

# Price & Farrington's Estate and Tax Planning Fast Faxes September, 2001

Estate, Tax and Family Wealth Preservation Planning For Advisors

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## Trusts Made Easy: An Irreverent Q & A

### What exactly is a "trust"?

A trust is an agreement, usually in writing and signed, where one person (or bank or trust company) holds property for another person according to the terms of the trust.

### What might a simple trust say?

#### TRUST

I give \$10,000 to my Trustee to hold for the benefit of my children as he deems appropriate.

Trustmaker Trustee

### Is the above trust valid?

Yes, it's a valid trust; crude and ambiguous, but legal. It doesn't say who will serve as trustee if the named trustee quits or describe distribution criteria, etc.

### Why would you set up a trust?

Lots of reasons: (a) when you don't want to give money to someone in one big heap; (b) to protect assets; (c) to invest well; (d) to protect beneficiaries, (e) for tax benefits; (f) for special needs; and so on.

### Is a trust a thing? What are its parts?

A trust is a legal entity, like a corporation or partnership. Its two basic parts, financially, are *principal* and *income*.

### What is a trust's principal?

The assets placed into a trust, such as real estate, stocks, bonds, cash, or anything else. People, even if they're involved in stocks and bondage, cannot be placed into trusts.

### What is a trust's income?

The interest, dividends, rents or other earnings produced by trust principal.

### What is a trustee?

The person or institution holding the property for another person. It can be a man, woman, bank or trust company; it cannot be your dog, even if he's your best, most

trusted friend. The trustee is responsible for holding, managing and distributing property according to the trust's instructions. *Tip:* A trustee should be trustworthy.

### What is situs?

A trust's "home", which is usually its birthplace. Trust documents can provide that a trust can move away from home.

### What is an *inter vivos* trust?

It's a trust that takes effect during your lifetime, unlike a *testamentary* trust which takes effect only after you kick the bucket.

### What is a revocable trust?

An *inter vivos* (*love that Latin!*) trust that can be changed or cancelled by the trustmaker. A living trust is a popular example.

### Why would you set up a revocable trust?

Mostly so the trust property won't be subject to guardianship, probate, publicity or large fees. Also, so the trustmaker can continue to control the property in the trust

### What is an irrevocable trust?

A trust that's "written in stone" and can't be changed or cancelled without a judge's approval. A trust created in a will is irrevocable on death, unless the decedent returns from the Beyond for a rewrite.

### Why would you set up an irrevocable trust?

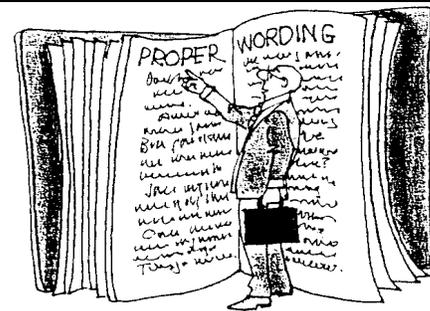
Mostly to remove the trust's assets from your estate for tax planning or creditor protection, and also to protect goodies earmarked for the trust beneficiary (a minor, "a deadbeat" or a surviving spouse).

### What is a "Crummey trust"?

A trust that's not worth a damn. Actually, it is a special court-approved trust arrangement named after Dr. Crummy, whose clever lawyer took advantage of tax laws that allow you to make "present interest" gifts without letting your kids get their mitts on the gifts "presently".

### What is a "spendthrift trust"?

A trust set up for someone who spends money foolishly. It is an *inter vivos* or *testamentary* trust that regulates the flow of funds in a planned way and places the assets beyond the reach of the beneficiary's ex-spouses, loan sharks, gambling buddies, parasites, creditors and bankruptcy.



### What is a "sprinkle or spray trust"?

A trust that gives the trustee discretion to distribute unequal amounts of income or principal among different beneficiaries, based upon their age, needs, abilities, the trustmaker's goals and other factors.

### How are trusts used to protect against creditors?

Joe Blow, Sr. sets up a trust for Joe Blow, Jr., who has the right to receive only income. Joe, Jr.'s creditors generally cannot reach the principal in order to collect Joe Jr.'s debts. Joe Blow, Jr. cannot blow it.

### Can I protect my assets from creditors crawling all over me by putting them into a trust for my own benefit?

It depends. The jury's still out on whether an Alaska-styled "self-settled spendthrift trust" will fly against legit. creditors.

### I want to set up a trust for my daughter so she gets income for life but can't touch principal. She can give principal away at her death. What should I do?

Give her a "power of appointment", the power to direct trust principal to others, usually by provisions in her will: "I exercise the power of appointment in my daddy's trust for the benefit of my children..."

### Are there any other kinds of trusts?

Tons, for all sorts of planning goals: CRTs; ILITs; QPRTs, GRATs; QTIPs; GSTs; IDGTs; and so on. To learn the alphabet, see your estate planning lawyer.

Glen D. Price

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Beware of preprinted forms and trust "mills"