

Trust Options

There is seemingly persistence by some people who are interested in effectuating an estate plan to make a Trust, even when the reasons for having one are not clear or even existent. Let's take a closer look at the concept of Trusts and thereby perhaps assist in determining if such a planning tool is appropriate for you.

A Trust may be thought of as a type of receptacle, a holding tank...a place to put something. It is an agreement between a "grantor" or "settlor," that being the person or people who make the Trust, and the "Trustee," who is the person, people or entity in charge of the Trust. The agreement is one in which the Grantor directs the Trustee what to do with the assets placed in the Trust. In addition to the Grantor and Trustee, Trusts have one or more "Beneficiaries." These are the people or entities that receive benefits from the Trust, usually in the form of a distribution of some type and at some point in time.

A Trust can be included in a Last Will and Testament. This type may be referred to as a "Testamentary Trust." For example, "If anyone under the age of 18 receives a gift it shall be placed in Trust..." This type of Trust does not become operational when the Will is executed and may only be so perhaps at some later point. It may never become operational as the Beneficiary might be 18 years or older when the Testator (the person who executed the Will) passes.

Other Trusts are made and often funded presently and are called "Living Trusts." Living Trusts can be either "revocable" or "irrevocable," each being what the name implies. The former can be changed or undone while the latter can not. Also, Testamentary Trusts may be directed to become irrevocable should they ever become funded.

Types of property that are often placed into a Trust include money and real estate. Revocable Trusts are taxed at the personal rate and Irrevocable Trusts have a rate that differs in some respects, and is somewhat higher. Irrevocable Trusts require a separate taxpayer identification number and there is a requirement to file a separate tax return if a tax is due.

Trusts typically, in some fashion and at some point in time, distribute the property that was placed into it. In this way, a Trust can be seen to fulfill some of the same functions as a Last Will and Testament. Often, one who has made a Trust will also have what is referred to as a "Pour-Over Will," which works with the Trust to disburse items that have not been placed into the Trust. In other words, such a Will essentially directs that any property not placed into the Trust during the Grantor's life, be distributed pursuant to the terms of the Trust. However, the Will does not necessarily have the same terms as the

Trust. A Trust and a Will are two different documents and can serve two separate functions.

Assets are placed into a Trust by titling them as such. A Trust will have a name. John Doe may have a Living Trust that might be called "The John Doe 2016 Trust." If John wished to place his home into the Trust, he would deed the property to "The John Doe 2016 Trust."

Some of the often cited benefits of Trusts include: avoiding the probate process, meaning that upon the death of the Grantor, assets maintained in Trust are not part of probate and the administration of the estate may proceed more efficiently; Irrevocable Trusts may be used to avoid taxes and long term healthcare costs but only if other requirements are met, such as having assets titled in the Trust early enough to avoid certain look-back periods; Revocable Trusts are helpful in the transfer of out-of-state property and avoiding a probate process in two states; Trusts are often deemed to be more private as they may not become public records as does a Will.

It may be noted that in the State of New Jersey, the rules and costs associated with probate are not particularly onerous and avoiding probate may not alone be worth the cost and effort of making a Trust and re-titling assets.

Trusts may be designed to suit various purposes. Certain Trusts are often used for children who may not be financially responsible and may be referred to as "Spendthrift Trusts." Others may be used for beneficiaries who are disabled and may be referred to as "Special Needs Trusts." Certain Trusts are designed to avoid estate taxes, for example by holding life insurance policies and are referred to as Irrevocable Life Insurance Trusts. There are many reasons for having a Trust and each may be given a different name.

Is a trust right for you? Think about your intentions and goals. Then see if such a document will meaningfully assist you therewith. If so, such planning may be well worth the effort and expense. If not, it will likely be of little practical value and even provide a false sense that you have accomplished something when you have not.

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