

# To Revoke or Not to Revoke; THAT is the Question!

## Revocable or Irrevocable Trusts - Part I

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Almost everyone who visits our office makes the following statement: “I know that I should have a Will.” As our clientele becomes more informed, however, they now also state that they have an interest in creating a Trust. As we have discussed in previous articles, there are numerous advantages to passing your wealth to the next generation through a Trust. Some of the more common reasons are the avoidance of the time, effort and cost associated with the Court system as well as protection of personal information from the public eye.

As the Trust discussion begins, however, the next question is almost always: what is the difference between a revocable and an irrevocable Trust? Usually when people use the term “Trust,” they are referring to Revocable Living Trusts, but the concept can be confusing, especially with so many terms floating around the Internet like; **Revocable Living Trust, Grantor Trust, Generational Skipping Trust, Irrevocable Life Insurance Trust; Irrevocable Asset Protection Trust**, etc. So let’s start with the basics.

### **Irrevocable vs. Revocable**

To keep it very simple; irrevocable means that you may not cancel, rescind or undo the Trust. You may think of it as irreversible, final or otherwise completed. Revocable, on the other hand, means the opposite, or that it is reversible. In other words, with a Revocable Trust you may change your mind and simply revoke it. Conversely, with an Irrevocable Trust, you may not just change your mind and undo the Trust unilaterally.

### **When to use Irrevocable & Revocable**

So why would anyone ever want to make an irrevocable decision that may not be changed later? What if a circumstance changes or you just change your mind? Isn’t it always better to maintain control over your assets and keep your options open?

Quite frankly, the answer depends on your goals, stage of life, possible medical expenses, and other challenges or opportunities on the horizon. If a document is primarily meant to dispose of your assets at your death, to manage your estate during incapacity, or to facilitate and expedite estate administration, then a Will or a Revocable Living Trust may be the best documents for keeping your options open.

On the other hand, if you wish to reduce the size of your estate for tax purposes, protect assets from being spent on future Nursing Home costs, or qualify for Veterans’ or other government

benefits; then using a Revocable Trust will not help at all. If any or all of those are your goals or concerns, you will most likely need to use an Irrevocable Trust.

### **What about Asset Protection**

So what about asset protection? Now that you understand the basic difference between revocable and irrevocable, which type of plan would you expect to protect your wealth from demands made by outside parties? If you guessed irrevocable, you are right! Why? Well, for the very same reason that a gift which is revocable is still considered by the IRS or a Court or any government entity as yours. A Trust that you may revoke at your discretion would run into the same problem as a gift you could take back. If you can simply revoke your planning, then “poof” – there goes your asset protection.

In a nutshell, if you need flexibility and want to be able to change your plan, then you probably want to use a Revocable Living Trust. If, however, you want to truly protect your assets, then the only sure way to do so is with an Irrevocable Trust, which leaves us with one big question: “Is there a way to still have control of your assets, even if they are in an irrevocable asset protection plan?” The answer is YES, if you know how.

We will answer this question and more in Part II of this article coming soon! Remember, Irrevocable does not always mean “unchangeable”.