



Estate Planning in a High Estate Tax Exemption Environment

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Trust Planning

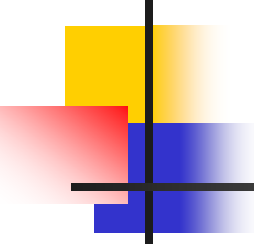
Common Reasons for Creating a Trust

A. Minimize or eliminate the Federal Estate Tax at the second death for married couples.

- OB3 (One Big Beautiful Bill) Increased federal estate tax exemption to \$15 million per spouse effective January 1, 2026. Indexed for inflation.
- Portability of the deceased spouse's exemption is available to the surviving spouse even if no trust exists.

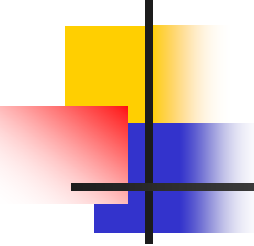
B. Revocable Trusts are used to Avoid Probate

- Probate is a court supervised estate administration process.
- Court fees and attorney's fees can be substantial
- Public process
- Burdensome on Executor.



Do I need a Revocable Trust to Avoid Probate? Not necessarily

- JTWRORS: Assets owned jointly with right of survivorship pass to the surviving owner outside of probate.
- NC Real Estate: Title vests in beneficiaries named in will without probate fees or delay
- Beneficiary Designations
 - IRAs, 401(k)s, annuities and life insurance
 - Payable on Death (POD) or Transfer on Death (TOD)



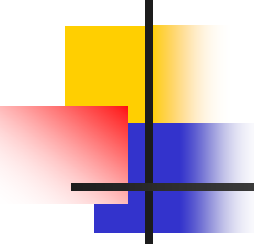
Are Revocable Trusts still relevant for most people?

- Assets owned by a Revocable Living Trust do not pass through probate at the Grantor's death like jointly owned assets and assets with designated beneficiaries.
- Revocable Trusts do not offer any estate or income tax advantages as compared to a Will.



Other Reasons for using a Trust in Estate Planning

- These benefits can be accomplished either through a Trust under a Will (Testamentary Trust) or a Revocable Living Trust.
- QTIP/Marital Trusts for second marriages. This type of trust gives the surviving spouse access to trust income and principal for life, but assets remaining at the spouse's death pass according to the wishes of the spouse who is first to die.
- Desire to protect beneficiaries from spendthrift habits; desire to not spoil beneficiary with money; incentive trusts.
- Need for professional investment management.
- A Beneficiary's lack of financial sophistication-need for help with investments, budgeting, bill paying, etc.

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- Protection from physical or mental disabilities. Substance abuse.
 - Asset protection for beneficiaries-from divorce and other creditors.
 - Business succession planning; QSSTs; ESBTs. Trusts can own interests in various types of businesses, including stock in a S Corporation.
 - Continuation of the movement of assets from generation to generation.
 - High-end planning: GRATs, QPRTs, ILITs, SLATs, CRTs, etc. These are types of irrevocable trusts that are established primarily for estate tax and income tax planning reasons.



Revocable Trusts vs Irrevocable Trusts

- Revocable Trusts are used primarily as a probate avoidance vehicle.
- Irrevocable Trusts are established for asset protection purposes and to minimize estate and income taxes.



Irrevocable Trust Modification and Termination and Trust Decanting

- Article 4 of the NC Uniform Trust Code contains the rules regarding modification and termination of irrevocable trusts.
- Provides circumstances under which beneficiaries can compel the termination or modification of an irrevocable trust, with or without the consent of the settlor.
- Statutes generally seek to protect the "material purpose" of the trust.
- Decanting: The NC Uniform Trust Code allows assets from one Irrevocable Trust pass to a new Irrevocable Trust for the same beneficiaries, but with new terms.



Irrevocable Trusts and Creditors

- The North Carolina Uniform Trust Code protects the interests of a beneficiary or a settlor of spendthrift, discretionary and protective trusts from creditor claims.
- If a trust contains a spendthrift provision, a beneficiary's creditor cannot attach the beneficiary's interest in the trust until there is a distribution to the beneficiary.
- Revocable Trusts do not provide any creditor protection.



North Carolina Uniform Trust Code.

- If there is no spendthrift, discretionary or protective trust provision, a creditor of a beneficiary may attach a distribution interest before it is distributed.
- Only creditor given an exception from the basic rule relating to spendthrift, discretionary and protective trusts is a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance.



Creditor Protection Provided by Irrevocable Trusts

- A creditor of a beneficiary cannot compel a distribution from a discretionary trust even if the trustee has abused its discretion. The only "exception creditor" will be a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, but only where a trustee has not complied with a standard of distribution or has abused its discretion.
- Protection from a beneficiary's divorce or lawsuit.



Trustee's Duties

- NC Trusts are subject to:
 - The North Carolina Uniform Trust Code under Chapter 36C of the North Carolina General Statutes
 - The North Carolina Uniform Principal and Income Act under Chapter 37A of the North Carolina General Statutes.
- Duty to Administer Trust. G.S. §36C-8-801 provides that:
 - (a) The trustee must administer the trust in good faith.
 - (b) The trustee must administer the trust in accordance with its terms and purposes.



Trustee's Duties

- Duty of Impartiality. A trustee must act impartially between two or more beneficiaries and must respect their respective interests. G.S. §36C-8-803.
- Duty of Prudent Administration. Prudence is a fundamental duty of a trustee in all activities of the trustee in administering the trust. G.S. §36C-8-804
- Enforcement and Defense of Claims. This section imposes a reasonableness standard on a trustee's duty to pursue or defend a claim belonging to or against the trust. G.S. §36C-8-811.
- Collecting Trust Property. A trustee must take all reasonable steps to collect trust property from a former trustee or other persons and to address a breach of trust known to the trustee to have been committed by a former trustee. G.S. §36C-8-812.



North Carolina Uniform Trust Code

Duty of Loyalty

- G.S. §36C-8-802(a) states the basic duty that the trustee shall administer the trust "solely in the interest of the beneficiaries".
- The duty of loyalty is the most basic and overriding duty of a trustee.

"A Trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions... Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court." Meinhard v Salmon 164 N.E. 545 (N.Y. 1928)



Conclusion

- Many people who established Trusts at a time when the federal estate tax exemption was lower may no longer need them, or should consider amending their Trusts to simplify the terms. For others, Trusts can still be a valuable tool in their estate plan.