

Changing What Is Irrevocable - Life Irrevocable Trusts and Estate Planning

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Many clients have created ***lifetime Irrevocable Trusts*** to achieve estate tax advantages. The assets in the Irrevocable Trust pass upon death free of estate tax. To achieve the estate tax advantages, the client needs to give up control, which necessarily means the Trust is irrevocable. However, changes in life or in the law oftentimes make the Trust provisions less desirable. For example, the creator of the Trust ("Grantor") may want to replace the Trustee, change the location of the Trust or the state law which controls it, or change the dispositive provisions for the beneficiaries.

Fortunately, a number of states now allow Irrevocable Trusts to be amended, even without court involvement. "Decanting" and "nonjudicial reformation" are legally acceptable ways to amend provisions without court approval that otherwise would be set in stone. Typically, you need the consent of the Grantor, Trustees, and beneficiaries to comply with state law.

The dilemma is whether these changes could jeopardize the estate tax advantages the client desired and obtained at the creation of the Trust. The good estate tax news is that the IRS has issued a number of Private Letter Rulings that indicate estate and generation skipping tax advantages will still apply even if an Irrevocable Trust is modified. Of course, the devil is in the details, in determining what types of changes are appropriate and the method in which the changes can be done under state law. But at least in the estate tax world, what is irrevocable may be irrevocable only in part.

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