Irrevocable vs. Revocable Trusts

Trusts are an important topic when it comes to estate planning. A trust essentially is an agreement between two or more people to hold assets (e.g., a house, bank account, investment, etc.) for the benefit of someone else—for the benefit of a beneficiary. A trust can serve many different purposes and accomplish a variety of goals.

When I talk about trusts – and specifically irrevocable ones – many people quickly reply that they do not like irrevocable trusts because they do not like the idea that they are losing control of their assets. They tell me they much prefer a revocable trust. Each type of trust has its uses but first, let's look at what revocability actually means.

A trust is established by a grantor, sometimes referred to as a settlor or trustor, by way of a written, legal agreement. Revocability means the trust can be revoked by the grantor who can basically "tear up" the trust agreement and take all the assets back. Revocability also means the trust can be amended by the grantor (i.e., the terms of the trust can be changed).

Revocable trusts are typically used to avoid probate. Assets held in the trust are not subject to Massachusetts' probate proceedings, making for immediate unrestricted access to the trust assets when the grantor dies. Revocable trusts also may be created to minimize or in some cases avoid estate taxes by creating other subtrusts into which assets pour over after the grantor's death.

Revocable trusts, however, *do not* protect assets from the cost of long-term care, which is a common reason clients come to us seeking guidance. That leads to a conversation about irrevocable trusts, which *can* be used to protect assets from the cost of long-term care. During our conversation about these types of trusts, the client perceives that irrevocability means losing control because they can’t revoke or amend the trust.

But, is that really true? No, it isn’t. I’ll explain what I mean.

It isn’t true because irrevocability is not synonymous with loss of control. It all depends on the purpose and the terms of the trust.

One common purpose in creating an irrevocable trust is to qualify a person for government benefits such as Medicaid’s long-term care benefits. Medicaid is needs-based, meaning you have to spend down all or almost all of your assets to qualify. Since a nursing home stay in Massachusetts costs $12,000 to $14,000 a month, many clients are unable to private pay for such services for an extend period without exhausting all of their assets.

An approach to allowing someone to access benefits is creating and funding a trust with their assets. The trust we use in these cases must be irrevocable to help a client qualify for the government programs; however, at the same time, the grantor retains several powers. These may include a way to dismiss/fire a trustee, reserving the right to live in any home held by the trust for the client’s lifetime, the ability to change the ultimate beneficiaries of the trust when the grantor dies, and other powers. So, you see, there is control; it’s all in the way the trust terms are written.

Are you considering whether a revocable or irrevocable trust is right for you? Give a qualified elder law attorney a call to review your options to make the best decision to meet your goals.

The information contained in this article is not intended to make you an expert on estate planning nor is this article *intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.*