



# Family Legacy Protection Planner

## DISPELLING A MALICIOUS MYTH: IRREVOCABLE TRUSTS AREN'T IRREVOCABLE

It's counterintuitive, we know: irrevocable trusts are revocable (and amendable). Unfortunately, irrevocability is a malicious myth. The uninformed could spend years relying on an old, out-of-date trust that could be updated and improved without too much effort. Yes, the so-called "irrevocable trusts" absolutely can be, and, often, should be, modified.

In this issue, we'll identify:

- 10 reasons you may want to modify your irrevocable trust
- 5 ways to modify your irrevocable trust
- 3 circumstances when trust modification should be considered
- When to contact our office to have your trust reviewed for potential modification

### 10 Reasons You May Want to Modify Your Irrevocable Trust

You may modify "irrevocable" trusts to:

1. Add or remove a trust protector or advisor
2. Add or remove beneficiaries
3. Adjust or remove a power of appointment
4. Change the trustee, the provisions governing the trustee, and/or the trustee's powers
5. Minimize income taxes or estate taxes
6. Modify distribution terms or patterns
7. Transfer the trust to a new jurisdiction
8. Obtain a step-up in basis and save taxes
9. Qualify a beneficiary for government benefits
10. React to changes in the trust's governing law

**ALERT:** You don't have to "make do" with an out-of-date trust or assume you can't make modifications. Chances are you can.

**Planning Tip:** If you're unsure whether your irrevocable trust can be modified – or whether the current version does what it was intended to do – call our office. A simple conversation and a review of the trust document is all it takes to ensure you're maximizing your trust's benefits.

## 5 Ways to Modify Your Irrevocable Trust

There are generally five ways to modify an irrevocable trust:

- 1. Judicial Reformation.** We ask a judge to restate the trust to match the trustmaker's intent. **WARNING:** Not all states allow judicial reformation.
- 2. Conversion (Judicial or Non Judicial).** The criteria for payment of income from irrevocable trusts can vary widely. For example, some irrevocable trusts require the payment of income to trust beneficiaries, whereas others instead allow (but do not require) payment of income. In a conversion, we invoke trust provisions or state law to convert the existing type of trust into another that's more appropriate for current circumstances.
- 3. Modification (Judicial or Non Judicial).** We change the terms of the trust by agreement or by court order to meet the trustmaker's tax-saving objectives and intent - or - we show an unforeseen change of circumstance that would frustrate the trustmaker's intent.
- 4. Invoke the Trust Protector or Advisor.** We invoke the trust protector or advisor's authority to act. The trust protector or advisor has authority to modify the trust within certain parameters – without going to court.
- 5. Decant the Trust.** We take the funds from an existing trust and transfer them into a new trust with more favorable terms. This is sometimes referred to as a “do-over” trust. **WARNING:** Not every state allows for decanting.

**ALERT:** You don't have to figure out the best way to get more favorable trust terms. We can help you. No more muddling through with an out-of-date trust.

**Planning Tip:** Sometimes, we can combine several of these methods together to accomplish what might otherwise seem impossible. A simple conversation and a review of your existing irrevocable trust is all it takes to make sure you're maximizing your trust's benefits.

## 3 Instances When Trust Modification Might Be Appropriate

Life changes as it unfolds. Here are three common circumstances when modifying an irrevocable trust could be appropriate:

- 1. Tax Law Is No Longer Relevant.** Irrevocable trusts are often created to save paying federal estate taxes in relation to a specific tax law. When that tax law is revised or ceases to exist, the trust should be modified or terminated.
- 2. Family Circumstances Change.** Irrevocable trusts are often created to provide for family members. However, when family circumstances change due to a birth, death, or anything else, it's important to modify the trust to reflect those changes.
- 3. Errors Are Discovered.** Most attorneys are diligent when it comes to creating irrevocable trusts and we always try to bat 1000. However, even a small mistake can have legal consequences. For example, Bill gets translated as Will or the trust property at 21161 Main Street gets translated as 21611 Main Street. When errors are discovered, the trust should be modified as soon as possible to reflect the trustmaker's true intent – and protect the beneficiaries.

## When to Contact Our Office About Your Irrevocable Trust

If you have an irrevocable trust, which may have become irrelevant due to changes in the law or changes in circumstances, call our office. We'll help you by determining whether your trust can and should be modified, as well as the best way to achieve your goals.

Although it's counterintuitive, irrevocable trusts are actually revocable and amendable. Don't fall prey to malicious myths or muddle through with an old, outdated trust when you can turn that musty old trust into a new trust that fixes problems, corrects errors, and more closely addresses the trustmaker's intent. Call our office now to review your trust to see if a modification is in order.

## ENSURE YOUR FAMILY IS PROTECTED

If you want to ensure that your family is protected, please schedule your complimentary Estate Planning Strategy Call with San Francisco's premier estate planning attorney, Matthew J. Tuller.

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BROUGHT TO YOU BY:

## LAW OFFICE OF MATTHEW J. TULLER

275 BATTERY STREET  
13TH FLOOR  
SAN FRANCISCO, CA 94111

**With an emphasis on developing and maintaining relationships with our clients and allied professionals, our firm collaboratively provides comprehensive estate planning and administration solutions to every client. Our firm provides the full spectrum of estate planning solutions. This includes creating and implementing a comprehensive estate plan, maintaining that plan through life, and administering the plan in the most effective and efficient manner.**



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