

Kinds of Trusts

Trusts fall into two basic categories: testamentary and inter vivos.

A testamentary trust is one created by your will, and it does not come into existence until you die. In contrast, an inter vivos trust, starts during your lifetime. You create it now and it exists during your life.

There are two kinds of inter vivos trusts: revocable and irrevocable.

Revocable Trusts

Revocable trusts are often referred to as “living” trusts. With a revocable trust, the person who created the trust, called the “grantor” or “donor,” maintains complete control over the trust and may amend, revoke or terminate the trust at any time. This means that you, the donor, can take back the funds you put in the trust or change the trust’s terms. Thus, 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. **need to give some real-world examples of trusts*

Revocable trusts are generally used for the following purposes:

1. *Asset management.* They permit the named trustee to administer and invest the trust property for the benefit of one or more beneficiaries.
2. *Probate avoidance.* At the death of the trust grantor, the trust property passes to whoever is named in the trust. It does not come under the jurisdiction of the probate court and its distribution need not be held up by the probate process. However, the property of a revocable trust will be included in the grantor’s estate

for tax purposes.

3. *Tax planning.* While the assets of a revocable trust will be included in the grantor's taxable estate, the trust can be drafted so that the assets will not be included in the estates of the beneficiaries, thus avoiding taxes when the beneficiaries die.

Irrevocable Trusts

An irrevocable trust cannot be changed or amended by the grantor. Any property placed into the trust may only be distributed by the trustee as provided for in the trust document itself. For instance, the grantor may set up a trust under which he or she will receive income earned on the trust property, but that bars access to the trust principal. This type of irrevocable trust is a popular tool for Medicaid planning.

Testamentary Trusts

As noted above, a testamentary trust is a trust created by a will. Such a trust has no power or effect until the will of the grantor is probated. 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 reduce estate taxes on the death of a spouse or to provide for the care of a disabled child.

Supplemental Needs Trusts

The purpose of a supplemental needs trust 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. In this way, the beneficiary will not lose eligibility for benefits such as Supplemental Security Income,

Medicaid and low-income housing. A supplemental needs trust can be created by the grantor during life or be part of a will.

Credit Shelter Trusts

Credit shelter trusts are a way to take full advantage of state and federal estate tax exemptions.

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