

Trust Terminology & Types of Trusts

People create trusts to implement their plans for themselves, their family and their property. There are many different types of trusts. Trusts can be customized to fit a person or families particular circumstances.

Revocable Living Trusts. A Revocable Living Trust is a written document containing the Trustmaker's plans for their property and their family. The Trust comes into existence when it is signed by the Trustmaker. The Trust may be revoked or amended by the Trustmaker.

Trustmaker, Grantor, Settlor, Creator and Trustor are names for the person who establishes a Revocable Living Trust.

Trustee. The Trustee is in charge of managing the trust property. The Trustmaker usually appoints himself/herself as the initial Trustee. Upon the Trustmaker's death or incapacity, a *Successor Trustee* takes over the management of the trust property and is responsible for carrying out the Trustmaker's instructions. Trustees may be individuals or institutions. Trusts can be managed by more than one Trustee, called Co-Trustees.

Trust Beneficiary. The Trust Beneficiary is the person or entity entitled to receive distributions of Trust property. During the Trustmaker's lifetime, the Trustmaker is also the Trust Beneficiary. Upon the Trustmaker's death, the Trust's beneficiaries are changed to the *Primary Beneficiary* and if he or she has predeceased the Trustmaker, to the *Contingent Beneficiary*. Charities or non-family members may be named as beneficiaries.

Trust Funding/Trust Property. Trusts control property that is held in the name of the Trust. The Trustmaker *funds* the trust by transferring title to his/her property to the Trust. The property then becomes "trust property". *Trust Funding* is accomplished by sending a letter to banks and other financial institutions asking them to change the title on the accounts from the Trustmaker's individual name to the Trust. Real estate is transferred to the Trust by deed. Trusts may also be the beneficiary of the Trustmaker's life insurance policies or retirement accounts.

Avoiding Probate. Property that is "trust property" will avoid Probate Court Proceedings at the death or incapacity of the Trustmaker

Sub Trusts. A Revocable Living Trust may contain Sub Trusts which come into being upon the happening of an event. For example the Trust may state "Upon my death, if my spouse survives me, my estate will be divided into a *Marital Trust* and a *By Pass Trust*". The Trust may go on the state "If my spouse has predeceased me, my Trust property shall be divided into equal trust shares to my children". The Marital Trust, the By Pass Trust and the trusts for the children are Sub Trusts contained in the Trustmaker's Revocable Living Trust.

By Pass Trust (Family Trust, Credit Shelter Trust) & Marital Trust. If a husband and wife have a combined estate valued at more than the Federal Estate Tax exemption amount, (\$2,000,000.00 in 2008), in order to save Federal Estate Taxes, the Trust document will divide the Trust

property into a *By Pass Trust* and a *Marital Trust*,. The surviving spouse may be the Trustee and Beneficiary of the By Pass Trust and the Marital Trust.

A *QTIP Trust* or *Qualified Terminal Interest Property Trust* is a special type of *Marital Trust* which may be used in a second marriage when a Trustmaker wants to provide trust distributions to his/her spouse during the spouse's lifetime and upon the spouse's death distribute the remaining trust property to the Trustmaker's children from his/her first marriage.

Separate Trusts and Joint Trusts. If husband and wife have a combined estate valued at more than the Federal Estate Tax exemption amount, (\$2,000,000.00 in 2008) they may have separate trusts which provide for Federal Estate Tax planning or they may have one joint trust which provides for Federal Estate Tax planning.

Protective Trust. An inheritance left to a child outright will subject the inheritance to the child's creditor problems, marital problems, addiction problems, inability to manage money and Federal Estate Taxes on the child's estate. Leaving the child's inheritance to the child in a Protective Trust, rather than outright, will address those concerns. *Dynasty Trusts* are special types of Protective Trusts which continue to hold property in trust for the benefit of succeeding generations.

Trust Amendment. After the Trustmaker has established a Revocable Living Trust he/she may change all or any part of the Trust by signing a Trust Amendment. A Trust Amendment must be signed and dated by the Trustmaker.

Testamentary Trust. A Testamentary Trust is a trust contained in someone's will. It comes into existence upon death and is subject to Probate Court proceedings.

Irrevocable Trust. An Irrevocable Trust is created during the Trustmaker's lifetime and can not be amended by the Trustmaker. Irrevocable Trusts may be used for gifting and reducing Federal Estate Taxes.

Life Insurance Trust. A Life Insurance Trust is an Irrevocable Trust established to be the beneficiary of a life insurance policy. If the premiums are gifted to the Trust, the life insurance proceeds will not be included in the Trustmaker's estate for Federal Estate Tax purposes.

Special Needs Trust. A Special Needs Trust is a trust established for the benefit of a child who has disabilities and is entitled to government assistance. An inheritance for a disabled child held in a Special Needs Trust will not disqualify the child from receiving government assistance. Distributions from the Trust are made at the *discretion* of the Trustee for the child's *special needs*. A Special Needs Trust may be established as a stand alone trust or it may be a Sub Trust contained in a Revocable Living Trust.

Asset Protection Trusts. A Trustmaker's property held in a Revocable Living Trust is not protected from the claims of the Trustmaker's creditors. Property held in a By Pass Trust or a Protective Trust is protected from the creditor claims against the Trust's Beneficiary. Several states now permit *Domestic Asset Protection Trusts* which allow a Trustmaker to transfer his

property to an irrevocable trust of which he is the beneficiary. If the statutory requirements are met, the property is protected from the Trustmaker's creditors.

