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TYPES OF TRUSTS: REVOCABLE V IRREVOCABLE

Revocable Trusts can be easily changed or modified, but do not offer additional asset protection. They go in effect during your lifetime, after they're created and funded. But as soon as you pass away, they automatically become irrevocable, at which point they can't be changed. A Revocable Trust will typically remain open for about 12 - 18 months after the passing of the Trustor (the Trust creator). Once all the estate's debts and taxes are paid off, distribution to beneficiaries will be made with the remaining value.

Irrevocable Trusts, on the other hand, are primarily used for asset protection as they cannot be subject to claims, liens or judgments against your estate. The downside to this type of Trust is they cannot easily be updated, changed or modified. Irrevocable Trusts don't really have a time frame that they can or will remain open after your passing because they're intended to be used for long-term planning and asset management.

DISTRIBUTIONS: OUTRIGHT V DISCRETIONARY

The distribution of trust assets can be a complicated process. There are three primary ways that a Trust Fund distribution to beneficiaries can work:

Outright - Outright distributions make Trust asset distribution easy and tend to have nominal fees. In this case, assets are simply given without any restrictions to the beneficiaries upon the death of the Trust creator (once all debts and taxes are paid).

Staggered - People use the staggered distribution method when they want to set up determined events that would trigger a distribution: think an age, a specific date, graduation from college, a wedding, etc. Staggered distributions are more common when the beneficiaries are minors or young adults.

Discretionary - Discretionary distributions leave distribution dates and amounts up to the determination of individual Trustee you appoint. In this case, the Trustee (who is charged with managing the Trust and distributing assets) would have the authority to determine when beneficiaries should receive assets. Like the staggered distribution method, discretionary distributions can result in higher administration costs because the Trust could take years to deplete. You can include language to advise or guide the trustee, but they are not obligated to provide beyond needs and this could result in confusion. Additionally, with no guaranteed age of outright distribution, this offers additional protection from creditors of the beneficiaries, also known as a "spendthrift" trust.

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CONSIDERATIONS

You should consider the burden and cost to administering the Trust assets over a longer time period. Within any of the above trusts, there are endless options. Some clients prefer "incentives" such as must be employed or in school part or full-time.

Intent Statements - Many trustees find words like "wish" and "hope" helpful, although they are not legally enforceable terms. They give guidance to the trustee as to the thought process when drafting, but they do not have to be followed if not appropriate for the situation.

Unique Assets - Be specific. Are loans and promissory notes forgiven? Should the debt be allocated to a particular beneficiary's share or equally to all shares? With a business, Is there someone who could be named who was involved in that particular business as a special advisor.

Personal Property - These sentimental items tend to have a high emotional attachment for the beneficiaries, which risks hostility between family members when it comes time to distribute. Miracle Law provides a list of specific items, but if incomplete, they will be distributed according to the terms of the residence of the trust.

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MORE CONSIDERATIONS

Support Trusts: Most trusts created for the benefit of children or grandchildren are classified as support trusts. This means the funds in the trust are available to the beneficiary for their health, education, maintenance and support in the same or similar lifestyle they're used to (assuming funds are available). The Trustee has the discretion to take into account other income sources and determine an appropriate distribution, but needs should be met.

A common "Staggered" approach to outright distributions at specified ages considers the expenses of higher education and allows the beneficiary to ease into managing the assets on their own.

For example:

-1/4 of the remaining trust assets at age 22
-1/2 at age 27
-balance at age 30