Types of Trusts

A trust can be created during a person's lifetime and survive the person's death. A trust can also be created by a Will and formed after death. Once assets are put into the trust they belong to the trust itself, not the trustee, and remain subject to the rules and instructions of the trust contract. Most basically, a trust is a right in property, which is held in a fiduciary relationship by one party for the benefit of another. The trustee is the one who holds title to the trust property, and the beneficiary is the person who receives the benefits of the trust. While there are a number of different types of trusts, the basic types are revocable and irrevocable.

Revocable Trusts

Revocable Trusts are created during the lifetime of the trustmaker and can be altered, changed, modified or revoked entirely. Often called a Living Trust, these are Trusts in which the trustmaker transfers the title of a property to a Trust, serves as the initial Trustee, and has the ability to remove the property from the Trust during his or her lifetime. Revocable Trust are extremely helpful in avoiding probate. If ownership of assets is transferred to a revocable trust during the lifetime of the trustmaker so that it is owned by the trust at the time of the trustmaker's death, the assets will not be subject to probate.

Although useful to avoid probate, a revocable trust is not an asset protection technique as assets transferred to the trust during the trustmaker's lifetime will remain available to the trustmaker's creditors. It does make it more somewhat more difficult for creditors to access these assets since the creditor must petition a court for an order to enable the creditor to get to the assets held in the trust. Typically, a revocable trust evolves into an irrevocable trust upon the death of the trustmaker.

Irrevocable Trust

An Irrevocable Trust is one which cannot be altered, changed, modified or revoked after its creation. Once a property is transferred to an Irrevocable Trust, no one, including the trustmaker, can take the property out of the Trust. It is possible to purchase Survivorship Life Insurance, the benefits of which can be held by an Irrevocable Trust. This type of survivorship life insurance can be used for estate tax planning purposes in large estates, however, survivorship life insurance held in an Irrevocable Trust can have serious negative consequences.

Asset Protection Trust

An Asset Protection Trust is a type of Trust that is designed to protect a person's assets from claims of future creditors. These types of Trusts are often set up in countries outside of the United States, although the assets do not always need to be transferred to the foreign jurisdiction. The purpose of an Asset Protection Trust is to insulate assets from creditor attack. These trusts are normally structured so that they are irrevocable for a term of years and so that the trustmaker is not a current beneficiary. An asset protection trust is normally structured so that the undistributed assets of the trust are returned to the trustmaker upon termination of the trust provided there is no current risk of creditor attack, thus permitting the trustmaker to regain complete control over the formerly protected assets.

Charitable Trust

Charitable Trusts are trusts which benefit a particular charity or the public in general. Typically Charitable Trusts are established as part of an estate plan to lower or avoid imposition of estate and gift tax. A charitable remainder trust (CRT) funded during the grantor's lifetime can be a financial planning tool, providing the trustmaker with valuable lifetime benefits. In addition to the financial benefits, there is the intangible benefit of rewarding the trustmaker's altruism as charities usually immediately honor the donors who have named the charity as the beneficiary of a CRT.

Constructive Trust

A Constructive Trust is an implied trust. An Implied Trust is established by a court and is determined from certain facts and circumstances. The court may decide that, even though there was never a formal declaration of a Trust, there was an intention on the part of the property owner that the property be used for a particular purpose or go to a particular person. While a person may take legal title to property, equitable considerations sometimes require that the equitable title of such property really belongs to someone else.

Special Needs Trust

A Special Needs Trust is one which is set up for a person who receives government benefits so as not to disqualify the beneficiary from such government benefits. This is completely legal and permitted under the Social Security rules provided that the disabled beneficiary cannot control the amount or the frequency of trust distributions and cannot revoke the trust. Ordinarily when a person is receiving government benefits, an inheritance or receipt of a gift could reduce or eliminate the person's eligibility for such benefits. By establishing a Trust, which provides for luxuries or other benefits which otherwise could not be obtained by the beneficiary, the beneficiary can obtain the benefits from the Trust without defeating his or her eligibility for government benefits. Usually, a Special Needs Trust has a provision which terminates the Trust in the event that it could be used to make the beneficiary ineligible for government benefits.

Special needs has a specific legal definition and is defined as the requisites for maintaining the comfort and happiness of a disabled person, when such requisites are not being provided by any public or private agency. Special needs can include medical and dental expenses, equipment, education, treatment, rehabilitation, eye glasses, transportation (including vehicle purchase), maintenance, insurance (including payment of premiums of insurance on the life of the beneficiary), essential dietary needs, spending money, electronic and computer equipment, vacations, athletic contests, movies, trips, money with which to purchase gifts, payments for a companion, and other items to enhance self-esteem. The list is quite extensive. Parents of a disabled child can establish a Special Needs Trust as part of their general estate plan and not worry that their child will be prevented from receiving benefits when they are not there to care for the child. Disabled persons who expect an inheritance or other large sum of money may establish a Special Needs Trust themselves, provided that another person or entity is named as Trustee.

Spendthrift Trust

A Trust that is established for a beneficiary which does not allow the beneficiary to sell or pledge away interests in the Trust. A Spendthrift Trust is protected from the beneficiaries' creditors, until such time as the Trust property is distributed out of the Trust and given to the beneficiaries.

Tax By-Pass Trust

A Tax By-Pass Trust is a type of Trust that is created to allow one spouse to leave money to the other, while limiting the amount of Federal Estate tax that would be payable on the death of the second spouse. While assets can pass to a spouse tax-free, when the surviving spouse dies, the remaining assets over and above the exempt limit would be taxable to the children of the couple, potentially at a rate of 55%. A Tax By-Pass Trust avoids this situation and saves the children perhaps hundreds of thousands of dollars in Federal taxes, depending upon the value of the estate.

Totten Trust

A Totten Trust is one that is created during the lifetime of the grantor by depositing money into an account at a financial institution in his or her name as the Trustee for another. This is a type of revocable Trust in which the gift is not completed until the grantor's death or an unequivocal act reflecting the gift during the grantor's lifetime. An individual or an entity can be named as the beneficiary. Upon death, Totten Trust assets avoid probate. A Totten Trust is used primarily with accounts and securities in financial institutions such as savings accounts, bank accounts, and certificates of deposit. A Totten trust cannot be used with real property. A Totten Trust provides a safer method to pass assets on to family than using joint ownership. To create a Totten Trust, the title on the account should include identifying language, such as "In Trust For", "Payable on Death To", "As Trustee For", or the identifying initials for each, "IFF", "POD", "ATF". If this language is not included, the beneficiary may not be identifiable. A Totten Trust has been called a "poor man's" trust because a written trust document is typically not involved and it often costs the trustmaker nothing to establish.

FINDLAW.COM EMPOWERS PEOPLE WITH TRUSTED, TIMELY AND INTELLIGENT LEGAL INFORMATION

BLOGS – FindLaw Blogs present timely news that has real-life implications, deliver important information and discuss law-related entertainment.

FINDLAW ANSWERS – A vibrant, interactive online community where everyday people can ask legal questions and get real-time answers from legal professionals and others with similar experiences.

NEWS & NEWSLETTERS – Updated throughout the day and night and covering a wide range of legal topics, FindLaw.com's News page presents current legal news, keeping people informed and educated.

FIND A LAWYER – An easy-to-search database of more than one million lawyers and law firms. It provides detailed information, enabling people to contact a qualified lawyer when they are ready.

DO-IT-YOURSELF FORMS & CONTRACTS – FindLaw.com provides accurate legal documents for common legal matters. Choose from a library of easy-to-use, low-cost, accurate legal forms for everyday legal issues.

FINDLAW VIDEO – On FindLaw.com, you'll find an online directory of more than 1,500 short videos dedicated exclusively to legal topics and attorney and law firm profiles.

Connect With Us

FindLaw.com has an entire social media team dedicated to providing our users with as many options as possible to join, participate in, and learn from the FindLaw community. Some of the social key channels are the following:

FindLaw for Consumers on Facebook

Making the law easy to access with interactive legal updates aimed at starting conversations, informing followers of their legal rights and providing a forum for questions and resources

@FindLawConsumer on Twitter

Tweeting interesting, entertaining and informative legal news everyday

FindLaw®
A Thomson Reuters Business