REVOCABLE & IRREVOCABLE TRUSTS – Continued

However, the assets in a revocable trust are still considered the settlor’s own personal assets for creditor and estate tax purposes. A revocable trust offers no protection from creditors if a settlor is sued.

An irrevocable trust is a trust that that cannot be changed or revoked after the agreement has been signed. The most common use of an irrevocable trust is to move assets out of the settlor’s name and onto the next generation, which reduces the estate taxes levied against the settlor’s estate.

Common methods of changing an irrevocable trust include:

- The beneficiaries of the trust agree to change the trust, according to state laws and with approval of a state court.
- Establishing a new trust. The assets of the old trust are poured into the newly created trust when the beneficiaries of the old trust will not agree to a change in their rights under the old trust.
- Selling the assets in the trust. If the trustees of the trust are empowered to do so in the original trust document, sell some or all of the assets in the trust to another trust with different terms.

REFORMATION OF TRUSTS

A trust may need modification due to a change in tax laws since the settlor passed away or the terms under which the trust was initially created are now less sensible. Even if the terms of a trust are definite, a court may reform the terms of a trust to conform with the settlor’s intention if it is proved by clear and convincing evidence that both the settlor’s intent and the terms of the trust were affected by an error. M.C.L.A. 700.7415.

SUCCESSOR TRUSTEES & SUCCESSOR BENEFICIARIES

In order to be named a successor trustee, a person must be over the age of 18 and be mentally competent. A successor trustee accepts nomination by filing a written acceptance with the qualified beneficiary(s) or otherwise indicating acceptance of the trustee within 63 days of knowing of the designation. Successor beneficiaries are named to receive assets at the settlor’s death.

REFERENCES

- Relationship Between Article and Trust Terms; Subjects Controlled by Provisions of Article. M.C.L.A. 700.7105
- Intervention in Trust Administration; Continuing Judicial Supervision; Scope of Proceeding Involving a Trust. M.C.L.A. 700.7201
- http://www.michiganlegalaid.org/

Veterans Memorial Courthouse
313 W. Kalamazoo Street
Lansing, MI 48933
(517) 483-6300
http://pr.ingham.org
WHAT IS A TRUST?
A trust is a legal agreement that specifies all the rules that one would like followed for property held in trust for the benefit of a third party. There are three parties to a trust agreement: the settlor, the trustee, and the beneficiary.

A **settlor** is the person who creates the trust agreement. A settlor can also be referred to as a **grantor**.

The **trustee** is the person in charge of the trust. The trustee has the responsibility of understanding the rules for the type of trust he or she is managing so that he or she can ensure that everything stays in order as per the trustor’s wishes. The trustee holds legal title to the trust assets.

The **beneficiary** is the person or entity who is to receive the benefits of the property that is titled in the name of the trust.

TYPES OF TRUST
There are two basic types of trust and they are **living trusts** or **inter vivos trusts** and **testamentary trusts**.

If the trust has been created to go into effect during the settlor’s lifetime, it is referred to as a **living trust or inter vivos trust**.

A **testamentary trust** is a trust that is set up by the last will and testament of a deceased settlor, and is made for the benefit of beneficiaries. Because a testamentary trust is created and funded after a settlor dies, no living person has the legal authority or ability to change the terms of the testamentary trust.

EFFECTS OF A TRUST
With a living trust, a settlor, a trustee, and a beneficiary can all be the same person. Under a testamentary trust, a settlor cannot be the initial trustee or beneficiary. Often, the settlor will be the initial trustee of the living trust or inter vivos trust until he or she dies or becomes incapacitated, and then the successor trustee takes control of the trust. However, a settlor cannot be the initial trustee or be a beneficiary with a testamentary trust.

Under a trust, the settlor transfers ownership of certain assets to the trustee who will manage the assets for the benefit of a third party. The items that a trustee can be entrusted with include real property, personal property, bank accounts, and securities, to name a few.

A living trust allows a settlor to manage and control his or her assets for his or her benefit during his or her lifetime. After the settlor dies, the trust assets can continue to be managed and controlled according to the settlor’s wishes for the benefit of the settlor’s named beneficiaries, or distributed to the settlor’s beneficiaries outright depending on what the settlor specifies in the trust.

POPULATING A TRUST
A trust is a legal entity separate from a person. Once a trust is created, assets must be placed into the trust.

When something is put into a trust, that item is no longer part of the settlor’s estate. This is because the trustee of that trust owns the property: the settlor is no longer the legal owner of the transferred property. This does not mean a settlor has no control over his or her assets in a living trust. Since a settlor will probably be his or her own trust’s initial trustee under a living trust, the settlor will still be in charge of his or her property.

Under a living trust, a settlor usually first has an attorney draft the trust. Next, the settlor places his or her registered items into the trust by changing the name on the account, for bank accounts or stock accounts, or using a quick claim deed, for real property.

Under a testamentary trust, a personal representative of the estate puts registered and unregistered items into the trust using the same process as would a settlor using a living trust.

ESTATE PLANNING & BENEFITS OF A LIVING TRUST
The main benefit of a living trust is that it allows a settlor to pass his or her estate on to his or her heirs without the need for probate.

The probate process can be very expensive and time-consuming to complete. Even a relatively small estate can take several months or more than a year to go through probate. Many people prefer using a trust as their primary estate planning document in order to keep private their estate and information regarding their beneficiaries.

The successor trustee - the person a settlor appoints to handle the trust after the settlor dies - transfers ownership of the assets in the trust to the beneficiaries the settlor named in the trust. This process usually takes only a few weeks and it bypasses having to pay lawyer or court fees.

REVOCABLE & IRREVOCABLE TRUSTS
A revocable trust is a type of living trust that can be changed at any time. If a settlor changes his or her mind, has second thoughts regarding the trust or decides that he or she does not like anything at all about the trust, then he or she can revoke the entire trust, or change the trust through an amendment and restatement.

(Please continue reading at REVOCABLE AND IRREVOCABLE TRUSTS – Continued)