

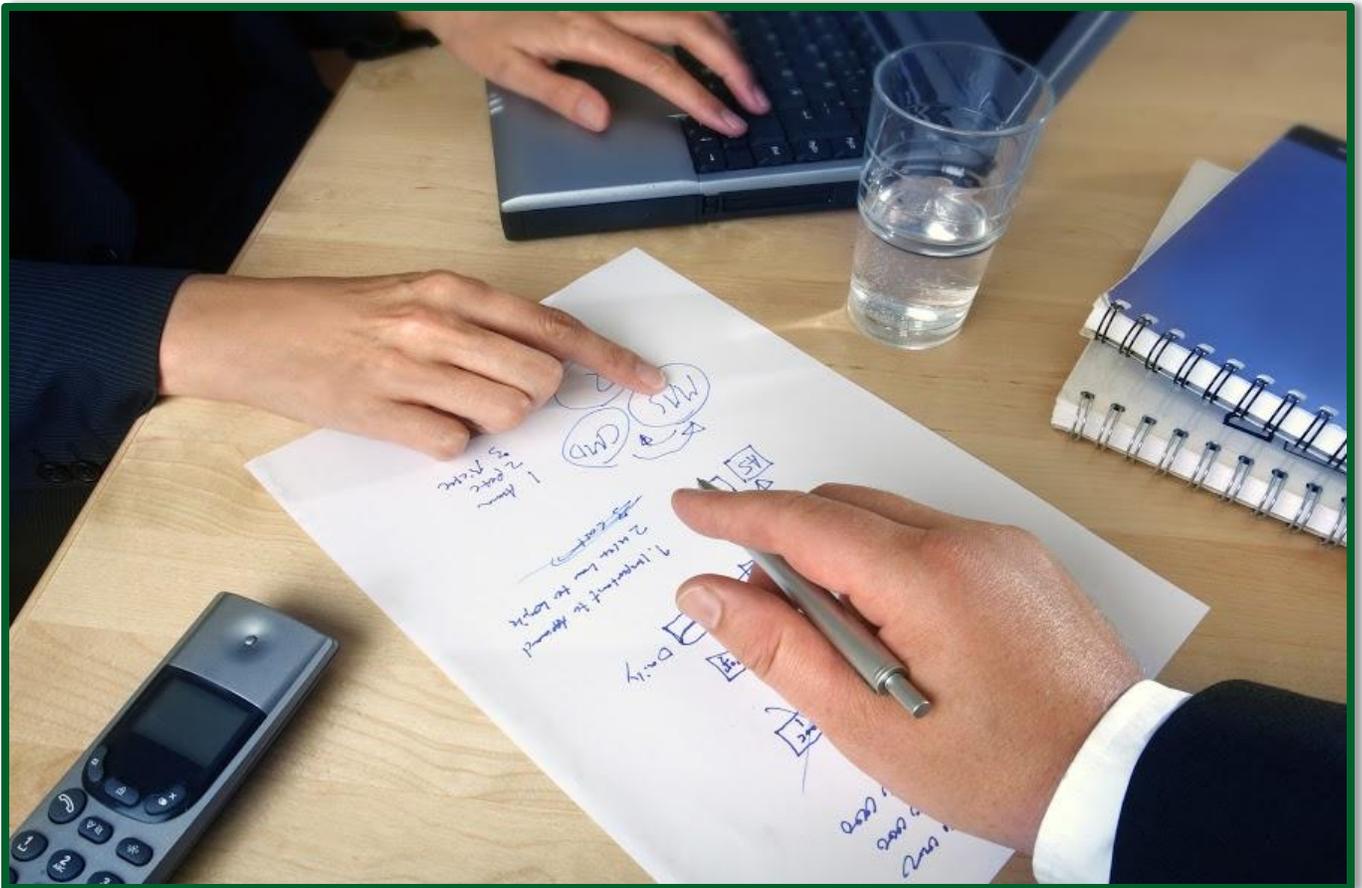
“There are distinctions between the different types of trusts that can be utilized when you are devising your estate plan. Some trusts can be rescinded or revoked, and other trusts cannot be revoked.”

SHOULD I USE A REVOCABLE OR IRREVOCABLE TRUST IN INDIANA?



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If you have not looked into the subject, you may be under the impression that a will versus a trust is an either/or proposition. In fact, this is not the case. There are various different types of trusts, and they serve different respective purposes.

A major distinction between the types of trusts is the right of revocation. There are trusts that you can revoke or dissolve after you create them, and there are also irrevocable trusts. Let's look at the details.

REVOCABLE LIVING TRUSTS

A very commonly used asset transfer vehicle is the revocable living trust. Since you can in fact revoke the trust at any time, you do not have to be concerned about losing control of the assets while you are living. This could be viewed as a positive benefit.



The right of revocation is not the only way that you control this type of trust. If you create a revocable living trust, you are called the grantor of the trust in legal parlance. The trustee is the person or entity who administers the trust, and the beneficiary is the person who receives monetary distributions from the trust.

As the grantor of a living trust, you can act as the trustee and the beneficiary while you are living, and most people do choose to assume these roles. Since you are the trustee, you control the trust while you are alive and well.

The ultimate goal is to get assets into the hands of your loved ones after you pass away. To make this happen, you name a trustee to

succeed you after your passing, and you name a successor beneficiary. After you are gone, the successor trustee would follow your instructions and distribute assets to the beneficiary in a timely and efficient manner.

A revocable living trust will facilitate efficient asset transfers, and you can also include spendthrift protections when you establish this type of trust. It would be possible to instruct the trustee to distribute limited assets over an extended period of time to preserve the viability of the trust for the long haul.

IRREVOCABLE TRUSTS



Irrevocable trusts are used to satisfy more advanced estate planning objectives. When you have this type of trust, you are surrendering incidents of ownership, because you cannot change your mind and take back direct personal possession of the assets. This can sound disconcerting, but there are some good reasons why you may want to establish an irrevocable trust.

These trusts are used by people who are exposed to estate taxes. When you convey assets into an irrevocable wealth preservation trust, you are removing the assets from your own name for estate tax purposes. Irrevocable trusts can also be used to protect assets from litigants seeking redress.



Medicaid planning is another objective that can enter the picture. The majority of senior citizens will someday need help with their day-to-day needs, with many of them residing in nursing homes or assisted living communities. These facilities are quite expensive, and Medicare does not pay for long-term care.

The Medicaid program does pay for living assistance, but it is a need-based program. You cannot qualify if you have significant assets in your own name. If you were to convey assets into an irrevocable Medicaid trust, they would not be looked upon as your personal property if you were ever to apply for Medicaid to pay for long-term care.

Plus, you could create an income-only Medicaid trust. The principal would not count against you if you were to apply for Medicaid, but you could continue to receive income from the earnings of the trust before you apply for Medicaid coverage.

SUMMARY

There are distinctions between the different types of trusts that can be utilized when you are devising your estate plan. Some trusts can be rescinded or revoked, and other trusts cannot be revoked.

Though you may feel a sense of security if you create a trust that you can revoke, these trusts do not satisfy certain objectives. Assets in a revocable trust

would be part of your estate for tax purposes, they would be in play if you were to be sued, and they would be counted if you were to apply for Medicaid.

On the other hand, you surrender incidents of ownership when you establish an irrevocable trust, so these trusts are used for estate tax efficiency purposes, asset protection, and Medicaid planning purposes.

To learn more about trusts, schedule a consultation with a licensed estate planning attorney.



REFERENCES

American Bar Association

http://www.americanbar.org/groups/real_property_trust_estate/resources/estate_planning/revocable_trusts.html

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About the Author

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Paul Kraft is Co-Founder and the senior Principal of Frank & Kraft, one of the leading law firms in Indiana in the area of estate planning as well as business and tax planning.



Mr. Kraft assists clients primarily in the areas of estate planning and administration, Medicaid planning, federal and state taxation, real estate and corporate law, bringing the added perspective of an accounting background to his work.

In addition to his practice, Mr. Kraft has lectured extensively in the areas of living trust planning, Medicaid planning, and presenting public and private seminars on the importance of proper estate planning. He has also authored various articles on estate planning and is a contributing author of *LEGACY: Plan, Protect, and Preserve Your Estate—Practical Answers from America's Foremost Estate Planning Attorneys*.

Mr. Kraft is a co-founder of the Indiana Network of Estate Planning Professionals, a charter member of the American Academy of Estate Planning Attorneys and a founding member of the National Network of Estate Planning Attorneys. He is also a member of the Indianapolis Bar Association, including the Taxation, Business Law and Estate Planning sections; the Indiana State Bar Association, including the section on Taxation Law; the Indiana CPA Society; and the Estate Planning Council of Indianapolis. Mr. Kraft is admitted to practice law before the Supreme Court of Indiana, U.S. District Courts, and U.S. Tax Court.

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