While people used to think of trusts as something only used by the extremely wealthy, the popularity of revocable living trusts as part of a probate avoidance strategy has focused more attention on these versatile estate planning tools. Avoiding probate is just the tip of the iceberg. Trusts can accomplish a wide variety of purposes—but you need a different type of trust to achieve these varied goals.

Your estate planning attorney can review your objectives and explain the types of trusts that might work best in your situation. Here are some general guidelines to keep in mind.

Revocable Trusts Offer Flexibility

When a trust is established so that it is revocable, you can not only cancel the trust, but you can also change the terms easily. If you transfer property into the trust, you can take it back out at any time.

Because of this flexibility, property placed in a revocable trust is generally considered to still belong to the creator of the trust. This treatment has some good points and some bad points. On the plus side, it is easier to manage. You don't need to file a separate tax return for the trust income; just include it with your other income. If you want to put real estate with a mortgage into a revocable trust, your mortgage company will usually allow it with no strings attached.

The downside is that a revocable trust does not protect your property from many factors, except for probate. Your creditors can still reach trust property, and property in a revocable trust remains part of your estate for estate tax purposes. If you want to reduce your property to qualify for Medicaid long-term care benefits, property in your revocable trust is still considered to belong to you rather than the trust.

Irrevocable Trusts Offer Protection

An irrevocable trust is far from flexible. Once you put property into the trust, you cannot remove it if you change your mind. The property must be used by the trustee to fulfill the purpose of the trust. Because the property belongs to the trust instead of to you, it does not count against you for Medicaid eligibility (although you do have to be aware of the five-year look-back period.) Creditors of either the trust creator or the trust beneficiaries cannot go after property in the trust. This makes irrevocable trusts a good choice to manage money for those who are not yet ready to handle their own finances or those who work in a field where they could be subject to substantial lawsuits. Property in an irrevocable trust does not count as part of your estate for estate tax purposes, so this type of trust can be helpful in reducing tax liability.

Living Trusts vs. Testamentary Trusts

A living trust takes effect while the creator is still living. For instance, if you set up a revocable living trust so that your property can pass to loved ones outside the probate process, that is a living trust.

On the other hand, a testamentary trust does not take effect until after your death. Testamentary trusts are generally established as part of a will, and they become active when the will is probated. Parents of young children often include a testamentary trust in their will to manage their children’s assets while they remain minors.

Examples of the Ways Trusts Can Be Used

Among the broad categories described above, estate planning attorneys develop many different types of trusts designed to accomplish specific goals for clients.

Some commonly-used trusts include:

- Revocable Living Trusts
- Spendthrift Trusts
- Special Needs Trusts
- Medicaid Asset Protection Trusts
- Charitable Lead Trusts
- Pet Trusts
- Education Trusts
- Charitable Remainder Trusts
- Generation-Skipping Trusts

In some cases, the trust must be administered to not only comply with the terms in the trust document but also to comply with specific legal requirements applicable to that type of trust. For instance, disbursements from a special needs trust must only be used for certain purposes to protect the beneficiary's eligibility for government benefits, so trustees must keep careful records and disburse funds appropriately.

Find Out How You Could Benefit from a Trust

While most families could benefit from some form of trust, the type of trust must be determined by the specific situations and goals of that family. Trusts should be created on a custom basis, and that's exactly what we do at The Nordhaus Firm. We invite you to call 214-726-1450 or contact us online to schedule a free consultation with our team to discuss the ways we can develop a trust to meet your needs.