

Weiner & McCulloch, PLLC

Attorneys and Counselors at Law
5599 San Felipe, Suite 900, Houston, TX 77056
Phone (713) 961-1099 Fax (713) 624-4295

IRREVOCABLE TRUSTS ...

The facts ...

A trust is a contract between the Grantor (the person who creates the trust), the Trustee (one who controls the trust) and the beneficiaries (those entitled to benefit from the trust). You, as Grantor, determine how the trust will be operated by the Trustee and who benefits, how and when.

While a Revocable Trust permits you to maintain full control (as Trustee) and have access to all your assets (as beneficiary), an Irrevocable Trust, once created, may prohibit your right to control the trust (as Trustee) or have access to your assets, but you get to decide to what extent.

It is a common misconception that irrevocable trusts, once created, cannot be changed. While that is true of many irrevocable trusts created to avoid taxes (tax reduction or avoidance trusts), it is not true of all irrevocable trusts. An irrevocable trust is a trust you create for the benefit of yourself or others and once created, you, as Grantor, must give up your right to “something”.

Debtor/Creditor law provides that whatever you can get, your creditors can get. You can have known creditors (i.e., bank/credit card debt) or unknown potential creditors (unforeseen lawsuits, nursing home, divorce). A typical “income only” irrevocable trust permits you to receive the income on your assets, but you must give up your right to your principal. In some irrevocable trusts, you can retain the right to change who gets your assets during your life and after your death, and maintain 100% control of your assets until your mental disability or death (asset protection trusts).

Tax reduction/avoidance trusts are much more restrictive than asset protection trusts. Typically, you cannot retain any right to control or access any of the assets in an irrevocable tax reduction/avoidance trust. There are many irrevocable trusts available that are quite flexible and grantor-friendly. You should consult a qualified estate planning attorney to get counseled on all your options before creating an irrevocable trust.

For more info: www.houstonelderlawyer.com or 713.961.1099