ESTATE PLANNING & ELDER LAW CENTER
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Plan for Tomorrow, Today

Revocable v. Irrevocable Trusts

Trusts have become the more preferred means of passing on and preserving family wealth in many states. Wills are certainly still used but popularity varies. Trusts are preferred in some states, like South Carolina, where probate can be costly and inconvenient. In other states, like New Jersey, where probate is a more simplified process, Wills are favored. Thus, anyone contemplating an estate plan in South Carolina should know the difference between a revocable and irrevocable trust.

On the most basic level, the difference between Revocable and Irrevocable Trusts is control. Here's a quick overview of what you need to know:

Revocable Trusts

A Revocable Trust is more commonly known as a Living Trust. It is created during a person's lifetime and is used to hold items of property like real estate, investments, and motor vehicles. Think of it as bowl created to hold all of your assets. While in the bowl the assets within can be freely used for the benefit of any person, or persons, or his/her family. It is a “Revocable” trust because the person creating the trust (the "Grantor") can dissolve it at any point during his/her life.

Business owners can also place their current businesses in revocable trusts, but it will not protect that business from creditors. Larger trusts may require paying a third party trustee to manage a revocable trust's assets and its tax burdens.

When the Grantor dies, and all family assets have been placed in the Trust, it acts as a substitute for the Will and there is no need for probating a will. If not all assets have been placed in the trust during the Grantor’s lifetime, a simple pour-over will ensures that any leftover assets not already in a revocable trust are transferred in at death.

Revocable v. Irrevocable Trusts (cont'd)

Irrevocable Trusts

An irrevocable trust cannot be altered or dissolved after its creation without the permission of the trustee (the one responsible for the trust's assets) and all of the beneficiaries (the ones who receive support and money from the trust). Irrevocable Trusts are also used to protect assets from nursing home expense, and if created properly, can allow one to qualify for Medicaid while protecting the assets in trust at the same time.

A revocable trust typically self-converts into an Irrevocable Trust upon death of the Grantor. This conversion allows the Grantor to make sure that his/her wishes, as stated in the trust document, are carried out without alteration. Irrevocable Trusts created at death are frequently used in planning for blended families.

The difficulty in changing or destroying the trust can ensure that misguided, or greedy, beneficiaries don't fight over, or burn through, limited trust funds, and trust funds will also be protected from the beneficiaries' creditors.

No one likes to imagine his or her own demise, but planning for the future may involve either a Revocable or Irrevocable trust. Know the differences and choose wisely.