
ESTATES AND ELDER LAW REPORTER

Choosing the Right Trust

The trust is the gift that keeps on giving. There are many different kinds of trusts that can be used to provide for our loved ones based upon their particular needs. Because there are so many different kinds of trusts, it can get a little confusing. Below is a list of various trusts and simple explanations that will help clear up any confusion.

Revocable Living Trust. This is one of the most commonly used estate planning tools. The grantor retains control over assets and the ability to amend or revoke the trust while, avoiding probate and providing protection against incapacity. Upon death, the trust becomes irrevocable.

Testamentary Trust. The testamentary trust is similar to the revocable living trust. However, this trust does not come into effect until the grantor's death, does not provide incapacity protection and, like a will, does not avoid probate.

Irrevocable Living Trust. The grantor relinquishes all control over the assets in the trust but is able to name beneficiaries and dictate how the trust income and principal will be paid and distributed. It can provide significant estate tax avoidance benefits. This trust becomes unchangeable once signed.

Credit Shelter Trust. This trust is used to maximize each spouse's applicable exclusion amount for estate tax planning. You can currently transfer up to \$675,000 each to children or any other beneficiaries, free of estate taxes.

Qualified Terminable Interest Property Trust (QTIP). The QTIP provides lifetime income for a surviving spouse. What's special about this trust is the fact that you can provide for the surviving spouse during his or her lifetime and still protect assets for children from prior marriages. While this trust may be taxable in the surviving spouse's estate, it can also be used to maximize the applicable exclusion amount.

Special Needs Trust. This trust can provide for a disabled beneficiary's needs without affecting their eligibility for Medicaid and other government benefits, thus preserving the trust assets for the disabled person's benefit.

Charitable Trusts. These trusts allow you to provide assets to charities as well as selected beneficiaries. The Charitable Remainder Trust (CRT) and the Charitable Lead trust (CLT) are the most common. The CLT provides assets to the charity first with the remainder to other beneficiaries. The CRT provides first for the other selected beneficiaries and the remainder to the charity.

It is easy to see how someone might be confused when deciding on the trust that would be right for them. Many issues must be considered and great care should be taken in selecting the appropriate trust. You should consult an attorney with the proper experience in order to choose the proper trust. Whether it is to care for a spouse, children or someone with a disability, or to provide funds to a charity, the trust

will ensure financial resources are there when needed.

New Proposed Minimum Distribution Rules for IRAs

The IRS recently released new proposed rules regarding Required Minimum Distributions (RMD) from IRAs. The RMD is the minimum that must be taken out of an IRA annually.

Since the rules were last changed in 1987, calculating your RMD was a complex process involving a number of different options and tables from which to choose. The new regulations make it much easier to calculate your RMD. If you were locked into the prior RMD rules, chances are you will notice a reduction in the amount you must deduct in 2001 as a result of the new Uniform Distribution Table (UTD).

The IRA owner must use the UTD except when the spouse is the sole beneficiary and more than ten years younger than the IRA holder. In that case, their joint life expectancy is used to determine the RMD. Most IRA holders will experience a longer life expectancy and, therefore, a longer lifetime distribution period under the UTD.

Upon the death of the IRA holder, the distribution rules are different depending upon whether the holder dies before or after the Required Beginning Date (RBD) and whether or not there is a designated beneficiary.

If death occurs before the RBD and there is a designated beneficiary, distributions must begin December 31st of the year following the date of death. Under these circumstances, the payment is determined by an election made by the beneficiary of a distribution period of either the life expectancy of the designated beneficiary or five years. If there is no designated beneficiary, then

all of the money from the IRA must be withdrawn within five years. If the surviving spouse is the designated beneficiary, the spouse can roll the IRA into his or her own IRA. This allows the spouse to determine new beneficiaries and a new distribution period at the surviving spouse's RBD. Or, the surviving spouse can postpone the distribution period, he or she may do so by waiting until December 31st of the year the decedent would have been 70 1/2, provided that the spouse is the sole designated beneficiary.

When death occurs after the RBD and there is a designated beneficiary, payment must begin by December 31st of the year following the date of death based on life expectancy of the designated beneficiary. If no designated beneficiary, all assets must be removed over the account owner's remaining life expectancy. Again, the surviving spouse may do a roll over or take the distributions over the owner's life expectancy.

These new rules provide new planning opportunities that should be considered. You should speak to someone experienced in this area regarding your options.

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