

SPECIAL REPORT

Trusts

WHAT IS A TRUST?

A trust is a separate legal entity for holding and investing property. One or more persons (the “trustee”) holds property, usually real estate or investments, for the benefit of another or several other people (the “beneficiary”). The person who gives the property for the trust is known as the “donor” or “grantor.” The trustee holds legal title or interest and is responsible for managing, investing, and distributing the assets or property of the trust. The beneficiary holds an equitable or beneficial interest.

WHAT ARE THE BENEFITS OF ESTABLISHING A TRUST?

Depending on your situation, there can be several advantages to establishing a trust. Most well known is the advantage of avoiding probate. That is, in a trust that terminates with the death of the donor, any property in the trust prior to the donor's death passes immediately to the beneficiaries by the terms of the trust without requiring probate. This can save time and money for the beneficiaries. Certain trusts can also result in tax advantages both for the donor and the beneficiary. Or they may be used to protect property from

creditors, to help the grantor qualify for Medicaid, or simply to provide for someone else to manage and invest property for the grantor and the named beneficiaries. Trusts are private documents and only those with a direct interest in the trust need know of trust assets and distribution. If well drafted, another advantage of trusts is their continuing effectiveness even if the donor dies or becomes incapacitated.

WHAT KINDS OF TRUSTS ARE THERE?

There are several types of trusts, some of the more common of which are discussed below:

Revocable Trust

A revocable trust is sometimes referred to as a “living” or “inter vivos” trust. Such a trust is created during the life of the donor rather than through a will. With a revocable trust, the donor maintains complete control over the trust and may amend, revoke, or terminate the trust at any time. So, the donor is able to reap the benefits of the trust arrangement while maintaining the ability to change the trust at any time prior to death. The disadvantage of a revocable trust is that the trust assets are countable to the donor for purposes of determining Medicaid eligibility.

Irrevocable Trust

An irrevocable trust is created during the life of the donor, who thereafter may not change or amend the trust. Any property placed into the trust may only be distributed by the trustee as provided for in the trust instrument itself. For instance, the donor can provide that he or she will receive income earned on the trust property. The irrevocable trust where the donor retains the right to income only is a popular tool for Medicaid planning.

Testamentary Trust

A testamentary trust is a trust created by a will. Such a trust has no power or effect until the will of the donor is probated upon his or her death. Although a testamentary trust will not avoid the need for probate and will become a public document as it is a part of the will, it can be useful in accomplishing other estate planning goals. For instance, the testamentary trust can be used to provide funds for the surviving spouse in a form that will not be considered available and not have to be spent down if he or she should seek Medicaid eligibility to pay for long-term care.

Supplemental Needs Trust

A supplemental needs trust can be created by the donor during life or be part of a will. Its purpose is to enable the donor to provide for the continuing care of a disabled spouse, child, relative or friend. The beneficiary of a well drafted supplemental needs trust will have access to the trust assets for purposes other than those provided by public benefits programs. Thereby, the beneficiary will not lose eligibility for benefits such as Supplemental Security Income, Medicaid, and low-income housing.

HOW CAN I FIND OUT IF I SHOULD HAVE A TRUST?

As with all estate planning, anyone considering a trust should contact an attorney who is skilled and experienced in this area.

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