What Everyone Should Know About Trusts

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We are not lawyers, accountants or investment advisors. We do not offer legal, accounting or investment advice. This article provides information designed to help you understand that there are several legitimate uses for trusts. Although we go to great lengths to make sure our information is accurate and useful, we recommend you consult a competent specialist attorney if you want professional assurance that our information, and your interpretation of it, is appropriate to your particular situation. This article is provided without warranty of any kind, either express or implied.

When people talk about trusts, it is usually difficult to really pin down what they are talking about. Most people have heard the term "trust fund" but when pressed to explain what that really is, most of us can't do it. With that in mind, the point of this article is to explain the history of trusts, outline the basic types of trusts and finally address the operation of trusts.

This information is not presented as legal or accounting information. It is presented as a common-sense guide from a professional estate advisor and analyst point of view.

The History of Trusts

The concept of the trust has been around longer than most people realize. As the story goes, the very first trust dates back to the days of the Roman Empire – about 800 A.D. In that society, only citizens of Rome could own property. When faced with deployment, soldiers would transfer ownership of their property to a trusted friend to make sure their families were cared for. During the Roman occupation of the British Isles, the trust became a familiar tool to protect lands from rogue governors and lords. The concept of the trust arrived on American soil along with the colonists.

Trusts were once regarded only as a tool available to the ultra-wealthy. While this was true for many decades, there has been a proliferation of use of these flexible and powerful planning tools. People have discovered that trusts can be useful for almost any socioeconomic class.

The Structure of a Trust

Every trust must have four primary elements. The first element is the trust maker – the person who makes the trust. This person can also be called the "Grantor" or "Settlor." The second element is the person who manages the trust assets and performs the functions of the trust. This person is called the "Trustee" and can sometimes be the same person as the trust maker or can be a professional or institutional trustee. There are more levels of trusteeship. For instance, when the original trustees are deceased or no longer to serve, then another person is appointed to take their place. That person is called the "Successor Trustee." The third element is the person or class of persons who will benefit from the existence and operation of the trust. This person is called a "Beneficiary" and the original beneficiary is sometimes the trust maker, however in many types of trusts the trust maker is not the beneficiary. After the trust maker is deceased, then normally their children become the next line of beneficiaries. Of course, if more than one person exists, they are called "Beneficiaries." The final element consists of the assets inside the trust. These assets are called the trust "Corpus."

These elements are completely interdependent - no trust could exist if even one of these elements did not exist.

Types of Trusts

Trusts can be formed in literally thousands of configurations. The uses are almost unlimited. Despite these almost limitless possibilities, there are only four major types of trusts – Revocable, Irrevocable, Testamentary and Living. Some advisors would mention Domestic trusts and Offshore trusts, but even these must fit within these four classifications.

Revocable Trusts

This type of trust can be amended, added to or revoked during its maker's competent lifetime. After the maker is deceased, this type of trust typically becomes irrevocable.

Irrevocable Trusts

These trusts can't be changed after they are made. There are many uses for irrevocable trusts – like funding legacies for children or grandchildren. Others might use an irrevocable trust to make gifts of property or life insurance.

Testamentary Trusts

This is the type of trust that is typically included in a person's Will. A testamentary trust goes into effect only after its maker has deceased. This trust could also be considered a revocable trust because your Will can be changed at any time during your lifetime.

Living Trusts

Any trust that takes effect during the maker's lifetime is considered a living trust. Most people – and sometimes even legal professionals – misinterpret the distinctions presented here. People are often heard talking about "living trusts" when they really mean "revocable trust." Sure enough, the revocable trust is typically a living trust, but irrevocable trusts are very frequently living trusts, too!

The distinction here is important because you need to have a thorough understanding of the terminology before you can have an understanding of what these trusts can or can not do.

Common Uses for Different Types of Trusts

While we're discussing the common uses for trusts, let's address the most common type of trust first – the Revocable Living Trust.

For most families, this trust acts much like a Will – its primary purpose is to distribute assets to the beneficiaries after the trust's makers are deceased. That's about where the similarities between the Will and revocable living trust end, however.

The revocable living trust's ability to avoid probate is often the primary reason families use them for distributing assets. Many generalist attorneys argue against making a revocable living trust and encourage their clients to have their estates settled through the probate process. This mindset is in direct conflict with the national organizations that support specialist estate planning attorneys. The National Network of Estate Planning Attorneys supports the notion that most people benefit from a revocable living trust – based estate plan. The American Academy of Estate Planning Attorneys lists the revocable living trust as its number one estate planning strategy.

Why does a revocable living trust avoid probate? That's a good question. The answer is that all of us are not going to be living at some point in the future. If we have assets titled in our names, then those assets will need to be probated so they can go to our heirs. If we have a revocable living trust, the assets are already out of our name. And even though we will all be deceased at some point, the trust lives on. In essence, when you fund your living trust (retitle your assets into the name of your trust), you have performed what some refer to as a "living probate."

Why Should You Care About Probate?

The estate planning community consists of professionals knowledgeable about estate law and regulations. The professional estate planners and lawyers steer clear of the pro and con debate over probate. Most of the specialists would prefer that their clients' estates not be exposed to the probate process. The reader should note that even though there are reasons why specialists don't want their clients' estate exposed to probate listed here, not every potential problem listed will occur in every probate.

Probate can be time consuming. It can take anywhere from four months to several decades to complete a probate. The national average is somewhere around thirteen months. Many states have passed the Uniform Probate Code to simplify and standardize informal probate proceedings and this has had a very positive impact on the process.

Probate can be expensive. It is almost impossible to find anyone who can tell you how much it costs to probate an estate. Some states have the rate set in law. In other states, attorneys, accountants and others charge whatever they want to charge. The issue is that there is no way one can predict what a probate might cost. National estate planning expert and author Henry Abts III, in his book The Living Trust, writes that you can expect five percent to fifteen percent of your estate to be gone after the probate process is completed.

Probate is a matter of public record. Some people are really shocked to discover that their parents' wills and other private financial and business information become a matter of public record as soon as their estate is presented for probate. Some Wills even have the date of birth and Social Security numbers of the heirs published in these public files! One recent discovery of this fact had a client particularly angry at the attorney who put her very personal information in the parents' Wills. There is frequently other very private information contained in probate files that families would prefer to keep private.

Formal probate provides very little or no flexibility. The process to complete a probate is written in law. There is very little or no flexibility in a formal probate. However, the adoption of the Uniform Probate Code has provided much more flexibility on estates that can be settled by informal probate.

During the probate process, it is relatively easy to challenge the Will. Any family member and even some people who are not considered family members can challenge the Will. Most Will challenges are not successful, but can lead to messy family fights in the public court forum. Challenges make the settlement process take longer, cost more money and add aggravation to everyone involved.

Probate can make it expensive to manage an inheritance for a disabled heir. When a disabled person inherits an asset, there are several issues that may make that inheritance ineffective. The first is the disabled person's ability to manage the asset. The second is the inheritance often disqualifies the disabled heir from government programs they might be on. To avoid this, another person may be appointed as a guardian or conservator of the disabled person's estate. This process can and often does lead to family fights.

Probate can't protect an inheritance from creditors. Once a person receives an inheritance out of a probate estate, that asset can be confiscated and applied to any judgment, including IRS liens and judgments from creditors or former spouses.

Advantage – Once Probate Is Done – It's DONE

Once a probate is closed and over, it is done. Ordinarily, creditors are not allowed to make

any more claims against the estate. With a revocable living trust, legitimate creditors typically have the length of time outlined in that state's statute of limitations laws to challenge distributions.

When you compare the probate process to the benefits of a revocable living trust, it may be quite easy to determine what might work best for you. In contrast to a Will, a revocable living trust is: *Normally inexpensive to settle.* One of the arguments against making a revocable living trust is the initial cost. While it is true that most attorneys charge more to draft a trust than they do to draft a Will, the savings are very frequently offset by the savings when the probate fees and costs are eliminated. This is not to say that the revocable living trust can eliminate settlement costs entirely. For instance, if an estate would need an appraisal for federal estate tax purposes, that appraisal would still have to be done. If an estate distributed by a Will would need an extensive amount of accounting work done, the same estate distributed by revocable living trust would probably need the same amount of accounting.

However, if an estate would not need any of these types of extra work conducted, trust settlement costs can be significantly lower than estate settlement costs through a Will. One issue that needs to be pointed out here is the effectiveness of any trust in probate avoidance is gauged directly by the quality of the "funding" of the trust – or having the assets titled in the name of the trust. If you have a trust that has not been funded, what you really have is expensive scratch paper. *Assets must be titled in the name of the trust for the trust to be an effective estate management and probate avoidance tool!*
Normally easy to settle.

When one spouse is deceased, it is very typical for a surviving spouse to just sign just a couple of legal documents and that allows that surviving spouse to take over the trust entirely. Obviously, the larger estates with federal estate tax issues will require far more work than just signing a couple documents. However, the properly funded trust still avoids the potential headaches of probate.

A national estate planning expert recently stated that most of his clients' trusts can be settled with only a couple of hours of work. Of course every planner has a different system, but specialists can attest that revocable living trusts are normally very easy to settle.

Revocable living trusts are private. There is no probate file for strangers to look at. The trust is completely private and is only for the eyes of those involved – trustees and beneficiaries.

Revocable living trusts are flexible. The trust makers can write in all the flexibility that they think is prudent. In reality, most of the modern trust drafting programs have standard language attorneys use to provide flexibility and control, but each trust must be customized to meet the needs of the trust makers.

Trusts are more difficult to challenge. The debate rages on over this statement. As our society is forced to become more and more legalized, many people have endured the rude awakening that there is no way to avoid being sued. In most states, trusts are under the same scrutiny as are Wills – and the scrutiny lies with two major issues. The first issue is mental competency – did the person writing the Will or trust have the mental capacity to make that document. The second issue is undue influence – did a person who got a larger share of inheritance have an undue influence over the person writing the Will or trust. A mediation/arbitration clause can help keep the trust's affairs out of the theatrics of the courtroom and a no-contest clause can help keep troublemakers from causing mischief. There are more explanations about these and other clauses later in this article.

Revocable living trusts can make it easier to manage a disabled heir's inheritance. The trust maker states exactly how all the heirs' inheritances are handed down. There are literally many different variations of how inheritances can be distributed and managed. This is not only true for disabled heirs, but also for all heirs. If an heir had a lien placed against them by any person or governmental agency, the trustee of the trust could pay for the benefit of that heir instead of just distributing money. In other words, a properly written and operated trust could allow the trustee to buy a house and let that heir live there. The trustee could buy a car for that heir's use. The trustee could pay medical bills, energy bills, provide vacations and provide relief for a variety of other expenditures. Of course, the trust has to have the proper language and be operated properly for the heirs to enjoy this level of asset protection.

Revocable living trusts can be an essential piece of keeping the family peace, especially in second or subsequent marriages. Most matrimonial attorneys want their clients to execute prenuptial agreements to avoid major problems later on. Estate planners are seeing more and more cases where "blended" families are at odds with each other. By far, the best way to deal with this is to use a revocable living trust that outlines very clearly what is to happen with assets. Typically the spouses want the entire trust assets available to support the surviving spouse, but may want those assets distributed to their own children after the surviving spouse passes.

How Does A Revocable Living Trust Work?

Now that we have addressed the primary differences between the probate process (Will or nothing) and the revocable living trust, let's address how a revocable living trust works. It's very simple.

A person making a revocable living trust decides how their assets will be used when they are living and then how the assets are to be distributed when they are deceased. There are several ways to retitle assets in the name of the trust. Real estate is typically deeded into the name of the trust. Personal property that does not have a title is transferred into the name of the trust by assignment or bill of sale. Titled assets, like vehicles, bank accounts investment accounts, stock certificates, etc. are simply retitled. We typically don't want to retitle qualified accounts such as IRAs, 401(k)s, TSAs, etc. into the name of a trust, but the properly worded trust can be a beneficiary of qualified accounts. Even though a trust maker has retitled assets into the revocable living trust's name, the trust maker still maintains complete control of the assets.

Normally, in a situation where a couple makes a trust their lives do not change one bit. They still have complete control of the assets. They still file the same income tax returns. They still maintain the same tax ID number on their bank accounts. They do not even have to change the name on their check blanks if they don't want to.

During their lives, all of the assets in the trust are used to support the surviving spouse during their lifetime. Then, after both spouses are deceased, the property is distributed to the heirs. During the spouse's lifetime, the trust is typically still amendable and revocable. In some cases, however, the trust can become irrevocable on the death of the first spouse to pass. What happens depends on what is written in the trust document.

Estate Tax Avoidance

Over the decades, there has been much ballyhoo over the federal estate tax. One author recently wrote that the federal estate tax has been "permanently repealed" three times! The reality is that even though many people would like to see this tax repealed, it will always be a political football. After all, when the government needs money, who is the easiest mark? Dead people don't vote or complain or give money to political opponents.

Whether you support the federal estate tax or not, you will always have the ability to avoid all of it if you really want to by using legitimate planning techniques which include splitting the revocable trust into two trusts at the first death of a trust maker to take advantage of the automatic estate exclusion amounts, currently known as the *Applicable Exclusion*. The term that applied to this concept was, for many years, referred to as the *Unified Credit*.

Some trusts include provisions that instruct the Successor Trustee to automatically protect the deceased spouse's Applicable Exclusion. The Applicable Exclusion is the amount of assets a person can own at death before their estate is subject to federal estate taxation. For tax year 2006, this exclusion for each deceased person is $2 million. So if a family had an estate that was near $2 million or over that amount, they would want a trust that had a provision to utilize the deceased person's lifetime exclusion. This type of sub- trust is sometimes called the "Bypass Trust," or "Credit Shelter Trust." Sometimes this trust is called the "Decedent's Trust." The entire point of this sub-trust is to utilize the deceased person's lifetime exclusion amount and reduce or eliminate federal estate taxes.

The A-B Trust Arrangement

If the Bypass Trust is used, then we have what we call an A-B Trust arrangement. It is easy to remember which trust is which. The A trust is for the above-ground spouse and the B trust is for the below-ground spouse. When the first spouse passes and the B trust is funded, the B trust becomes irrevocable – the terms of the trust can not be changed. The A trust is typically completely amendable and revocable by the surviving spouse. The surviving spouse typically remains as trustee of the A trust. Many different people or institutions could act as trustee of the B trust. Most families appoint a child or children to serve as trustees after the parents are gone. Others can appoint professional trustees or institutional trustee, such as a bank trust department.

Making these two trusts is a function of utilizing several benefits all under one umbrella. As you read earlier, we can split an estate with this mechanism to make sure that the deceased spouse's lifetime exemption is utilized. We can also use this A-B arrangement to put rapidly growing assets in the B trust, so the estate growth takes part outside of the surviving spouse's estate. The Trustee of the B trust can take cash inside of the trust and purchase life insurance on the surviving spouse, so the wealth is leveraged for the beneficiaries on an income tax free basis.

We want to take great care when constructing an estate plan with the A-B trust. Although the surviving spouse can have some limited control over the assets in the B trust, there is not nearly as much control over these assets as there once was. The surviving spouse has complete control over the assets in the A trust, however.

Why does the surviving spouse lose most control over the assets in the B trust? It has to do with what the IRS calls "Power of Appointment." Basically, a person with power of appointment over an asset in a trust is the owner of that asset for federal estate tax purposes. In essence, if the surviving spouse could appoint any and all assets out of the B trust, all of those assets would be included in that spouse's estate when they deceased, probably causing much waste from estate taxes and the administrative work required to file the Form 706 (Federal Estate Tax return).

Potential Problems Funding the A-B Trust

When the first spouse deceases, a decision must be made on which assets to place in the A trust and which to place in the B trust. We call this "funding" the trusts. As you will recall, when we originally made the first Revocable Living Trust, we had to change the titles of the assets we owned to the name of our trust, thereby "funding" it. Now we get to do it again. This is not a difficult chore.

The difficult part of this process is deciding which assets go where. Because we want the surviving spouse to benefit from all the assets in the estate, we need to make sure there is control over the assets the surviving spouse wants control over. For instance, if a ranch had land worth $2 million, cattle and equipment worth $1.5 million and cash worth about $500,000, the surviving spouse would probably want the land placed in the B trust and the cattle, equipment and cash placed in the A trust. This way, the surviving spouse has the most flexibility with the most liquid assets, the heavy land value appreciation is probably taking place in the A trust, and the depreciating assets are in the A trust.

The only changes required in this arrangement would be to change the deeds to read that the land is owned by the B trust. Ownership might read like this: Grantee: The John and Jane Doe Family Trust, Credit Shelter Trust or The John and Jane Doe Family Trust, Decedent's Trust. The name of this trust depends on how the main trust document refers to it.

Some trusts have a forced funding of the B trust. In the event a spouse passed, the trust would require the trustee to fully fund the B trust with the maximum amount allowed by law. So in the year 2006, if a person passed and their trust had this clause, a mandatory funding of $2 million in assets would be required to be placed in the B trust. This is all fine and dandy, except in the event the estate is only $2.25 million. Essentially, that would mean the surviving spouse might lose control over all the assets but $250,000. Once the surviving spouse finds out about that, they are usually not very happy. There is a better way to do this, and it is called a "Disclaimer" trust.

A Disclaimer trust is really a state-of-the-art estate planning arrangement. With this type of trust, the trustee only funds the B trust with assets that are "disclaimed" by the surviving spouse. By operating the trust this way, we can ensure that the surviving spouse gets to keep control over the maximum amount of assets that make the most sense for their case. So in this case where the family had $2.25 million is assets, the surviving spouse could fund the B trust with the fastest-growing assets and retain control over the liquid assets and depreciating assets.

Because this is a state-of-the-art arrangement, it also requires a state-of-the-art plan that is put together by someone who knows what they are doing. It is not difficult to operate this strategy, but the right steps have to be taken at the right time. Many attorneys shy away from this arrangement because they either don't understand how it works or they don't want the burden of having to keep track of the funding process. Most specialists, however, point out that this is often the best of what we can offer to families. It is important to note that using a qualified disclaimer falls under certain rules that have to be adhered to or risk losing the exemption! If you use this strategy, it should only be with the help of a qualified estate planning specialist.

One Trust or Two?

One of the more popular misconceptions about larger estates is the notion that in an estate that has a potential estate tax liability, two trusts are needed – one for the husband's assets and one for the wife's assets. It is rare to find an arrangement like this done by specialists today. There is still an occasional occurrence where two trusts are better than a joint trust. There are two major reasons why specialists don't make two trusts any more. First, the surviving spouse can lose control over too many assets. Second, there is potential for a major lack of flexibility in funding the trusts.

Here is an example: Let's say that Mr. and Mrs. Doe have gone downtown to their lawyer and he has made them two trusts. The lawyer has funded Mr. Doe's with the ranch land, half the

cattle and half the money. The lawyer has funded Mrs. Doe's trust with a small acreage close to town, half the cattle and the money. As they aged, Mr. and Mrs. Doe discovered that none of their children wanted to come back and ranch. Just prior to Mr. Doe's death, they had begun negotiations with the neighbor to sell the ranch land for a premium price. The Does' oldest son is named as trustee of Mr. Doe's trust and is really not looking out for his mother's interest. As Trustee, he now decides when and if that land is sold. Even though Mrs. Doe wants to sell the place, she may no longer has a real say in the matter. The son, as Trustee, is obligated to perform the trust, but probably has wide discretion in the disposition of the trust as long as he keeps the trust assets safe and productive. In contrast, if the Does had made an A-B Disclaimer trust, Mrs. Doe could have disclaimed other property into the B trust and then have the ranch land in the A trust and finally sold the land inside the A trust. That gives her maximum flexibility and control.

Many non-specialist attorneys want to make two trusts because they can generate two trust drafting fees. Others don't want to keep track of funding an A-B trust. Still others are not up to speed on the A-B trust, so their clients get what the attorney wants them to get. What is best for you? Well, only you can make that decision after your specialist estate planner or estate planning attorney gives you the proper amount of information to make an informed decision.

Other Sub-Trusts

A family trust can have a variety of sub-trusts. These sub-trusts are typically meant to serve individual heirs who are not capable of managing their own affairs – such as a mentally disabled child or a child who has drug or alcohol dependency or even a spendthrift child. So it would be possible in a family with five children to have shares of the trust distributed outright to three children, while another share is managed for one mentally disabled child and the last share managed for the benefit of the children of a deceased child. Sometimes people leave a portion of their trust estate to provide a scholarship or other ongoing support for a worthy organization. The management possibilities when using sub-trusts are almost limitless!

Trust Clauses

Every trust consists of a series of paragraphs or groups of paragraphs. These paragraph groups are called "Clauses." Clauses are the tools the trust drafter uses to make sure the trust makers get what they want. Here are a few of the most widely–used clauses that can be used in almost every trust:

Mental Competency Clause: This clause instructs the Successor Trustee to have the original trustee examined if there are serious concerns about the original trustee's mental competency. It is common to have the person examined by a regular doctor, a neurologist and a psychologist. The entire point of this clause is to avoid the public nature of a competency hearing. If the original trustee is found to be not competent by consensus of the examination team, the trusteeship automatically transfers to the Successor Trustee with no need for a court order secured through conservatorship hearings.

No-Contest Clause: This clause clearly states that any beneficiary of the trust who challenges the distribution of the trust is automatically punished – typically by losing part of all of their inheritance. This clause is usually used to discourage any mischief from disgruntled heirs and/or their spouses. When properly and aggressively enforced, this clause can put an end to challenges.

Mediation/Arbitration Clause: This clause requires that any and all disputes regarding the trust be handled in mediation and binding arbitration. The reason more and more specialists are using this clause is to remove the supervision of the trust from a frivolous

and ineffective court system that is often based on tricks, harassment, discover and courtroom tactics and place the dispute under the auspices of an arbitration system that is based more on reason and common sense. It is very rare to find an attorney who supports the addition of this type of clause because they prefer the court system which is most familiar to them, but if the client demands it, the attorney will put it in.

Spendthrift Clause: This clause is designed to protect the beneficiaries' inheritance from their creditors. However, you must note that a revocable living trust will not protect the trust makers' assets from their own creditors! The spendthrift clause works by not allowing the beneficiaries of the trust to assign, pledge or anticipate their inheritance from the trust. In essence, as long as the assets are inside the trust, they can be protected from the beneficiaries' creditors.

Gone Missing Clause: This clause is self-explanatory. The trust maker instructs the next trustee to take over once the original trustee – the trust maker – goes missing or is not heard from for a certain period of time.

Distributions to Minors Clause: This clause exists because sometimes minors become beneficiaries of trusts. Most people agree that the worst thing one could do to a 20-year-old is to give them $100,000 outright as an inheritance. This clause instructs the trustee on how to manage those funds for the benefit of the minor. Some trusts give the "minor" all the income from their share, but no principal from their share until age thirty-five. Other trusts "sprinkle" income to the young beneficiaries, pay education costs and then give parts of their inheritance at different ages – for example one-third at age twenty-five, one-half of the remaining share at age thirty and the balance of the share at age thirty-five. There are very few limits on how this can be set up.

Distributions to Disabled Persons Clause: This clause instructs the trustee on how to proceed with distributions to a disabled person. Very often, if a disabled person is receiving government benefits, an inheritance would disqualify them. Typically, the trustee is instructed to give the disabled beneficiary just enough to keep them qualifying for benefits.

Powers and Duties of Trustees Clause: This is an important clause – usually about ten or twelve pages long – that specifically outlines the powers and duties of the trustees. This clause does not have an impact on the trust makers as long as they are living and in control of their trust. While the trust makers are living and in control, they have unlimited powers over the assets in their trust.

Other Types of Trusts and Their Uses

There are literally thousands of possible trust configurations. Here are a few of the trusts most commonly used on agricultural operations and small business situations.

Testamentary Trust

As mentioned earlier, this trust is contained in the Will and is used to manage and distribute assets after its maker is deceased. After the testamentary trust is funded by probating the deceased person's assets into it, it acts almost exactly like a revocable living trust would act after the trust makers were deceased. The primary difference is that the assets have to be probated into this trust. Most estate planning specialists agree that this is not the best type of arrangement to have, especially considering the availability of the revocable living trust to avoid probate. Many generalist or probate attorneys will encourage their clients to have this type of arrangement.

You will not witness the specialist estate planning attorney organizations touting the use of this trust, but both organizations mentioned in the "resources" section of this article have high regard for a properly drafted, funded and operated revocable living trust.

Irrevocable Life Insurance Trust
This trust has many uses, but the most common use is to provide cash to pay federal estate taxes. Another popular use is to equalize inheritances. In many farm and ranch operations, one or two of the children stay on and operate the place and, ultimately, inherit it. Parents, wanting to be as "fair" as possible, set up the life insurance trust and provide the cash to pay the insurance premiums. By doing this, parents can move assets out of their estate, thereby reducing any estate taxes they might owe and at the same time produce income tax free cash to their children. When the situation is right, this is a powerful and effective strategy.

Another strategy is to convert money that is currently subject to federal estate taxes and income taxes into money that is income tax free and estate tax free. Some larger estates that have IRAs, 401(k)s, pension plans and other qualified accounts can lose up to 80% of the value of those accounts when eroded by federal estate taxes and state and federal income taxes. With income stream planning along with the irrevocable life insurance trust, the erosion can be reduced dramatically and the wealth can be leveraged.

Children's Trust
This trust is typically used to take advantage of the annual gifting exclusion and get this gift out of the parent's or grandparent's estate to a minor without the minor having control of the gift. When the minor reaches the age of majority, they can have access to the trust funds, unless they are disabled. Wealthy families teach their children to not take distributions of principal from this trust to use the trust as an asset protection vehicle.

Generation Skipping Trust
Some people try to minimize death taxes not only for their children but also for their grandchildren by using their Generation Skipping Tax (GST) exemption. Typically, a generation-skipping trust is a trust that distributes only income to a child of the trust makers. Then, upon the death of the child, the trust ends by distributing the principal in the trust to the child's children (the grandchildren of the trust makers). This is why planners say that the ownership of the principal of the trust has "skipped" the child's generation.

There are many variations on this estate plan. Instead of a trust for one child, the trust might include all of the trust makers' children as beneficiaries and terminate only when all of the children have died. A Generation Skipping trust might leave out the children entirely, so that only the grandchildren are included. A trust like this might last for several generations, the principal of the trust skipping both the children and the grandchildren and ultimately being distributed to the great-grandchildren or grandchildren even further down the line. Now that is planning ahead!

Special Needs Trust
A Special Needs Trust might be set up because a child is disabled. The trustee manages the trust assets to support the special needs child to the extent that the trust instructs.

Spendthrift Trust
Many families have members who just can't handle money. That is the function of the Spendthrift Trust. Parents fund this trust with the trustee appointed as the person to manage the funds for the family member who can't manage money. The trustee trickles money out to the beneficiary on an ongoing basis. The trustee can still purchase assets that benefit the spendthrift. The entire intent of this type of trust is to protect the nest egg from financial mismanagement and provide ongoing support for the beneficiary. This trust can be a subtrust of a revocable living trust.

Charitable Remainder Trust
This trust is used very frequently to erase immediate capital gains treatment from the sale of a highly appreciated asset. The basic setup

(in simplest terms) of this trust is to (i) donate the asset to the charitable trust, (ii) the trust sells the asset and provides a lifetime income to the donor, and (iii) to give the remainder of the assets in the trust to the named charitable organization after the donor has passed. This is a very simple explanation of a very complex legal arrangement. If you are interested, you should seek competent specialists to help you.

Conclusion

As you can see, there are many uses for trusts. Tremendous advantages can be gained by using the right trust in the right situation. The reader is cautioned, however, that trusts can't cure all the ills of an estate. Experienced professionals understand that even though a family might have the "perfect" document package, the process is still impacted by the people involved. No trust can perfect family problems that have existed for thirty or forty or fifty years.

It is absolutely imperative that if you are considering a trust, you search for people who specialize in trust work and legitimate estate planning issues. Specialists in any area should spend at least seventy-five percent of their time practicing specifically in that area. Your local attorney may or may not qualify under this burden and may not agree with this standard. However, if you pay attention to the national experts and the credible organizations that support specialist estate planning attorneys, it will become clear that specialists are better-equipped to help you produce a desirable outcome.

Credible Specialist Estate Planning Resources

You can find estate planning information just about anywhere. Most people talk to their local attorney who may or may not be competent in the area of estate planning. Like choosing a medical professional to treat a specific problem, people should depend on specialist estate planning attorneys and other estate planning specialists to help them negotiate the maze of choices available.

The National Network of Estate Planning Attorneys, one of two credible national organizations solely supporting estate planning specialists states on its website, "During the 1980s and early 1990s, estate planning attorneys debated wills and probate versus living trust planning. That argument has been settled. Most Americans now recognize that living trust–centered estate planning is more suited for the modern, mobile society in which we now live.

The American Academy of Estate Planning Attorneys, the other credible national organization lists the revocable living trust as its number one estate planning technique.

The National Institute of Certified Estate Planners, an organization that supports financial and legal professionals who specialize in helping their clients with estate planning issues. This organization provides education and support.

The American Academy of Certified Estate Planners, another organization that supports and educates specialist estate planners.

Henry Abts III spent 35 years as a financial adviser and estate-planning specialist to businesses, corporations and individuals. A nationally recognized authority on the living trust, Henry has dedicated his life to educating people about what he feels is one of the most crucial and beneficial concepts to family wealth planning. His book The Living Trust is now in its third printing, with more than 1,000,000 copies sold.

Acknowledgements

The National Network of Estate Planning Attorneys   http://the.nnepa.com/public/Default.asp?m=p

The American Academy of Estate Planning Attorneys   www.aaepa.com/topten.aspx

The National Institute of Certified Estate Planners   www.nicep.org

The American Academy of Certified Estate Planners   www.americanestateplanners.com

Mr. Henry Abts III and his firm The Estate Plan   http://theestateplan.com

Stephen Leimberg – The New, New Book of Trusts

Alexander Bove – The Complete Book of Wills, Estates and Trusts

Martin M. Shenkman   www.laweasy.com