

## **Irrevocable Trust Decision Checklist**

**Settlor's Full name (may be more than one):**

**Address:**

**Phone numbers:**

### **Irrevocable Trust:**

Notes:

Person who creates a Trust: called the Settlor, Grantor or Donor.

Person(s) who administers the assets held in trust: called the Trustee(s) (must be age of majority.)

Person(s) who benefit from the trust: called the beneficiary/ies.

In an irrevocable trust, the Settlor retains no power to revoke, change or amend the trust at any time. Certain powers to change the trust may be given to either a Trustee, if an Independent Trustee, or a beneficiary, but with limitations. In most cases, when assets are transferred to an irrevocable trust the Settlor has made a gift to that Trust. For gift and estate tax purposes, the gift may be classified as non-taxable because the gift is equal to or less than the Settlor's annual gift exclusion to trust beneficiaries, non-taxable because the gift is equal to or less than the Settlor's lifetime federal gift tax exemption amount (currently \$1,000,000.00), or taxable because the gift exceeds the Settlor's available annual exclusion amounts and lifetime gift tax exemption amount.

Current law: For Medicaid planning purposes, gifts made to either individual persons or to a trust within five years of an application to receive Medicaid benefits are "countable" to determine eligibility for benefits. (The assets that were transferred will make the applicant ineligible for Medicaid benefits.)

Decisions:

1. Who should be named as the Trustee(s)? If a beneficiary is named as a Trustee, then a Co-Trustee is needed in order to keep the trust assets free from attachment by creditors of the Trustee/beneficiary and to keep the assets free from estate tax in the estate of the Trustee/beneficiary. Please provide full name and address for each Trustee named.

First Trustee:

Co-Trustee:

2. Upon the death of any Trustee named above, who should succeed that Trustee? Again, please include full name and address.

Successor to first Trustee:

Successor to Co-Trustee:

Additional successor(s):

3. Who are the beneficiaries? An irrevocable trust may state that a “pool” of persons is permissible beneficiaries at any one time (Trustee can pick from numerous beneficiaries when deciding to make distributions), or that only one person is the beneficiary (for lifetime of that person for example) and then at a certain time additional beneficiaries are named, or separate trust shares may be established for multiple beneficiaries. Any beneficiary who is entitled to a present benefit (the Trustee may make distributions to that person immediately) is called the current beneficiary and any beneficiary who may receive a benefit in the future is called a contingent beneficiary (the Trustee may make distributions to a contingent beneficiary upon the occurrence of the contingency, most common contingency is the death of the beneficiary and then his/her children become the next beneficiaries).

Current beneficiary/beneficiaries:

Contingent beneficiary/beneficiaries:

4. The type of benefit each beneficiary is entitled to must be specified. For example, (1) Beneficiary A and B – entitled to income and/or principal in the Trustee's discretion, or (2) Beneficiary A – entitled to all income from the trust and principal in the Trustee's discretion, or (3) Beneficiary A, B, and C – entitled to receive income and/or principal in the Trustee's discretion, but not equal distributions (otherwise known as a discretionary pooled fund). In addition the time frame for a beneficiary's interest in the trust must be specified. For example, in (1) above Beneficiary A's interest may last for his/her lifetime or until he or she reaches a certain age, or in (3) above the pooled fund lasts until the youngest of A, B and C reaches age 25 (and has probably graduated from college) and then the fund is divided into separate trust shares with one share for A, one share for B and one share for C (and these shares must also be defined as to type of benefit and length of time. In addition, the trust must contain a provision that spells out what happens when a beneficiary dies. For example, the trust might be distributed outright to the deceased beneficiary's children, as long as they are a certain age (and multiple distributions are possible e.g. ½ at age 25 and balance at age 35), or the trust continues for the deceased beneficiary's children or grandchildren or some other beneficiary, which again requires a definition as to the type and timing of their benefit.

Name and address of each beneficiary and type/timing of his/her benefit:

