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Elder Law Guys: Planning a trust may seem complicated, but it's not impossible. Here are some basics.

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A recent discussion with a new client who is considering using a trust in their estate plan prompted several questions regarding this subject. Here are some Frequently Asked Questions to clear up some concerns about trusts.

Keep in mind that we've prepared thousands of trusts over the past few decades and there are different types of trusts for different situations. However, rather than delve into the different types of trusts and how they work (see our January 2019 Post-Gazette column "Do I need a trust?"), we're going to discuss the questions on many people's minds.

1. Can I be my own trustee? In many trusts, the answer is yes! This applies whether your trust is revocable or irrevocable. While some trusts require a corporate trustee, most don't. And, you can set up a pecking order of successor trustees to take over if you can't or don't want to act as your own trustee.

2. Assets in an irrevocable trust. What can a person still do with trust assets once an irrevocable trust is created? The answer is — a lot. It all depends on the reasons the trust is being created and how much control you want to retain or delegate. Remember, just because a trust is irrevocable doesn't mean you can't reserve powers to change it in the future.

3. How do I fund my trust? That depends on the types of assets you want to have owned by the trust. For real estate, typically a new deed is prepared and recorded in the courthouse, transferring the ownership from the current individual owner(s) to the trustee(s). This transaction is quite common and should not result in any taxes or reassessment of the property. If the asset is an investment account, the investments are simply retitled in the name of the trust.

4. Speaking of retitling assets into my trust, will I pay capital gains or ordinary income taxes on assets I transfer into my trust? If you do this correctly, the answer is resoundingly "no." A common trust funding transaction involves transferring an investment account "in kind" into the trust, which means no investments are sold, thus no taxable event occurs.

5. Now that we're talking about taxes, do I have to file an annual income tax return for the trust? The answer is most likely not unless you prepare a fairly complex trust. Most revocable and irrevocable trusts that we prepare do not require any separate income tax returns other than the client's own return during the client's lifetime.

6. So, what do I put into the trust? Generally speaking, assets like your primary residence, vacation homes or rental properties are often prime candidates for trust ownership. In addition, nonqualified investments such as brokerage accounts, individual stocks, annuities and bank accounts are frequently added to a trust. Life insurance is also a popular asset for trust ownership.

IRAs, however, are not typically placed into a trust during the IRA owner's lifetime because of the negative income tax consequences for transferring an IRA into a trust during that person's lifetime. (Using a trust as a death beneficiary of an IRA, however, does not have the same negative tax consequences and actually has some great planning options. See our prior Post-Gazette columns on IRAs and trusts.)

7. Does the trust just end when I die? It's your choice. You can have the trust terminate upon the death of a specific person, occurrence of some event or a time constraint. Or, you can keep the trust in effect for future generations in perpetuity.

8. Do I need to be rich to have a trust? Definitely not; this is a common misconception. As a reminder, trusts are created to address myriad issues. Sometimes they are used as a tax planning device for wealthy people, but this is the minority of situations that we see.

9. Is my trust only valid in Pennsylvania if I move to another state? That depends on a lot of things. It's a good idea to consult with your current legal counsel as well as new legal counsel in the state to which you are moving to in order to make sure your wishes set forth in the trust will be honored. Frequently, a trust created in one state can still be effective even if the client moves to another state. In fact, some states have more favorable trust laws than others so clients will purposely create a trust in another state that has more favorable laws than where the client is domiciled.

Trust planning is more complex than simple estate planning but can yield superior results when done correctly. However, now that you know a little more about the commonly asked questions, you can approach this planning technique with more certainty about the options and, hopefully, be in a better position to ask questions for your particular situation.

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