

Do I need a Revocable Trust or an Irrevocable Trust?

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Life has become so complicated! How can you make sure that you have done all that you can to protect yourself and your family? We all are concerned to some extent about our finances, minimizing taxes and paying for health care – especially long term care.

Having a comprehensive estate plan that meets your desires and that is up to date can be the key. One of the best planning tools available is the “Trust”. Trusts come in many flavors and can be tailored to meet your wishes. However, choosing the right type of trust is not as simple as choosing your favorite ice cream topping.

Trusts can be living trusts or testamentary trusts. They can be revocable or irrevocable. They can be established for almost as many different reasons as you can think of. But this is the most important factor – Why are you setting up a trust? The answer to that question will allow your attorney to properly draft the type of trust and trust provisions to meet your goals.

Let’s look at a few different answers to that question.

“I don’t want my family to have to go through probate.”

Many people are concerned about the cost and potential delays of having to go through probate. Assets that are held in the name of a trust, whether revocable or irrevocable, are not subject to probate. However, if the main goal is to avoid probate, a revocable trust is often utilized. The person who established the trust can maintain control over and access to the trust assets and income, if any. A revocable trust does not protect assets from long term care.

“I want to protect my home in the event I need to go to a nursing home.”

In this case, an irrevocable trust is needed. If someone is concerned about protecting their home (and/or other assets) from the costs of a nursing home, then a Medicaid Asset Protection Trust (“MAPT”), which is a type of irrevocable trust, should be used. The Settlor (the person setting up the trust) will have no access to the principal of the trust. They may have access to the income if desired, but this needs to be discussed with the attorney since the income will then not be protected. Also, special powers can be drafted into the trust to allow the Settlor to change the trustee and the beneficiaries of the trust.

There are various other types of trusts, revocable and irrevocable, which include:

1. Irrevocable life insurance trusts (typically used to fund an estate tax);
2. Charitable trusts (irrevocable), which can be used to save taxes and support your favorite charity at the same time;
3. “Family Protection Trusts”, which can be revocable or irrevocable depending on circumstances, to protect inheritances for your children in case they have a marital problem or have creditor issues;
4. Special or Supplemental Needs Trusts, which can be established to protect a loved one with special needs and their government benefits.

So, you can see how useful trusts can be. Trusts are a wonderful planning tool in the planner’s tool kit, but every situation is different. One size does not fit all when it comes to trusts. Deciding on which trust(s) make sense for you can be complicated. Experienced financial planners and estate planning attorneys can help you in deciding which trust is right for you, revocable or irrevocable?