

Dutchess County

PLANNING FOR YOUR FUTURE

Different types of trusts for different purposes

By Bernard A. Krooks, Certified Elder Law Attorney

Trusts are a very useful part of an estate plan; however, there appears to be a lot of confusion about the different types of trusts. While we are not attempting to list every type of trust here, we will discuss some of the more common types of trust and when they are used.

How do trusts work?

Basically, trusts have three components: (1) The settlor is the person who creates the trust; (2) The trustee is the person who manages and invests the trust assets according to the terms of the trust; (3) the beneficiaries are the people who receive trust distributions either during the lifetime of the settlor or after the settlor's death.

As settlor of a trust, you decide who will be the trustee and beneficiaries of the trust. You, and possibly other donors, then fund the trust with stocks, bonds, bank accounts, real estate, and other assets.

The trustee collects these gifts and invests the trust assets according to the rules of the trust, which are set by you. The trustee also distributes the trust assets to the beneficiaries, according to the terms of the trust.

Different trusts have different objectives. When you



design your estate plan, you may well need more than one trust depending on your particular circumstances.

Here are some of the types of trusts which may be utilized in the estate planning process:

Revocable Living Trust-a revocable living trust can help you leave assets to your heirs without going through the probate process. When you set up a revocable living trust, you can control your assets during your lifetime and determine how they will eventually be distributed to your heirs. You could, for example, have money distributed outright in one lump sum to your spouse and children. Alternatively, you could have money distributed to your beneficiaries in installments, over a period of years.

A significant benefit of a properly established revocable living trust is that it will carry out your wishes if you become incapacitated. Title to your assets will be in the name of the trustee and this will facilitate management of your affairs if you become ill or incapacitated.

Bypass Trust-If you're married, you can leave an unlimited amount of assets to your spouse, free of estate taxes and without using up any of your estate tax credit. But if your spouse then dies with an estate worth more than the federal estate tax exemption of \$5 million in 2011 (\$1 million for New York estate tax purposes) his or her estate would be subject to the estate tax.

Unfortunately, your original estate tax credit was unused and, in effect, wasted. Essentially, a Bypass Trust allows both spouses' estate tax exemptions to be preserved, for the benefit of the surviving spouse and, ultimately, the children. However, as is the case with most trusts, it is critical that assets be titled properly prior to death of the Settlor.

The new federal estate tax law has a portability provision which allows the unused exemption of the first spouse to die to be used by the surviving spouse without needing a bypass trust. However, there are many non-tax reasons for having a bypass trust, such as protecting assets from creditors or in the event of a re-marriage of a surviving spouse.

Special Needs Trust-If you have a family member with a disability, you should consider a Special Needs Trust. These types of trusts are sometimes referred to as Supplemental Needs Trusts.

People with mental or physical disabilities can hold an unlimited amount of assets in a Special Needs Trust without having those assets count against eligibility for certain governmental benefits, such as Supplemental Security Income (SSI) and Medicaid. The trust assets can be used to improve the quality of life of a person with disabilities without negatively impacting their ongoing eligibility for public benefits.

QTIP Trust-If you're married for a second time, but want to make sure your children from your first marriage are protected, you may want to think about a QTIP (Qualified Terminable Interest Property) Trust. A QTIP trust enables you, as settlor, to provide for your surviving spouse and also maintain control of how the trust's assets are distributed once he or she dies.

Of course, trusts are complex instruments, so you should work with an attorney experienced in these matters. By using trusts wisely, you can leave a legacy that benefits your family.

Bernard A. Krooks, Esq., is a founding partner of the law firm Littman Krooks LLP and Chair of its Elder Law and Special Needs Department. Mr. Krooks is a nationally-recognized expert in all aspects of elder law and special needs planning. Learn more about trusts at www.littmankrooks.com.