

# WHAT IS AN IRREVOCABLE TRUST IN TEXAS?

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JOHN R. VERMILLION



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### **REVOCABLE VS. IRREVOCABLE**

One major difference between trusts is the matter of revocation. There are revocable trusts like the revocable living trust, and there are also irrevocable trusts.

From the name you can see that you cannot dissolve or rescind an irrevocable trust, but what are the implications? Let's look at some of the reasons why you may want to use an irrevocable trust.

## **ASSET PROTECTION**

They say that we live in a litigious society. There are people out there



who are always looking for deep pocket targets to sue, and certain people are in high-risk professions. Landlords are open to lawsuits from tenants who get injured on rented property, and physicians are vulnerable to

malpractice suits. These are two high-risk professions, but there are others.

There are certain types of irrevocable trusts that can be used to provide asset protection. You could also use this type of trust to protect assets that you are leaving to a spendthrift heir.

## **ESTATE TAX EFFICIENCY**

The federal estate tax is a looming threat if you have been financially successful throughout your life. This tax carries a 40 percent top rate, and this can take a big bite out of your wealth as it is being passed on to



your loved ones.

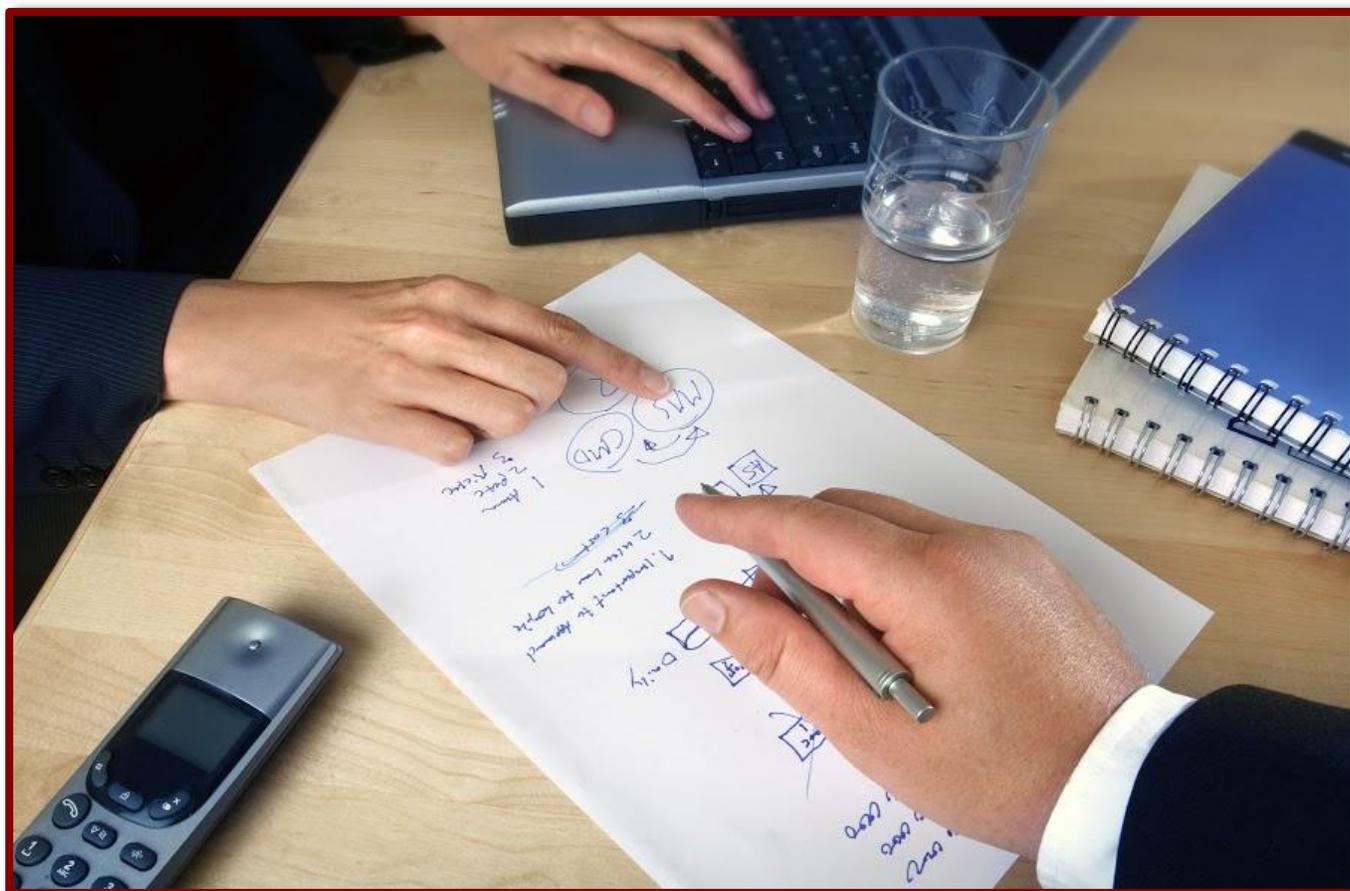
We should point out the fact that you can transfer unlimited assets to your spouse tax-free, but transfers to others are potentially taxable. There is a \$5.43 million exclusion that allows

you to transfer this much before the tax would kick in, but the rest would be subject to taxation when it is being transferred.

There are a number of different irrevocable trusts that can provide estate tax efficiency. These would include grantor retained annuity

trusts, generation-skipping trusts, charitable lead trusts, charitable remainder trusts, and qualified personal residence trusts.

## SPECIAL NEEDS PLANNING



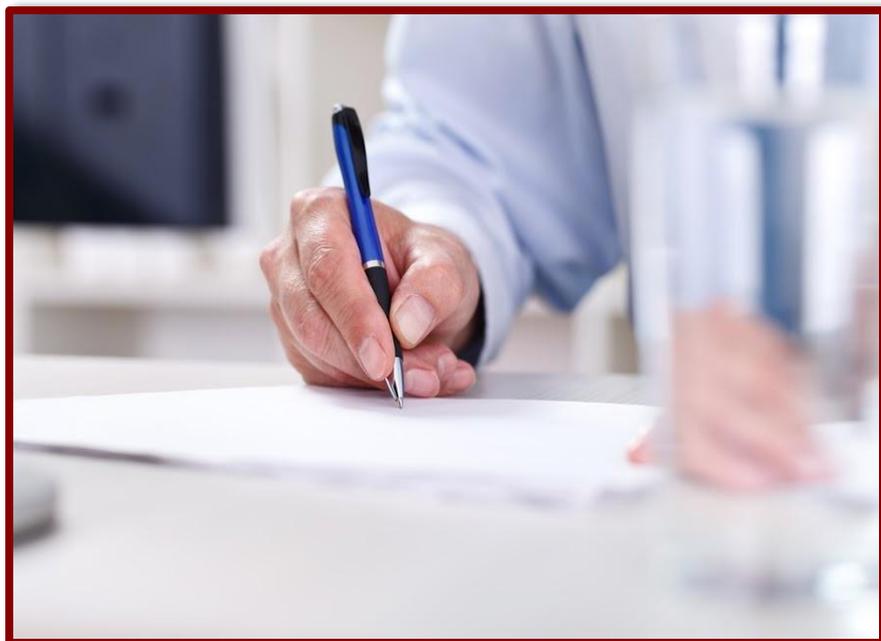
People with special needs often rely on government benefits like Medicaid and Supplemental Security Income. An improvement in financial status could cause a loss of eligibility, because these are need-based programs.

You could respond by creating a Special Needs Trust. With this type of irrevocable trust, the trustee could use the assets to assist a disabled beneficiary without disrupting benefit eligibility.

## **MEDICAID PLANNING**

A significant percentage of senior citizens eventually seek Medicaid eligibility, because this program will pay for living assistance. Medicare does not pay for long-term care, and it is very expensive.

Since Medicaid is a need-based program, there is a \$2000 limit on



countable assets You could convey assets into an irrevocable Medicaid trust before you apply for coverage.

There is a type of Medicaid trust called an income only trust.

With this type of irrevocable trust, you could draw income from the earnings of the trust throughout your life, but you could not touch the

principal. The assets in the trust would not be counted against you when Medicaid was determining your eligibility status.

## **SUMMARY**

A revocable trust is a type of trust that you can dissolve or revoke at any time. This type of trust can provide benefits, but you are retaining incidents of ownership, so for all intents and purposes, the assets are still yours in the eyes of the law.

Things are different with an irrevocable trust. You surrender incidents of ownership, because you cannot revoke the trust and take back the assets. Under most



circumstances, you cannot change the terms once the trust has been established.

Because you no longer control the assets that you convey into an irrevocable trust, you gain certain protections. These trusts are used for estate tax efficiency and asset protection purposes. You could use an

irrevocable trust to provide for a person with special needs, and these trusts are also useful for Medicaid planning purposes.

If you would like to learn more about trusts, schedule a consultation



with a licensed estate planning attorney.

Your lawyer will answer all of your questions, become apprised of your objectives, and make the appropriate recommendations.

Ultimately, you can

emerge from the interaction with a solidly constructed estate plan that ideally suits your needs.

## REFERENCES

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## About the Author

### John R. Vermillion



John R. Vermillion works as an estate planning and probate attorney and is licensed to practice in Texas, Louisiana, Oklahoma, and Tennessee. A native Texan, he graduated from Texas Christian University in 1974 receiving a Bachelor of Arts Degree in Political Science. In 1977, he received his Juris Doctor degree from the Louisiana State University Law School.

Upon graduation from law school, Mr. Vermillion worked extensively as a corporate attorney in the fields of oil and gas exploration and production, real estate development, finance and estate planning. He served for many years as corporate counsel and Vice President of a private independent oil and gas company.

Mr. Vermillion is a member of the State Bar of Texas, the Dallas Bar Association, the Louisiana State Bar Association, the Oklahoma Bar Association, and the Tennessee Bar Association. He is a member of the American Academy of Estate Planning Attorneys and the National Academy of Elder Law Attorneys.

Also active in his community, he currently serves as a director for the Charles Coody Classic Golf Tournament which benefits Catholic Charities of Fort Worth, Texas. A member of the French-American Chamber of Commerce, Louisiana Chapter, Mr. Vermillion pursues their goal of promoting and developing commercial and financial relations between France and the United States. In addition, he serves on the TCU Dallas Alumni Board and sponsors the Dallas area NAMI Walkathon (National Alliance for Mental Illness).

Coming from a family of entrepreneurs, Mr. Vermillion has owned and operated his own businesses, including an historic inn. His experience has given him a hands-on understanding of the legal and practical issues facing his clients and their estate planning needs.

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