

There are many reasons for using a trust in estate planning. Which kind fits your needs?



NEWS

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Q: What is the difference between a revocable and an irrevocable trust?

In a prior article, I discussed the terminology and basic function of trusts in estate planning. A follow-up article went into some more detail.

More: [Think of trusts as buckets for your assets; they can be filled up](#)

More: [I know I need a will, but do I need a trust, too? And if so: Why?](#)

But there is so much more to think about!

Each family might have different reasons to use trusts. In the past, they were useful in saving on estate taxes, although that is currently rarely the case. At times, they may be used to “control” assets for those heirs that are either not yet (or may never be) responsible enough to have their own ownership of the assets. But in most cases, I think that using a trust represents an act of love and protection.

When an individual or a couple finishes living, they are usually left with assets bound for those they love and care about. In many cases, just leaving the assets outright to heirs works well, but there are instances in which a trust might provide value.



As the trust document may convey instructions in somewhat legal dry language, it helps greatly to think about how to convey the true intent of the trust with the words you choose to use. As noted above, control of how money comes out of the trust might be important to protect an inheriting child from wasting your legacy. But also offering asset protection for that money can be very valuable.

When you (both spouses) die, your revocable trust becomes irrevocable, and it can offer both valuable factors of control and asset protection. An independent trustee or co-trustee is not under an obligation to pay out trust funds for a soon to be ex-spouse in a divorce, or an auto accident creditor of your heir. An independent trustee or co-trustee may also put a “brake” on unwise spending by your heir.

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It is important to remember that many if not most of the things that you own do not pass via your will. Retirement accounts and IRAs pass via beneficiary designation, as do life insurance and most annuities. Assets owned with right of survival with someone other than your spouse will pass to the survivor. So if you create a trust, you must then also make sure that these assets will pass to the trust (usually as a contingent beneficiary, as the spouse is the usual primary beneficiary).

It's important to decide on what level of control you want for the distribution of assets. Many of us feel it is unwise for younger people to have "too much money," so that the level of financial support by the trust before the heir is mature and responsible is important. Many trusts allow a trusted person (the trustee) to have much discretion in how the money is distributed-hoping that the trustee will act like the parents would have in similar circumstances.



Asset protection in the now irrevocable trust is a function of having a trustee that is not the beneficiary. The trustee is not compelled to pay out funds even when the beneficiary is at fault in an accident or a marital failure. A family judge could consider the funds in the trust account when making financial allocations, but usually could not force a distribution of funds (other than for child support).

There are many more considerations in the design and implementation of a trust that bear the input of your financial advisor and a good estate planning attorney.

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