

141 North State Rd. | Briarcliff Manor, NY 10510  
 T: (914) 923-1600 | F: (914) 941-6450  
 [susan@susanparkerlaw.com](mailto:susan@susanparkerlaw.com)

**Using Trusts in Estate Planning**

Clients always want to know about trusts: what they are, how they work and why there are so many different names: revocable, living, asset protection, etc. Here we explain what trusts are, what the names mean, and benefits of trusts in estate planning.

**Trusts are separate legal entities**, in much the same way as corporations and LLCs are. A trust is created by a person referred to as a “grantor” or “settlor.” The trustee oversees the trust, and the “trust agreement” describes how trust assets will be managed and ultimately distributed to “beneficiaries.”

* If a trust is created under a will, and only takes effect when someone dies, it is called a *testamentary* trust.
* A trust that is created when someone is alive, and takes effect presently, is a “stand alone trust” , also known as an *inter vivos* trust.
* Some trusts can be changed (“revocable”) and some trusts generally cannot be changed, except in limited ways (“irrevocable”).

**Living Trusts are the most common type of stand-alone trust used in estate planning.** These trusts are revocable trusts that you create while you are alive. You can use all the trust assets as if you still own them and change the trust terms in any way you like. While you are alive, you serve as both grantor and trustee. The trust can name a successor trustee who can take over if you become mentally impaired.

Benefits of living trusts are that they: (1) avoid probate (they are considered non-probate assets), (2) require no court supervision, (3) preserve the Star benefit if you live in a home owned by the trust, (3) does not require a separate tax I.D. and uses your social security number for tax reporting and (4) under present law, cannot be used to repay Medicaid after you die.

**A trust only is considered to own an asset,** if the account or deed names the trust as the owner. This means a new recorded deed and new name on bank accounts is needed to transfer property to a trust. You remain the legal owner if you fail to change the legal ownership. If you create a trust, but fail to properly transfer assets, the trust may own nothing and doesn’t legally exist.

**An “irrevocable” trust works differently.** These are often called asset protection trusts or even Medicaid trusts depending on what the trust terms provide. These trusts have their own tax ID and file their own tax returns. When you establish the trust, you appoint the trustee and name beneficiaries. You generally can’t serve as trustee or make material changes. However, as with living trusts, these trusts avoid probate, and homes held in trust remain eligible for STAR if the grantor uses the home as his/her primary residence.

Although you cannot remove principal from an irrevocable trust, the grantor can retain the right to receive income or exchange assets. These dual qualities offer several advantages:

* Assets transferred to an irrevocable trust start Medicaid look-back periods running, as of the date of the transfer of the property to the trust.
* You are no longer deemed the title owner to assets renamed into the name of the trust, but you can reserve the right to receive (and get taxed on) income from the trust.
* These assets receive what is known as a “basis step-up” at death, meaning your loved ones inherit the asset with its date of death value, as its market value, and capital gains tax is avoided on appreciation on these assets.

**If you have young children,** it is standard to hold any assets left to them in a trust, until they are of an age or maturity level to manage their own funds. You can select the age and maturity level that you think is best. This type of trust is often created under a will but can be created as a feature in a living trust, or a children’s trust on its own. There are many advantages to creating a trust for children:

* You can formulate ages when the trust income and principal will be payable to the child, based on the maturity of a child to handle funds. Often people hold funds in trust until age 25 or 30, with interim distributions for health, education and welfare.
* This type of trust, either under a will or stand-alone, can be named as the beneficiary to receive retirement benefits, IRA assets, life insurance and other assets where beneficiaries are designated. This way, these large funds are not paid directly to minor children.
* You can limit the income and principal distributions to a trustee’s discretion, depending on the circumstances facing your children after you pass away.

**Here we covered the basics about trusts.**  If you are considering trusts as part of your estate planning, make sure you understand the rules to get the results you want. Supplemental needs trusts are created for disabled persons and they are not addressed here.

**If you would like further information or to schedule a consultation, please contact Susan, at Susan G. Parker Law Associates PC, at (914) 923-1600.**