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Introduction to Estate Planning:

Trusts – What They Are & How to Use Them to Protect Your Loved Ones

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Thank You for Your Trust

We would also like to express our gratitude for allowing us to serve as your resource; it is a privilege to be trusted to provide you with information about these important topics.

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Overview

1. Trust Basics
2. Trusts By Will & During Life
3. Revocable & Irrevocable Trusts
4. Estate Plans & Trusts
5. Charitable Trust Options

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Trusts

- Trusts are one of the most flexible and useful of all estate planning tools
- A trust is a legal entity that can be used to hold property and to manage money or assets for your benefit, and/or the benefit of loved ones
- When assets are given to the trust, you no longer own them, the trust does
- Trusts are private, and do not require court supervision or approval

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Trust Basics

- Trusts are controlled by state law

- Creating a trust requires a special document that spells out the people who manage the trust property, how they do so, and what control they have to give property to those you selected

- The person who manages the trust is called a Trustee

Trust Basics

- When creating a trust, you must choose the Trustee(s)

- You could be a sole trustee, or you can choose others to assist with trust management

- Trustees owe a duty of loyalty to the beneficiaries of the trust

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Considerations When Choosing A Trustee

- Choose someone younger than you, or an entity like a bank or charity

- Must be a trusted person who will follow your instructions

- Comfortable dealing with accounting, legal process and maybe negotiating conflicts between family members where the Trust provides discretion for distributions (possibly in uneven amounts)

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Considerations When Choosing A Trustee

- If naming more than one trustee, consider naming an odd number to avoid having to ask a court to break any tie

- If the trust does not set a specific compensation for the trustee, state rules set their compensation as a percentage of the trust assets

Trustee Powers

- Trusts give powers to the trustee and these powers can be broad or narrow

- Powers can give the trustee the ability to invest trust property, sell or exchange it, to enter contracts, borrow or loan money/trust assets, and decide how or when to give money/assets to beneficiaries, if at all

- If giving trustees discretion, it is important to spell out how much

- Trust powers can be restricted and divided, giving different responsibilities to different trustees

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Trustee Replacement

- It may be necessary to remove or replace a trustee during the life of the trust
- It is important to list multiple backup trustees
- Provide clear instructions for who can remove the trustee(s) and the process for doing so
- Trusts also should include a process for a trustee to resign

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Trust Beneficiaries

- Having a trust means choosing beneficiaries; this might be you, a spouse, your children, or even pets

- You may choose to name classes of people, like grandchildren, or name specific individuals and/or charities

- It is possible to give a loved one access to trust property for life or a set period of time, and then give the trust to another person

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Trust Beneficiaries

- Beneficiaries have a right to the trust assets, and those assets must be managed for their benefit by the trustee

- For trustees, these management responsibilities are very important, and in some cases, beneficiaries can sue for poor management of trust property

- Including detailed instructions for the trustee on how to manage trust assets can help avoid this

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Trust Property

- A trust can own almost any kind of property; when creating the trust you must decide what property you want the trust to hold

- Some assets, like your home, might require consent from another person/entity to place in trust

- A trust can own income producing assets like a business or rental property, but may not be able to act without the approval of any business partners

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Trust Basics

- Trusts offer legal protection to beneficiaries, often reducing or eliminating the chance that someone might be able to take the property held in trust for them

- Trusts also allow the creator to control the timing of trust funds, to place conditions on receiving distributions, or to set standards for payments, such as to pay for medical care or education only

- Generally, a trust must end, and instructions for when and how must be stated in the trust

Trust Types

- There are a variety of trust types and each has its own advantages and disadvantages

- Which you choose will depend on your goals and your desired level of control over trust management

Basic Trust Types

- Trusts can be created at two general times:
  - During life
  - After death, through your will

- Trusts created <u>during life</u> can be either:
  - Revocable
  - Irrevocable

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Trusts Created By Wills

- Creating a Trust through your Will is a helpful way to provide for young heirs, who may not be ready to manage money, or a family home or business
- When choosing this kind of Trust, most people have their Will "pour" all of their assets into the Trust, along with any insurance money
- A Trust is often formalizing and managing what your Will instructs

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Trusts Created During Life

- Creating a trust during your lifetime requires making a choice between a <u>revocable</u> or <u>irrevocable</u> trust

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Revocable Trusts

- Revocable trusts are easy to create or change, and offer flexibility in management

- Creators who want to control finances, taxes and other trust business can generally do so with a revocable trust

- Changing beneficiaries and trustee(s) is generally less complicated

- Once you pass away, your revocable trust becomes irrevocable

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Revocable Trusts

- Revocable trusts can protect assets for your loved ones, and can make sense for planning when there are blended families

- Because you can always take back your assets by revoking the trust, property you place inside the trust generally receives less legal protection, and any trust taxes are generally your responsibility

- For example, if a person is injured and you are held responsible, the person may be able to access property you put in the trust

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Revocable Trusts

- You might choose this trust type because:
  - You want to retain control over investments or management of a property or business
  - Flexibility is more important than legal protection
  - You want to pass property to heirs and still qualify for step up basis

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Irrevocable Trusts

- Irrevocable trusts require more planning, and are less flexible

- Trust terms are generally set in stone and making changes to the beneficiaries, trustee(s) and trust terms is difficult, usually requiring the consent of all beneficiaries or court approval, if it is possible at all

Irrevocable Trusts

- Creators usually can't control trust finances or business if they are a beneficiary of the trust

- In exchange for the lack of control, property is generally given greater legal protection

- Tax issues are important: If creators will have significant control, or will receive money from the trust, it can affect income, gift and/or estate taxes

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Irrevocable Trusts

- Irrevocable trusts provide more protection against people or entities who might try to get money from you or your loved ones

- Generally, no ability to force distributions from the trust

- By giving up control over your assets and placing them in an irrevocable trust, they generally will not be taxed as a part of your estate and they are no longer considered your property for paying debts

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Irrevocable Trusts

- You might choose this trust type because:
  - You want to receive income from investments or the management of a property or business you own, but wish to pass the property itself to loved ones
  - Legal protection for assets and heirs are a primary planning goal
  - Estate taxes are a concern (state or federal)

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How Can a Trust Help Me?

- Trusts can protect assets from creditors and can help heirs who may have problems with overspending, protecting their inheritance (spendthrift trust)

- Trusts may save on taxes, leaving more for loved ones

- Including a gift for charity is simple

- The Carter Center is happy to provide sample trust language for a charitable gift to your favorite organizations

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How Does My Trust Work With My Will?

- In a good estate plan, all documents work together
- While most people think of a trust as replacing a will, they rarely do
- People often exchange property through their lives, and acquire new assets after they create a will and trust
- Because these documents may not be fully up to date, the will may control more assets than you think, and it should always specifically handle all of your "remaining property"

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How Does My Trust Work With My Will?

- Your will is the only place to name a guardian for children, minor dependents or pets

- Many people name a different trustee who is not the child's guardian, separating any financial control to avoid potential abuse

- A trust picks up where the will leaves off, adding greater structure and more detailed instructions beyond the will, especially when planning for long time horizons

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How Does My Trust Work With My Will?

- For business owners, using your trust to hold your stock or ownership units can be advantageous

- It is possible to provide more detailed instructions about the ongoing management of the business by the trustee, as well as instructions for any potential sale of the business

- Having the trust hold the business can also be a good solution when you have heirs or loved ones who wish to continue the business, but they are too young at the time of your passing

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How Does My Trust Work With My Will?

- To learn more about Wills and estate planning, please watch our recent webinar entitled, *Introduction to Estate Planning: Wills – Why You Should Have One, How it Affects Your Loved Ones & When You Should Update Yours*, CLICK HERE

- This video will help you understand what happens to your property after you pass away, and how that process affects your loved ones

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How Does My Trust Work With My Other Planning Documents?

- Your trust should work in harmony with your Powers of Attorney

- If you cannot make decisions for yourself, and all of your property is in a revocable trust where you are the only trustee, your Power of Attorneys should allow someone to serve in your place, or to select another person, like a business associate or spouse, to act for you

- Without this harmony, it may be necessary to have a court appoint a guardian and also a trustee, which would be expensive and time consuming

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How Does My Trust Work With My Other Planning Documents?

- To learn more about Powers of Attorney and estate planning, please watch our recent webinar entitled, *Introduction to Estate Planning: Everything Except Wills*, CLICK HERE

- This webinar will help you understand many other important estate planning documents like Powers of Attorney, Living Wills, and Beneficiary Designations, including more information on how trusts work to make life easier for those you leave behind

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Charitable Trust Planning

- A Charitable Remainder Trust is a powerful strategic planning tool

- Charitable Remainder Trusts provide a lifetime income for you or your loved ones, and then leave a gift for charity after you are gone

- The great thing about Charitable Remainder Trusts is that you can give the trust your assets, tax free, and the full value can be reinvested to produce a greater income stream, and a greater charitable gift

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Charitable Remainder Trust Planning

- You create a trust during life that you will give assets to upon your death, or while still living

- You get an immediate charitable tax deduction, and you can select a trust payout that will continue for a set number of years, or for the rest of your life (or the life of a loved one)

- Once you pass away or the term expires, whatever remains in the trust is given to charity

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Charitable Remainder Trust Planning

- Charitable Remainder Trusts have limited payout options

- The income payout can be fixed, like an annuity, set as a percentage of trust assets when the trust is created

- Alternatively, the income payout can fluctuate with the value of the trust assets each year

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Charitable Remainder Trust Planning

- Charitable Remainder Trusts can accept almost any asset

- You can have the trust begin paying out immediately, or select another event that will trigger the payments

- You can structure the trust to delay any payments, in case the property you place in the trust does not generate money, until the asset is sold

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Charitable Remainder Trust Planning

- Special IRS rules control Charitable Remainder Trusts, and a payout for a set number of years may be necessary, rather than for the lives of the payment recipients, in order qualify as tax exempt

- Like other trusts, this requires an attorney to create, and ongoing accounting and compliance requirements can be costly

- The Carter Center provides these services at a discounted rate for Charitable Remainder Trusts naming the Center as majority or sole charitable beneficiary

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Other Estate Planning Tools

- By carefully selecting the right assets to give your loved ones, they will pay less in taxes and get more of what you intended

- Certain property, like retirement account funds, are very highly taxed when inherited, especially after the new SECURE Act (effective Jan. 1, 2020)

- You can use retirement accounts to provide a lifetime income for your loved ones, and a gift to charity at the same time. For more information, ***Watch Our Recent Webinar – CLICK HERE***

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Charitable Remainder Trust Planning

- The Charitable Remainder Trust strategy can be tailored to your specific plans or needs, or those of your loved ones

- For example, if a parent believes a child will be in high income/high tax years when the retirement account funds will be inherited, the parent and child can work together to plan a delayed start date for the lifetime payments that coincide with the child's retirement, meaning there will be more income for the child when their tax rates are lower

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Charitable Lead Trusts

- You create a trust that you will give assets to upon your death, or while still living
- You can get an immediate tax deduction, and you can select a trust payout that will continue for a set number of years, or for the rest of your life
- The charity of your choice receives payments each year
- Once you pass away or the term expires, whatever remains in the trust is given to the people you selected

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Charitable Lead Trust Planning

- By placing appreciating property in trust, and giving an immediate income stream to charity, the assets can be removed from your estate and will be passed on at minimal tax cost to your heirs

- This strategy enables wealthy families to pass property down to children, grandchildren and later generations

Charitable Lead Trust Planning

- Charitable Lead Trusts require significant tax planning, and should be discussed with an estate planning attorney to determine suitability for your needs

- As with other trusts, ongoing accounting and legal compliance can be expensive

- The Carter Center provides these ongoing trust services at a discounted rate where it is the majority or sole beneficiary of the Lead Trust

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Charitable Estate Planning with Trusts

- Naming The Carter Center, and your other favorite charities, in your trust allows you to provide a specific amount, or a percentage of your trust to fund the programs of your choice

- The Carter Center is happy to provide sample language you can use with your attorney to include a trust gift for charity

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Barry Nickelsberg and Mark Williams are happy to work with you and your advisors to discuss how these strategies can fit your specific needs and goals.

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Q & A

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