TRUSTS

A trust is a fiduciary relationship created to allow one person to manage funds on behalf of another.

- The Trust is the legal document that creates the arrangement and sets out the duties and discretion of the Trustee.
- The Trustor is the term used for the person creating and funding the trust
- The Trustee is the person or firm named to have control of the assets placed in trust
- The Beneficiary is the person on whose behalf the trust is created and who is intended to benefit from the assets placed in trust. The Trustor and the Beneficiary may be the same person.
- The Trust Principal is a general term for assets placed in trust.

There is a wide variety of trust types and assorted provisions that can be included in trusts. Consultation with an experienced attorney is essential to understanding how these alternatives apply in a specific situation. The following are some of the more common terms used in trusts that GSS manages.

Special Needs Trust (SNT) – Special Needs Trust provisions are included in a trust when the beneficiary receives or is eligible for SSI, Medicaid and other public entitlements. Special Needs Trusts specify that funds are to be used for the "extra and supplemental needs of a beneficiary." The source of funds may be a relative, a personal injury settlement, a marital separation, or, under certain circumstances, an incapacitated person's own funds. Special Needs Trusts can be created by the court, a parent, grandparent, or a guardian. They are irrevocable.

A Special Needs Trust can be used for educational, medical, recreational and other needs of the Beneficiary that are over and above what would otherwise be provided by public benefits. This maintains eligibility for public benefits and prohibits access to the trust for any purpose other than by the trustee and for the client's benefit.

For beneficiaries who have disabilities, the development of a carefully structured trust can mean the difference between care that meets minimal needs and providing personal services, recreational benefits, and other benefits which public programs do not provide. The creation of a Special Needs Trust ensures the beneficiary will not be solely dependent on the uncertainties of public assistance.

Testamentary Trust – A Testamentary Trust is created within a person's last will and testament and goes into effect upon the completion of the probate of the will. It is commonly used when someone does not believe that an heir is able to manage funds on their own. Testamentary Trusts often include Special Needs provisions.

Settlement Trust – Settlement Trusts are often created by the court with the proceeds from a personal injury settlement or other type of litigation. Very often, Settlement Trusts include Special Needs Trust language. A Settlement Trust generally allows the trustee discretion to provide for maintenance, education, support and health while considering other sources of income or any parental support obligation. If the settlement was reached on behalf of a minor, the trust may have termination provisions that take effect after the Beneficiary reaches the age of majority or other predetermined age, or occasionally upon the client achieving certain goals *e.g.,* maintaining employment, stable housing, or sobriety for a set period.

Spendthrift Trust –Most trusts contain provisions to the effect that the beneficiary cannot direct spending of trust assets and cannot make financial commitments that are binding on the trust. The purpose of these provisions is to protect trust assets from creditors of the beneficiary.

Revocable Living Trust (RLT) – A Revocable Living Trust is an estate planning tool that is most often used in order to lawfully avoid or mitigate state and federal estate taxes, as well as the costs of probate. Typically, a married couple creates the trust, transfers their assets into the trust, and names themselves as both Trustor and Beneficiary.

When one spouse dies, the RLT provides a mechanism to minimize future estate tax liabilities upon the death of the surviving spouse. This is accomplished by establishing an *irrevocable* trust for the benefit of the surviving spouse, funded by the decedent's share of the trust assets. The irrevocable trust is funded, subject to estate tax thresholds applicable at the time of death, in order to shelter those assets from estate tax at the time of the surviving spouse's passing.

Revocable Living Trusts include provisions for disposition of the couple's assets after both have died, similar to the provisions of a will. The trust names a successor trustee whose duty is to accomplish these transfers after both spouses have died. The successor trustee can also step in if one or both spouses become unable to manage their finances due to illness or other ongoing concerns.

Revocable Living Trusts are also commonly used for unmarried individuals, with the intent of avoiding the costs of probate.

GSS becomes involved in Revocable Living Trusts when the couple or unmarried individual selects us to act as successor trustee, or when one or both members of the marriage community/unmarried individual choose not to name themselves as trustee during their lifetime.