

Not Just for the Rich and Famous

Trusts to consider for your estate plan

By: Bernard A. Krooks, Certified Elder Law Attorney

You don't have to be super rich, or even just rich, to set up a trust to protect your assets for yourself or your loved ones. In today's estate planning environment, trusts have become a staple for most middle class people. Now you may ask yourself, how would I benefit from a trust? The answer depends upon your own individual circumstances. Although each individual situation is different, here are some widely used trusts:

- **Revocable trust.** As the name indicates, with this trust you have maximum flexibility. If you want, you can transfer assets into it, or, cancel the arrangement and take the assets out of the trust so long as you still have the requisite legal capacity to do so. You control the trust fund and collect any investment income from trust assets. A benefit to this type of trust is probate avoidance. At your death, trust assets go directly to your heirs without a court overseeing the process. A revocable trust also serves as a good estate planning tool in case you become incapacitated; someone you've named as successor trustee will step in and manage the trust fund on your behalf. Two things a revocable trust will not do are protecting your assets from nursing home costs or estate taxes.
- **Irrevocable trust.** As its name implies, this type of trust is irrevocable. This means that you can't modify, alter or change the trust once it is executed. There are several different types of irrevocable trusts. For example, one type of irrevocable trust might protect your assets from nursing home costs; while another type might protect your assets from estate taxes.
- **IRA trust.** When you have an IRA, you should name a beneficiary to take advantage of income tax deferral opportunities available to you and your family. You may be concerned, though, that a large IRA will be mismanaged by your heirs. Fortunately, you can name a trust as the beneficiary of your IRA with the person whom you'd like to inherit the IRA as the trust beneficiary. If done properly, this can be a great way to accumulate family wealth.
- **Credit Shelter trust.** This type of trust is commonly used by married couples. The first spouse to die leaves assets to the trust; the amount can be as much as the federal estate tax exemption allows, which is \$2 million in 2008. Beneficiaries may include the surviving spouse and the couple's children. This trust is also known as a bypass or A/B trust. At the death of the first spouse, the bequest is sheltered by the estate tax

exemption. The trust assets are not included in the survivor's estate so they won't be taxed at the death of the second spouse either.

- **QTIP (qualified terminable interest property) trust.** This is a special type of trust utilized by married couples. After the death of the first spouse, assets in a QTIP trust can only be distributed to the surviving spouse, who gets all the trust income. No estate tax is due on assets going into a QTIP trust when the first spouse dies. At the death of the second spouse, the assets in the QTIP trust are included in his or her estate and estate tax may be owed. However, any assets left in the QTIP trust go to the beneficiaries named by the first spouse to die. Thus, QTIP trusts are especially popular among remarried couples who wish to ensure that their assets go to the children from their first marriage and not to their second spouse's children.

These are just a few of the types of trusts utilized in the estate planning process. Determining which type of trusts are best for you depends on a variety of factors, the most important of which are your own estate planning objectives.