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Trusts Unlimited LLC

Revocable/Irrevocable Trusts

Here we examine the differences of revocable trusts vs irrevocable trusts. If you reposition (transfer) your assets through the use of an IRREVOCABLE TRUST, you will no longer own them. If you don't own assets, no one will want to sue you; no one will want to track your spending habits; no one will call you to interrupt your dinner. You don't have to go offshore. US Laws, US courts will defend and support your asset protection system. These laws have been defined by numerous court cases, over and over, right up to the Supreme Court. You must however, give-up control over your assets to a true independent trustee.

Legitimate repositioning (transfer) of assets from you to an irrevocable trust is perfectly legal. The fact is, if your assets are owned by a subchapter S Corporation or a Limited Liability Company and in turn the shares of the Sub S or membership units of the LLC are owned by an irrevocable trust, it's the fortress of US Asset Protection. The ultimate asset protection device is the use of an offshore asset protection trust.

The following financial grid explains the **major differences between revocable vs. irrevocable trusts:**

FEATURES/BENEFITS	REVOCABLE TRUST (REVOCABLE LIVING TRUST)	IRREVOCABLE TRUST
Asset Protection	ABSOLUTELY NO Asset Protection. NONE. The Grantor, The Trustee, and the Beneficiary are generally the same person. The Grantor did not give-up control of the asset(s).	YES. The Grantor no longer owns the assets. Assets have been transferred to the INDEPENDENT Trustee who has a fiduciary duty to manage the assets for the benefit of all beneficiaries, which may include the Grantor.
Eliminate Probate	YES	YES
Eliminate Estate Taxes	NO	YES. Assets are not subject to the Estate Tax. The deceased did



		not "own" the assets or have assets in his possession at the time of his death.
Form 1040 income tax benefits	YES. You have done nothing. You still "own" the assets. All Income and Expenses flow-through to the Grantor's form 1040.	YES. If this is a Grantor-Type Trust, for income tax purposes, all income and expenses can flow through to the Grantor's form 1040.
Comments:	The Revocable Trust is designed to eliminate probate. DOES NOT eliminate estate taxes; ABSOLUTELY NO asset protection. The Revocable Trust is nothing more than an extension of your will.	For asset protection purposes the trust is irrevocable. Under certain conditions, the trust can be designed to be a pass-through trust for income taxes.

The Revocable Trust (Revocable Living Trust):

What's wrong with a revocable trust (revocable living trust) is that the owner of the assets (the Grantor) retains too much power over the disposition of the trust assets. This direct control nullifies any defenses against potential frivolous lawsuits. His deemed control is equivalent to ownership, and if you still own the asset you are liable to lose them in a lawsuit. And if you own the asset you will incur an estate tax.

The laws of most states permit the formation of a variety of revocable trust instruments (AB "Family" Trust, QTIP Trust, Crummey Trust, Retained Interest Trusts such as GRITS, GRATs, GRUTs, and QPRT), whereby the trust creator (Grantor) contributes assets for the benefit of others to be managed by a Trustee. While it is also possible for the creator to be either the Trustee or a Beneficiary of the trust he or she has created, such dual capacities will usually destroy the trust's ability to shelter its assets from creditors of the Grantor. When a Grantor reserves an unqualified power of revocation, he or she is deemed the absolute owner of the trust property, as far as the rights of creditors are concerned. This is true even if a Grantor of a trust does not retain a beneficial interest in the trust, but simply reserves the power to revoke it.



The Irrevocable Trust:

Unlike a revocable trust (revocable living trust), assets transferred to an "irrevocable" trust cannot be changed or dissolved by the Grantor once it has been created. The Grantor no longer owns the assets. An independent Trustee is your best defense. With an independent trustee, you generally can't remove assets, change beneficiaries, or rewrite any of the terms of the trust. An irrevocable trust is a valuable estate-planning tool. First, you transfer assets into the trust--assets you don't mind losing control over.

With an irrevocable trust, all of the property in the trust, plus all future appreciation on the property, is out of your taxable estate. That means your ultimate estate tax liability may be less, resulting in a more tax efficient way to transfer your accumulated wealth to your beneficiaries. Property transferred to your beneficiaries through an irrevocable trust will also avoid probate. As a bonus, property in an irrevocable trust may be protected from your creditors. Of late this irrevocable trust device is being utilized by many planners for avoiding the Medicare nursing home spend-down provisions whereby if the elderly has to enter a nursing home he must first spend all his money until he does not have any money left. However, a so-called "Look back" can be applied so this type of planning must be done beforehand.

Independent Trustee:

A quick word about the independent trustee: most people don't like to give up control over their assets because of their perceived notion that giving up control is equivalent to leaving the wolf in charge of the henhouse. The law imposes strict obligations and rules on trustees including a duty to account for any benefits the trustee may have gained directly or indirectly from a trust. This goes beyond fraudulent abuse of position by a trustee.

The courts regard a trust as creating a special relationship which places serious and onerous obligations on the trustees. The law regards the special "Fiduciary" relationship of a trust as imposing stringent duties and liabilities on the person in whom confidence is placed - the trustees - in order to prevent possible abuse of that confidence. A trustee is therefore subject to the following rules:

- No private advantage -
A trustee is not permitted to use or deal with trust property for direct or indirect private advantages. If necessary the court will hold him personally liable to account for any profits made in breach of this obligation.
- Best interests of beneficiaries -
Trustees must exercise all their powers in the best interests of the beneficiaries of the trust.



- Act prudently- -
Whether or not a trustee is remunerated he must act prudently in the management of trust property and will be liable for breach of trust if, by failing to exercise proper care, the trust fund suffers loss. In the case of a professional the standard of care which the law imposes is higher. Failure to exercise the requisite level of care will constitute a breach of trust for which the trustee will be liable to compensate the beneficiaries. This duty can extend to supervising the activities of a company in which the trustees hold a controlling interest.

Legal safeguard of an irrevocable trust: In cases of substantial assets, you may add one other safety measure, "the Trust Protector." The trust protector's sole function is to hire and fire trustees, **at will and without explanation**. We use limits on how much a trustee can be authorized to spend without a second signature.