

# REVOCABLE AND IRREVOCABLE TRUSTS

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The acceptance of Trusts as a practical way to organize and protect assets is a positive step in helping to strengthen a family's financial well-being. Revocable Trusts keep decision-making in the hands of the grantor. Irrevocable Trusts bestow powers and control to another person, persons or entity to provide more complete asset protection. Property, accounts, and other tangible assets which are held in both Trust types may be transferred after death without the need for a probate proceeding.

Owners of multiple properties in different states should consider revocable trusts to avoid the cost and delay of separate probates in each state where a property is located. Probate may also be problematic where one or more children are estranged from the parents or siblings and yet are still required to sign court documents or make an appearance in an estate proceeding. A revocable trust would be preferable in that situation by allowing a parent to direct where he or she wants assets to go without the interference of a court proceeding or troubled family member. The creator of a revocable trust is still the owner of the assets funding the trust and may amend, alter or revoke the trust at their discretion. This flexibility makes sense if the trust creator's age and health are not barriers to the pursuit of a more active financial life.

Advancing age and health concerns bring the concept of an Irrevocable Trust into sharper focus. Irrevocable Trusts are featured in Medicaid and long-term health care planning to protect homes and other assets from Medicaid liens and estate recovery. Irrevocable Trusts may be drafted with life estate language to maintain

the STAR property tax exemption for the primary residence when it is placed in the Trust. Creators of Irrevocable Trusts must choose a Trustee or Trustees to make decisions regarding trust assets including: investments, sales, purchases and many other responsibilities. The fact that assets are no longer titled in the Irrevocable Trust creator's name shields those assets from creditors at a later point. Spouses in a second marriage with children from a previous marriage should consider an Irrevocable Trust to direct and lock-in assets to their desired beneficiaries without relying on will planning and the potential for future revocation.

The selection of trustees and successor trustees is vitally important in trust planning. For revocable trusts, the creator is also the trustee, but when they pass away their trust becomes irrevocable and the successor trustee must carry out the wishes of the Trust creator as specified in the document. An Irrevocable Trust is completely separate from its creator. The Irrevocable Trust is assigned its own EIN number (Tax Id number) from the IRS and the chosen Trustee is responsible for accepting transferred assets into the Trust and managing them. Some Trusts continue beyond the death of the creator for the benefit of certain known beneficiaries and other Trusts are terminated and the assets distributed immediately after death. Picking the right trustees who have the capacity to handle these obligations will ensure that an estate plan is followed successfully.

Reach out to the professionals at The Feller Group, P.C. for more information on Trusts and their importance in planning.

