiaries. The trust, on the other hand, transfers trust assets to your beneficiaries, so probate is unnecessary.

- Trusts Are Private – If privacy is a concern to you, trusts are a good estate planning option. Some people choose them because they don’t want their financial holdings to be common knowledge when they die. Because assets placed in your trust don’t go through the probate process, they’re not a matter of public record.

- Trusts Control Inheritances – Trusts can also serve the purpose of keeping control of your assets even after your death. If you pass your assets to your beneficiaries through a will, they receive the assets when you die. If you use a trust instead, you can set it up so that younger, less mature beneficiaries might not receive their inheritance until they reach a certain age. The trust would manage their inheritance until that time.

- Some Trusts Shield Your Assets from Creditors – A purpose unique to irrevocable trusts is that they can also shield your assets from creditors during your lifetime, so you’re sure you have something to leave your loved ones when you die. If your career is one that leaves you open to lawsuits, and if someone gets a judgment against you, they can’t use that judgment to seize your assets if you've transferred them to an irrevocable trust. If you maintain control over them, either through a revocable trust or by not forming a trust at all, you could lose the assets to creditors or lawsuits.

When is a revocable trust a good idea?

One type of trust that is commonly used by estate planning lawyers is the revocable Living Trust, which allows you to retain control over your personal assets. However, revocable Living Trusts aren't for everyone. In some cases, the disadvantages can outweigh the benefits.

- A Revocable Living Trust Gives You Control – As the name implies, a revocable Living Trust takes legal effect during your life rather than at your death. Since it's revocable, you always have the options of changing the terms of the trust, such as adding and removing beneficiaries, or cancelling the trust entirely. This flexibility is seen as an advantage by many people, because you can't always predict your future financial needs or whether relationships with beneficiaries will become strained.

- You Can Use a Revocable Living Trust in Place of a Will – Many estate plans use revocable Living Trusts as a substitute for a will either entirely or for specific assets. Wills may be subject to probate proceedings in a state court after your death. During probate, there's always the possibility that a family member who is excluded from your will may challenge the terms of your will. Moreover, probate usually delays the distribution of your estate. With a revocable Living Trust, however, your assets can be distributed immediately. They aren't subject to probate or to challenges by those who aren't named as beneficiaries.

- Make Sure That an Irrevocable Living Trust Isn't a Better Option – One of the main disadvantages to creating a revocable Living Trust is that the trust property is still considered yours and isn’t protected from your creditors or lawsuits. Making the Living Trust irrevocable provides more creditor protection since you’re no longer considered the owner of property in the trust. The downside to irrevocable trusts, of course, is that you can’t change your mind if you ever need your assets back at some point.

● Consider the Estate Tax Implications – Since you’re considered to be the owner of all assets in your revocable Living Trust at the time of death, the value of your trust property may be subject to estate taxes. Check carefully, because tax laws change frequently.