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Understanding the Role of Trusts in Estate Planning

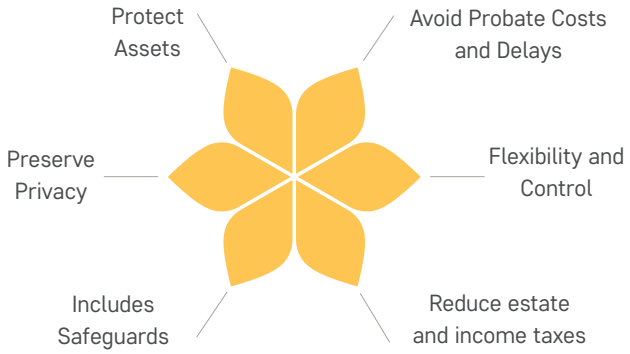
For many people, the topic of estate planning and establishing a trust can seem daunting, overwhelming, and confusing. Thinking about the inevitable isn't something you want to do but by choosing the right type of trust, you gain peace of mind that you are protecting your wealth today and optimizing the legacy you leave in the future to the people and causes you care about.

What is a trust?

A trust is a legal arrangement you can set up to help ensure your assets are managed according to your wishes, especially after your death. Trusts can be arranged in many ways and can specify exactly how and when your assets transfer to your beneficiaries.

Why set up a trust?

Trusts aren't just for wealthy people. They can be an important part of your estate planning and can provide peace of mind by ensuring your assets will go to the right people.



Who is involved in a trust?

Grantor

The individual who establishes the trust, decides what assets are included and sets the rules for how the trust operates

Trustee

The individual(s) or institution that manages/administers the trust on behalf of the future beneficiaries

Beneficiaries

The individual(s) or entities that will eventually receive some or all of the trust assets

What assets can be included?

- Cash/Bank Accounts
- Real Estate
- Investment Assets (Stocks, bonds, securities etc.)
- Other Types of Property
- Business Interests
- Life Insurance Policies
- Retirement Accounts
- Tangible Personal Property
- Cryptocurrency
- High Value Collectibles

What Are the Common Provisions of a Trust?

- Whether it is revocable or irrevocable.
- The rules of operation of the trust.
- The powers of the trustee.
- How the trustee is to divide the income and principal among the beneficiaries.

What Are the Primary Types of Trusts?

It's important to understand that trusts, as with so many other matters pertaining to estate planning and administration, are not "one-size-fits-all." You can tailor a trust to your needs. Selecting the right trust for your situation is key. Here are some of the most common types of trusts:

A Revocable Living Trust

This type of trust is one of the most versatile and easy to use. It allows you to maintain control of your assets by providing instructions for how your assets will be managed during your life and in the event you experience a disability. It also contains instructions for distributing your assets after death. Typically, the grantor will act as the trustee during his or her lifetime, with the successor trustee stepping in after the grantor's death.

Note: You should consult with your attorney for the tax implications of naming yourself rather than someone else as trustee of your living trust, as well as for any implications of transferring the titles of your assets to the trust.

Qualified Terminable Interest Property (QTIP) Trust

Especially useful for an individual who has been married more than once, this type of trust provides for both the current spouse and any children from a previous marriage. It also protects against unforeseen future marriages. For example, couples who use an all-to-spouse will and have children may face an extra challenge if the surviving spouse remarries. Imagine that a surviving wife, for example, brings her deceased husband's assets to a new marriage. What if that couple then establishes a simple spousal will and the wife predeceases her new husband? The first husband's assets are ultimately transferred to her new husband, diluting or even eliminating any inheritance to the children of the first marriage.The issue can become even more complicated if the second marriage produces children too.

The QTIP Trust is one approach to avoiding this potentially complex situation. Thus, a couple can take comfort in knowing that they have provided for a surviving spouse while protecting the ultimate interests of the children, regardless of future relationships.

"Credit Shelter Trust (CST)"

Also referred to as a "B Trust," "Bypass Trust," or "Family Trust," it is created after the death of the first spouse of a married couple. It is commonly used to help married couples with significant assets pass their estates (after their deaths) to children or other beneficiaries without triggering estate taxes.

With this type of trust, you write a will bequeathing an amount to the trust up to the estate-tax exemption. Then you pass the rest of your estate to your spouse tax-free. You also specify how you want the trust to be used—for example, you may stipulate that income from the trust after you die goes to your spouse and that when he or she dies, the principal will be distributed tax-free among your children.

Since your spouse is also entitled to an estate-tax exemption, the two of you can effectively double (or more than double) that portion of your kids' inheritance that is shielded from estate taxes by using this strategy.

Irrevocable Life Insurance Trust (ILIT)

In this arrangement you can remove your life insurance from your taxable estate, help pay estate costs, and provide your heirs with cash for a variety of purposes. To remove the policy from your estate, you surrender ownership rights, which means you may no longer borrow against it or change beneficiaries. In return, the proceeds from the policy may be used to pay any estate costs after you die and provide your beneficiaries with tax-free income. That can be useful in cases where you leave heirs an illiquid asset such as a business. The business might take a while to sell, and in the meantime your heirs will have to pay operating expenses. If they don't have cash on hand, they might have to have a fire sale just to meet the bills. But proceeds from an ILIT can help tide them over.

A ILTI is irrevocable, which means that once you create it, the trust generally cannot be changed or revoked; the terms of the trust agreement are set. This can give you greater protection from creditors and estate taxes.

LET'S START THE CONVERSATION

Trusts are a popular estate planning tool, but it is essential to receive guidance from an experienced, skillful, and knowledgeable advisor and attorney to ensure the trust is properly established and maintained. If you're considering a trust to protect you and your family, LoVasco is here to help. Contact the **Estate Planning and Business Succession** team today at **EBS@lovascogroup.com.**

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