

Trusts

A trust is a fiduciary relationship in which one party (the “grantor”) gives another party (the “trustee”) the power to manage money or property held by the trust for the benefit of a third party (the “beneficiary”). Some trusts can be terminated or amended; a trust like this is called a “revocable trust”. Other types of trusts may not be changed once they are set-up; trusts of this type are called “irrevocable”. Some trusts are “inter vivos,” which means that it was created during the grantor’s lifetime. Other types are created in a person’s will to be established at the grantor’s death (“testamentary”). The different characteristics of a trust provide different benefits and responsibilities. Trusts are created for many reasons: for privacy; to help minors, incapacitated, elderly or others manage their money or other property; to save taxes (income, capital gains, or estate tax); to assist with Medicaid eligibility (nursing home care); to protect money from a beneficiary’s creditors; to keep property “in the family”; to avoid out-of-state probate costs, to keep family members from disagreeing.

How We Can Help

When considering creating a trust, it is very important to meet with an experienced trusts and estate attorney so that he or she can help you decide if a trust is right for you. If it is, there are certain, appropriate characteristics to include in the trust to benefit your specific situation. There are many different circumstances when a trust can be helpful, but if the trust is not the right kind, or if it is improperly drafted, it will not provide any benefit to you. Tully Rinckey PLLC’s estate planning lawyers in Syracuse, New York know the right time to create a trust and the best combination of characteristics to choose for your situation. Each trust is custom-made for the client, in order to provide him or her with the maximum benefit available. In addition, our team of attorneys, paraprofessionals and support staff will continue to assist you once the trust is in place. Our experienced legal team will help your trustee to understand and manage the trust assets so that the trust is cost effective and in compliance with the law and the trust’s responsibilities. We can also assist you with your other estate planning needs. Since we are highly qualified in all types of estate, tax and elder law planning, our knowledge of your particular situation will be helpful going forward to ensure that all of your planning bases are covered. Some examples of the types of trusts that Tully Rinckey PLLC’s estate planning lawyers in Syracuse, NY can prepare for you include the following:

- 2503(c) Minor’s Trust:

This trust is an irrevocable trust under which a trustee is required to spend trust income and assets for the benefit of a minor beneficiary until the minor becomes 21 years old. Upon the child attaining the age of 21, the trustee must distribute all of the remaining trust assets and income to the beneficiary.

- Marital Trust:

This type of trust protects an amount left to a spouse in trust while still allowing the assets to qualify for a marital deduction.

- Credit Shelter Trust:

This trust is a combination of trusts that enable married couples to maximize their tax exemptions through the use of a mathematical formula based on the current federal estate tax exemption. Although this type of trust was commonly used only a decade ago, the shift in law to a higher Federal estate tax exemption has made this type of trust unnecessary in most cases. It is important to remember, however, that planning recommendations are made based upon "current" law. Laws change rapidly, especially in an uncertain political climate. It is necessary to retain an attorney who will keep current with the changing laws and the safest and best planning techniques.

Disclaimer Trust:

This type of trust allows the surviving spouse to decide at the time of his or her spouse's death whether he or she should refuse to accept ("disclaim") some of the spouse's assets and have the assets go into a trust. Even a trust for the surviving spouse's benefits is permitted. A disclaimer trust is an excellent planning tool if wealth may dramatically increase, or if tax laws are uncertain, because the trust will not be set-up unless the surviving spouse takes direct action after his or her spouse's death.

Charitable trusts can be very helpful for planning purposes because they can allow for an income tax or capital gains tax benefit in addition to an estate tax benefit. These benefits depend on the size of your estate and the manner and amount of the gift made to a charity. Two types of charitable trusts include:

Charitable Remainder Trust
: An irrevocable trust that allows a grantor to receive income from the trust over a period of time (e.g. 20 years) as either a fixed dollar amount or fixed percentage of the trust's assets. At the end of the trust's term, the remaining assets are transferred to a designated charitable organization. The remaining assets may be left to more than one charitable beneficiary, but the beneficiary must be a charity; and

Charitable Lead Trust

: Allows a charitable organization, or more than one charitable organization, to receive income from a trust while the grantor is living, but after his or her death the assets are transferred to other non-charitable parties, such as family members.

Crummey Trust:

An irrevocable trust that takes advantage of the annual gift tax exemption and holds annual gifts of money for beneficiaries beyond their 21st

birthday. This trust can be helpful to give a partial interest in a family business or other corporation to children or others over time.

Generation Skipping Trust (GST Trust):
This trust is a trust that a grandparent grantor establishes for a grandchild or later generation. It is a helpful tool to use where a grandparent does not wish to give a gift to his or her child, but instead would like to "skip" the child and give a gift directly to a grandchild. A GST Trust is helpful where there is tension between the grandparent and his or her child, a child has creditor concerns, issues of substance abuse or alcohol abuse exist, to prevent a child's ex-spouse from benefiting from the trust's property, or to avoid generation skipping taxes.

Medicaid Trust:

This trust is an irrevocable trust under which a trustee obtains title to property but the grantor or other beneficiaries may continue to receive income from this property. The trust property may be fully or partially exempted from the grantor's Medicaid eligibility considerations, depending on when assets were transferred into the trust and the amount of income it generates.

Life Insurance Trust:

This trust is an irrevocable trust created to hold a life insurance policy and distribute the policy proceeds at the Grantor's death. If the trust is set up in the necessary time period, the life insurance policy proceeds will not be considered as part of the Grantor's estate. Special Needs Trust

(Supplemental Needs Trust):

The two types of special needs trusts include: Self-started special needs trust

: This trust is established with the assets of a beneficiary with special needs who is not yet 65 years old. It is very commonly used when a special needs beneficiary receives proceeds from a lawsuit. New York law recently revised the law concerning special needs trusts to allow a beneficiary to set up the trust without the assistance of a parent, guardian or court. This is an exciting change which makes it easier for special needs people to protect their assets.

Third-party special needs trust

: This type of trust can be set up by any individual for the benefit of a person with special needs. It is not necessary that the assets used to create this trust are assets of the beneficiary.

Uniform Transfers to Minors Act:

This is a planning tool that is an alternative to a trust. Instead of a trust, a custodian manages the property on behalf of a minor beneficiary, pursuant to the direction of New York State law. The custodian does not take ownership to the property. The concern with this tool is the custodian must distribute all of the assets to the beneficiary as soon as the beneficiary reaches the age of majority. In most cases, where any significant amount of money is involved, the age in which a beneficiary will receive the assets is too young. In addition to drafting trusts for clients, Tully Rinckey PLLC's estate planning attorneys in Syracuse, N.Y.

counsels trustees to help them perform their duties in accordance with the trust document and the law. We also represent and defend trustees involved in litigation over claims of fraud or breach of fiduciary duty. We represent grantors, beneficiaries, and interested parties in trust contests stemming from allegations of undue influence, lack of testamentary capacity or other claims. Call a Tully Rinckey PLLC trust lawyer in Syracuse, N.Y.

We are available for legal representation throughout Central New York, including Syracuse, Cicero, North Syracuse, Manlius, Liverpool, East Syracuse, Cazenovia, Skaneateles, Baldwinsville, Utica, New Hartford, Fayetteville and DeWitt.

To schedule a meeting with a trust attorney, call 315-492-4700 or e-mail info@tullylegal.com

. Click
here

to view a video about our consultation process.

Our office is located in Franklin Square, near exits for I-81 and I-690,
with free parking available for firm clients.

If your legal matter is urgent, call 518-727-3593 to speak to an attorney 24 hours a day, seven days a week. The firm is responsive to the needs of current and prospective clients and will respond to phone calls within normal business hours and e-mails within hours on the same business day. If you call or e-mail us after hours, you should expect to hear from our office by the next business day.