



How to Choose Between a Revocable and Irrevocable Trust

Consider how much control you want and need over your assets.

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It's called a trust for a reason: You're counting on this [stand-alone legal entity](#) to do something you can't. You may want the trust to ensure that ownership of your assets or property will transfer to heirs smoothly and privately. You may want it to convey some tax advantages. You may think it can protect your assets from creditors.

Well, maybe. Maybe not.

The first thing to consider is not whether to set up an irrevocable or revocable trust, but how much control you want and need over your property or assets (or both). That will dictate if you should have an irrevocable or revocable trust – if either is appropriate. Estate lawyers and [financial advisors](#) say that for many middle-class families, trusts might be more bother and expense than they're worth.

So what is a revocable trust to begin with? Exactly what it sounds like: You can revoke and rewrite the terms of the trust as much as you want. Trusts of the irrevocable kind, however, have the opposite definition. You (sometimes known interchangeably as the trustor, grantor, or settlor) set up the irrevocable trust, then relinquish control to the trustee. The grantor can't step back in

and change the terms of the trust or fire the trustee without getting the approval of everyone involved, including the beneficiaries. For the most part, what's done is done.

The decision for you as grantor then is how much control you need and want over the trust. The more control you have, the fewer immediate benefits you have. The less control you have, the greater the potential benefits down the road.

So at this point you may be wondering, why you should bother with a trust of either type?

If your goal is to reduce [estate tax](#) – the classic rationale for a trust – recent changes to tax policy have come to your rescue.

The exemption on estate taxes is now \$10.6 million for married couples. "That takes a lot of people out of the picture," notes estate lawyer Laird A. Lile, who is based in Naples, Florida.

You won't save any taxes by pouring assets into a revocable trust. "From the IRS' point of view, revocable trusts are invisible," Lile explains. "There are no tax considerations or gift tax considerations to having a revocable trust." Nor is such a trust as likely to shield assets from a creditor as the irrevocable kind.

These days, the main reason for a revocable trust is to get it set up and ready to accept assets when you no longer have the ability to manage your own affairs, says Paul Pantano, senior financial planner with Luttner Financial Group in Pittsburgh. When you move assets to a revocable trust, you provide direction for their use upon your death, usually without going through probate and usually with a modicum of privacy for your living heirs. As soon as you die, a properly set up revocable trust will become an irrevocable trust, and the trustee will manage it. Thus, a revocable trust can become a partial substitute for a will – an essential part of [estate planning](#) – affording some privacy for the family.

That process is only worth it for assets that are not already jointly owned (such as real estate property) or that have a direct beneficiary (such as an [individual retirement account](#)), Pantano says. In those cases, ownership of the assets transfers seamlessly, so it actually complicates things to have them in a trust.

Finally, a revocable trust is useful for setting up plans to handle your assets and income if you become incapacitated, points out Michael A. Dribin, a trust and estate lawyer with Harper Meyer Perez Hagen O'Connor Albert & Dribin in Miami.

"The trust makes a provision for the continued management of the assets without a formal court order. It might just take a letter from a physician to validate that you can't handle the assets for the successor trustee to take over," he explains. "It's designed to be pretty seamless. You don't have court interventions, and you can make quick decisions using the assets."

But, he adds, you might be able to achieve the same planning goals by using a durable [power of attorney](#).

Irrevocable trusts, however, are only for the very sure. Be aware that the main irrevocable trust advantages (typically tax advantages) mainly exist for the very well-off. Even then, advantages come in the form of complex constructs in irrevocable trusts that are costly to set up and administer, estate lawyers and advisors say.

For the rest of us, the advantages of irrevocable trusts result mainly from the value of addressing special circumstances, such as guaranteeing for the continued support of a disabled dependent or ensuring the protection of assets from professional liability.

You might also turn to an irrevocable trust to effectively protect assets from creditors, but only if you are thinking way ahead and put assets in the trust before you have credit problems, Lile says. "If you're trying to stay a step ahead of an emerging legal or credit situation, creating an irrevocable trust could be construed as a fraudulent conveyance," Lile says.

Incidentally, both irrevocable and revocable trusts are considered inter vivos trusts, or living trusts; testamentary trusts, on the other hand, always go into effect after the death of the trustor and are created as the result of a will. Living trusts are simply created during the lifetime of the grantor.

Other uses for trusts include uses as: generation-skipping tools (transferring wealth to your grandchildren), protecting your assets in [divorce cases](#), and of course, the classic use of the trust fund to provide for your next of kin in a responsible way.

In any of these cases, any advantages for the grantor come with the caveat that you essentially permanently lose control of whatever is in the irrevocable trust.

Additional considerations:

- Who will be the trustee or trustees? In a revocable trust, you can change the trustee any time you want. But with an irrevocable trust, you give up control, so you should be confident that the trustee you designate is a person you, well, trust, and that they'll make decisions in agreement with your desires.
- Don't assume that a trust will keep your estate out of probate court completely. Depending on the state, probate laws still might apply to some degree.
- For additional details, visit the National Association of Estate Planners & Councils website (naepc.org).

<http://money.usnews.com/money/personal-finance/mutual-funds/articles/2014/06/19/how-to-choose-between-a-revocable-and-irrevocable-trust?int=investing-rec>