Advanced Trust Planning

KRASA LAW, Inc.

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Background
Grew up on the Monterey Peninsula
Attended Forest Grove Elementary School, Pacific Grove Middle School, and Robert Louis Stevenson School
Grandfather taught Czech at DLI; Grandmother worked in the sardine industry on Cannery Row
Parents worked for the Monterey Peninsula Unified School District

Education and Organizations
Bachelor of Arts in English Literature from Saint Michael's College, Colchester, Vermont
Juris Doctor from U.C. Davis School of Law
President of Pacific Grove Rotary and Past President of Meals on Wheels of the Monterey Peninsula
Member of California State Bar Trusts and Estates Sections
Member of National Estate Planning Organization; WealthCounsel
Certified Estate Planning, Trust & Probate Law Specialist

• Practiced law focusing on Estate Planning for a minimum of 5 years
• Taken and passed a written 6+ hour examination in Estate Planning
• Demonstrated a high level of experience in Estate Planning
• Fulfill ongoing education requirements

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Basic Estate Planning

Basic Revocable Living Trust:
1. Avoids conservatorship upon incapacity.
2. Avoids probate upon death.
3. (Minimizes estate tax.)

Trusts Can Do So Much More!
1. Preserve a beneficiary’s eligibility for public benefits.
2. Provide a degree of asset protection.
3. Provide a degree of divorce protection.
4. Avoid further court intervention in a variety of circumstances.
Key Trust Terms

Grantor / Settlor / Trustor: the person who creates the trust and transfers assets into the trust.

Trustee: the person who manages the assets of the trust in accordance with the terms of the trust.

Beneficiary: the person for whom the trust is created.

Key Trust Terms

Distribution: Payment of assets out of a trust from a Trustee to a beneficiary.

Revocable Trust: a trust that can be easily modified, amended, or revoked, usually by the Grantor.

Irrevocable Trust: a trust that cannot easily be modified, amended, or revoked. (Irrevocable Trusts can be modified under certain circumstances.)

Protecting Public Benefits

Many public benefits, such as Medi-Cal and SSI, are “means-tested,” meaning that a recipient of such benefits must be below a certain asset threshold.

Two Key Concerns:

(1) Qualifying for benefits;

(2) Preserving benefits that one already has.
Qualifying for Benefits:
Medi-Cal Planning

Preserving benefits that one already has:
Special Needs Trust ("SNT")

A Special Needs Trust is a type of trust that is structured in a manner to provide a person with assets but that at the same time does not interfere with their eligibility for public benefits.
Protecting Public Benefits

If you know that a person has special needs, your living trust can be structured to create a Special Needs Trust to manage the person’s inheritance upon the death of the Grantor.

Protecting Public Benefits

Stand-By Special Needs Trust

Often, at the time that a trust is created, a beneficiary might not have special needs but might later develop special needs. If the trust is never amended to accommodate this change in circumstance, the inheritance could disqualify the beneficiary from public benefits. A stand-by Special Needs Trust is designed to plan for this possibility.

Protecting Public Benefits

A Special Needs Trust must be structured in a specific manner in accordance with the law.

*The law can change over time.
Asset Protection

Traditional Estate Plan: Outright distribution if the beneficiary has attained a certain age.

Pros:
1. Simple
2. Beneficiary has total control.

Cons:
1. No asset protection.
2. Less divorce protection.
3. Less flexibility for changed circumstances (i.e., the need for a Special Needs Trust in the future)

In-Trust Inheritance (an “irrevocable trust”):

Traditionally only reserved for minor beneficiaries, special needs beneficiaries, beneficiaries who were unable to manage their finances, and advanced estate tax planning purposes (GST Trusts or “Dynasty Trusts”).
Asset Protection

Additional Features of an In-Trust Inheritance:

Pros:
- Asset Protection
- Divorce Protection
- Respond to changing future circumstances (i.e., the need for a Special Needs Trust in the future)

Cons:
- *No beneficiary control.
- *Lack of flexibility.
- Additional tax returns.
- Additional learning curve.

Source of Authority:

California Probate Code Section 15303 permits asset protection trusts when they are created for the benefit of a third party.

California Probate Code Section 15304 specifically forbids asset protection trusts if they are for the benefit of the Grantor (i.e., a “first party trust”).
Asset Protection

Creating a trust for your children, siblings, other relatives for friends is a third party trust and therefore there is an opportunity to create asset protection.

*Also, for a married couple, upon the death of the first spouse, the deceased spouse is making a gift to the surviving spouse – a third party – and therefore there is opportunity for asset protection in this scenario as well.

Divorce Protection

Inheritance is generally Separate Property.

Inherited Separate Property can easily be unintentionally co-mingled with Community Property, especially when the inheritance was received as an outright distribution.

An In-Trust Inheritance can create a bright-line division between inherited Separate Property and Community Property.

Controlling the Trust

Third Party Sole Trustee = Highest degree of protection.

Beneficiary as Sole Trustee = Lowest degree of protection.

Beneficiary as Administrative Trustee and Third Party as Distribution Trustee (“Spending Trustee”) = Medium degree of protection.
Flexibility for an Irrevocable Trust

The ability to modify the administrative provisions of the trust is important:

- The law changes;
- Legal strategies change;
- Beneficiaries’ circumstances change.

Modification of an Irrevocable Trust:

1. Grantor and all beneficiaries consent.
2. Petition to Court if all beneficiaries consent.
3. Petition to Court if there is a change in circumstances.

Flexibility for an Irrevocable Trust

Modification of an Irrevocable Trust:

To allow a more efficient method for modifying an Irrevocable Trust, the trust can include Trust Protector provisions.
Flexibility for an Irrevocable Trust

Trust Protector:

An individual that has special authority to make certain modifications to an otherwise irrevocable trust.

Flexibility for an Irrevocable Trust

Trust Protector Powers May Include the Power to:

1. Amend the Trust (limited or broad).
2. Change the governing law and situs of the trust.
3. Terminate a trust.
4. Construe the terms of a trust.

Flexibility for an Irrevocable Trust

Trust Protector Powers May Include the Power to:

5. Remove and appoint Trustees.
6. Direct Investments.
7. Approve or reject Trustee accountings.
Flexibility for an Irrevocable Trust

Appointment of Trust Protector:

1. Named in the trust.
2. Appointed when needed by the beneficiaries of the trust.
3. Appointed when needed by a trusted third party.

Trust Decanting:

“Trust decanting is the act of distributing assets from one trust to a new trust with different terms. Just as one can decant wine by pouring it from its original bottle into a new bottle, leaving the unwanted sediment in the original bottle, one can pour the assets from one trust into a new trust, leaving the unwanted terms in the original trust.” – Steve J. Oshins, Esq.

New California Trust Decanting legislation (effective January 2019)

Specified circumstances and conditions.

Trust can provide its own decanting provisions.
Expressing a Trust Purpose

Gives guidance to the Trust Protector or the Trustee for Trust decanting purposes.

Example: “The material purpose of this trust is to establish an efficient mechanism for the administration and distribution of trust assets while avoiding court intervention whenever possible.”

Advanced Trust Planning Recap:

Trusts can do so much more than simply avoiding conservatorship and probate.

Your basic revocable living trust can have more sophisticated provisions built into it in order to provide a more comprehensive plan for your loved ones.

Using tools such as a Trust Protector or Trust Decanting can create needed flexibility for your Trust.

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