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TRUSTS

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Trusts are the "in topic" of estate planning. Some advertisements would lead a person to believe a trust could be a "one-pill cure-all" estate planning prescription. However, there are many different kinds of trusts and each type of trust has its best use and each type has its advantages and disadvantages. Trusts have many potential uses. For example, a particular type of trust might be best used for the management of property for minors and other individuals incapable of managing their business affairs; another type of trust best used for the management of business assets during the estate settlement process; some trusts provide for the avoidance of probate; and other trusts can be used as a tool in the minimization of income and estate taxes. I know it sounds like an old record, however, your goals and objectives should dictate which trusts, if any, you might want to consider in your estate plan.

A trust is basically an agreement between a grantor (the person creating the trust) and a trustee for the management of property for the benefit of one or more beneficiaries. In this three party arrangement (grantor, trustee, and beneficiary) individuals can play more than one role. For example, the grantor might also serve as the trustee as well as be the income beneficiary of the trust. Trusts established during the grantor's life are called *intervivos* trusts while trusts created by a decedent's will are called testamentary trusts.

Trusts are further defined as revocable or irrevocable. The revocable trust is a type of trust currently receiving a lot of publicity. As the name implies this trust may be changed or terminated at any time by the grantor. Given that the grantor retains control of a revocable trust, no gift tax liability is incurred on the transfer of property to this type of trust. In addition to the typical provisions which would be included in a will, revocable trusts will normally contain a provision for successor trustees to manage the affairs of the trust should the grantor/trustee become physically or mental incapable. Additionally, revocable trusts are not probated, thus avoiding the expense, court administration, and public records involved with probate. However, in and of itself, a revocable trust **does not** save estate taxes.

A irrevocable trust, once created by the grantor, may not be terminated by the grantor. Thus, property transfers to the irrevocable trust will be subject to the gift tax regulations. Given the transfer of control, an irrevocable trust may be used as a tool for the minimization of estate and income taxes, whereas a revocable trust will not accomplish these objectives. An important note, the trust beneficiaries are the donees of any property transferred to the trust. Thus, if there are 5 beneficiaries of the trust, the grantor would have total annual gift exclusions of \$55,000, not a single \$11,000 annual gift exclusion. The hinging requirement is the trust beneficiaries must receive a present interest in the gifts for the transfers to qualify for the annual gift exclusion. If you are financially able and willing to gift property, irrevocable trusts not only avoid probate, but offer potential income and estate tax savings, as well as property management for the beneficiaries.

There are many types of trusts and trust provisions you and your estate planning team may want to consider. These might include: revocable trusts, irrevocable trusts, life insurance trusts, generation skipping trusts, spendthrift trusts, grantor retained income

trusts, and marital deduction trusts -- just to mention a few.

A critical decision in the use of trusts is the selection of a trustee or trustees. The trustee may be an individual or a corporation. Some trusts provide for co-trustees and have individuals and a corporation serve together. One primary advantage of a corporate trustee is its durability. In addition to durability, a trustee should be selected based on ability, integrity, experience, and solvency. Cost is another practical consideration. Family members may be willing to serve as trustees for little or no fee, while corporate trustees will require compensation. However, a corporate trustee will be able to provide the ability, durability, experience, and solvency.

The proper use of trusts can provide the opportunity for tax savings and the ability to draft a customized plan to meet your goals and objectives. However, while the concept of a trust is rather simple, trust provisions and regulations can be quite complex, thus, this trail should be blazed only with a professional guide.