

INTRODUCTION TO TRUSTS

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What Is A Trust?

- A separate legal entity
 - Assigned a tax id number
 - Obligated to file a tax return if all income not distributed
- Corpus: trust assets
- Trustee: the fiduciary and manager of all trust assets
- Creator: trustor, grantor or donor
- Beneficiaries: designated recipients of income and principal
- Remaindermen: Recipients of final distribution of trust

Kinds of Trusts

Revocable

- Remain within the control of the Trustor and remain part of the taxable estate
- Assets properly transferred to the trust pass automatically upon death to the named beneficiaries of the trust rather than having to wait for probate

Irrevocable

- Cannot be changed or altered by Trustor
- Usually not includible in the Trustor's taxable estate upon her death
- Exception:
 - Assets transferred into the trust within three years of the Grantor's death may be includible in the Grantor's taxable estate

Kinds of Trusts Continued

Testamentary

- Created in a Will
- Only comes into being upon the death of the creator
- Can be changed at any time prior to death
- Common testamentary trusts include:
 - Credit Shelter Trusts
 - Trusts for Minor Children

Inter Vivos

- Created during the life of the Grantor
- Come into being immediately
- May or may not be able to be changed (see above slide relating to Revocable versus Irrevocable)

Benefits of a Trust

- Protect a spendthrift beneficiary
- Reduce a taxable estate
- Allow for successor beneficiaries
- Allocate income and principal to different classes of beneficiaries
- Utilize estate tax exemption
- Protect minor or disabled beneficiaries

Trustee Options

Individuals

- Self, spouse, children, trusted friend
 - Positive: May save on administrative fees
 - Negative: May improperly administer the trust, possible conflict of interest between income beneficiaries and remaindermen

Corporate

- Administrative experience, neutrality
- But may cost more to administer
- Not all trust companies are alike
 - Need Removal Provisions
 - Directed trust model
 - Trust as Administrator solely, removable upon request
 - Grantor appoints investment advisor

Common Names of Trusts

- QTIP: Qualified Terminable Interest Property Trust
- Credit Shelter Trust: allows preservation of the first spouse to die's tax exemption
- ILIT: Irrevocable Life Insurance Trust
- QPRT: Qualified Personal Residence Trust
- SNT: Supplemental Needs Trust
- GRITs, GRATs, CRUTs, CRATs

QTIP Trust

- A trust that qualifies for the unlimited marital deduction at the death of the first spouse
- Allows the first spouse to set remainder beneficiaries upon the death of the second spouse
 - Protects assets if surviving spouse remarries
- The tax advantage is that it delays the payment of estate taxes to the death of the second spouse

Credit Shelter Trust

- A trust that preserves the first spouse's estate tax credit
- Prevents assets in the trust from being taxed upon the death of the second spouse, in essence doubling a married couples' estate tax exemption
- Allows first spouse to designate the ultimate beneficiaries or to delegate that decision to the second spouse

Funding a Credit Shelter Trust

- Automatically up to maximum amount allowed without incurring a FEDERAL estate tax; OR
- Automatically up to maximum amount without incurring a STATE estate tax; OR
- Disclaimer Trust:
 - Most flexible
 - Allows for post-mortem tax planning when know how much money is available and what the current tax liability is
 - One Caveat: Assets need to be segregated immediately

ILITs or Crummey Trusts

- Term Life Insurance: is includible in the decedent's taxable estate IF there were any incidents of ownership, such as ability to change beneficiary
 - Nearly zero present value, so using very little of your gift tax exemption in gifting the policy to a trust
 - Commonly referred to as ILITs or Crummey Trusts

QPRTs

- Qualified Personal Residence Trust
 - Transfer personal residence into trust
 - Retain right to live in residence for a set number of years
 - That retention allows the grantor to reduce the value of the transfer into the trust, using less of the lifetime gifting exemption
 - Appreciation in personal residence post-transfer not includible in the grantor's taxable estate

Supplemental Needs Trust

- Trust for the benefit of someone who receives government benefits, such as Medicaid, Medicare or SSI
- Goal: to avoid having to spend down the assets of the beneficiary or the trust in order to qualify for those benefits
- Commonly used by parents or grandparents of disabled persons
- Trust income and principal NOT considered an available resource of the beneficiary , but trustee can make distributions to the beneficiary to cover things not provided by the government