

## Utilizing a trust as an estate planning tool

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Trusts are often utilized in estate plans to help you manage assets during your lifetime and upon your death, as well as for tax planning. In order for a trust to achieve its full potential as a planning tool, it is essential that you legally transfer to the trust ownership of all assets that you wish to be managed or distributed by your trust. If your assets are held by your trust at the time of your incapacity or death, the probate court will not need to be involved in supervising the administration and distribution of the trust property.

### Revocable trusts

A revocable trust is a trust that can be revoked or amended during the creator's lifetime. It may hold assets such as real estate; checking and savings accounts; certificates of deposit; money market accounts; stocks, bonds and other securities; household contents and personal effects. Generally, formal documents that identify the trustee and the trust are required to transfer asset ownership to your trust.

A written deed prepared, signed and recorded as required by the law of the state in which your real estate is located is required to transfer ownership of real property. If you have a mortgage on the real estate, check with the lender before recording the deed and confirm that transfer of the title will not trigger an acceleration of the note.

If you wish to transfer assets in bank or brokerage accounts to your trust, many institutions will not simply

change the title of your existing individual account to your trust. Typically, a new account must be established, with the signatures of all current trustees on file, and you must instruct the institution to transfer all assets in your existing account to the new trust account.

If you have personal property of substantial value – artwork, jewelry, collectibles – and wish to ensure your estate will not be subject to any probate proceedings, all “tangible” personal property must be transferred to your trust. Because these assets typically have no formal documents evidencing ownership, a form of “assignment” is generally prepared and signed to describe the personal property being transferred.

When transferring assets that are insured – whether real estate or personal property – check with your carrier about whether it will affect coverage or policy endorsements need to be revised.

### Irrevocable trusts

There are a variety of irrevocable trusts which may be established to serve different estate planning objectives. A common type is an Irrevocable Life Insurance Trust (ILIT), which generally is created to own and distribute the proceeds of a substantial policy insuring your life, or the joint lives of you and your spouse.

Properly structured, an ILIT provides benefits in the form of readily-accessible cash to your beneficiaries – or continued management of the proceeds – while avoiding estate tax that might otherwise be payable on the proceeds at

the death of the insured(s).

Once an ILIT is established, the trustee may buy a new life insurance policy on your life, or ownership of an existing policy may be assigned to the ILIT. If an existing policy is assigned, you may have to file a gift tax return to report the transfer of any cash value in the policy.

The trust beneficiaries must be promptly notified of the assignment and given a reasonable opportunity to withdraw the cash value. When a policy is assigned to the trust, the trustee, as the new owner, must also take steps to update the beneficiary designation naming the trust/trustee as the beneficiary of the policy.

To maintain the insurance policy owned by the ILIT, usually you must contribute funds to it periodically in order to pay premiums. Properly drafted ILITs contain withdrawal provisions that will allow those contributions to be treated as gifts to the beneficiaries which qualify for the “annual gift tax exclusion.”

In order to avoid gift tax on contributions, the trustee must notify each beneficiary of the amount of each contribution, the amount he may withdraw and the deadline for making a withdrawal.

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