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FAQ: What is a Trust?

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A **Trust** is a legal entity where a Trustee has legal title to Trust property, with the Trust beneficiaries being entitled to enjoy the Trust property. Traditionally, a Trust was considered a legal structure established to own and control property when a beneficiary is a minor or is otherwise unable to manage the property, or when it is considered imprudent to let the beneficiary have control of the property. However, there are many reasons to create a Trust, including avoiding probate, saving taxes, and asset protection (for the Trust creator or a beneficiary of the Trust). A Trust has a:

(i) Grantor (the person creating the Trust),
(ii) a Trustee (the legal “owner” of the Trust property, who manages the assets) and
(iii) one or more beneficiaries.

Depending on the goals of the Trust, one person can serve in one, two or all three of these capacities.

What are some differences between a revocable and irrevocable trust?

(a) Revocable Trust: A revocable Trust, also known as a living Trust, is created during a person’s life, for several purposes:

(i) avoid probate;
(ii) provide for the management of assets in case of disability, and
(iii) privacy.

Typically, the person creating the revocable Trust will transfer ownership of assets to the Trust, and serve as Trustee during his or her lifetime to retain power and control over the Trust assets.

What makes the Trust "revocable" is that the person who creates the Trust (the "grantor” or “settlor") can amend or revoke the Trust at any time during his or her life. The revocable Trust generally does not file an income tax return during the grantor’s lifetime; instead the income from the Trust is reported on the grantor’s individual income tax return. Since the Trust is revocable, the Trust assets are not protected from the grantor’s creditors.

Upon the grantor’s death, the Trust becomes irrevocable.

(b) Irrevocable Trust: An irrevocable Trust can be created for many purposes, including saving estate taxes and providing asset protections benefits for the grantor and his or her family. Unlike a revocable Trust (and subject to certain exceptions), the grantor cannot remove assets, change beneficiaries or rewrite any Trust terms. The grantor no longer owns or controls the assets. As a result, the Trust is recommended only for those individuals who do not mind giving up control over the assets (and usually access to the Trust funds).

Even though the Trust is irrevocable, the Trust terms and/or state laws sometimes allow the Trust to be altered or terminated with the permission of an independent Trustee, the beneficiaries and/or a local court.

Typically (but not always), an irrevocable Trust uses a taxpayer identification number, rather than the grantor’s social security number, for purposes of titling assets and paying income tax. In that situation, the Trust income is reported on the Trust’s income tax return (Form 1041).

What is the difference between a spendthrift trust and a supplemental needs trust?

(a) Spendthrift Trust: A spendthrift Trust is generally created when the creator (grantor) of a Trust is concerned that the beneficiary cannot properly handle money. The spendthrift Trust in effect prevents the beneficiary's creditors from reaching the Trust assets.

(b) Supplemental Needs Trust: A Supplemental Needs Trust ("SNT") is a Trust created for a beneficiary who receives (or may receive in the future) government benefits such as Supplemental Security Income or Medicaid. With many Trusts, the Trust assets may be treated as being owned by the Trust beneficiary, which may disqualify the beneficiary from being eligible for many government assistance programs. The SNT assets are not considered as being owned by the beneficiary (at least under current law), so that the beneficiary can still receive government benefits.

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