



## Various Types of Trust Documents

### **Revocable Trust:**

All trusts done by your clients through the Encore system are revocable trusts. We like to say they are “set in sand” as opposed to “set in stone” while the client(s) are living and have capacity. Once the client(s) have died or become incapacitated, the trust is now irrevocable (set in stone).

For a married couple, the default for the type of revocable trust is something commonly known as a “Disclaimer Trust”. If your clients want to limit the surviving spouse’s ability to change the estate plan (final question on Step 3 of the system), there is a possibility they want something known as an “AB Trust” or “QTIP Trust”.

### **Option 1 - Disclaimer Trust (most common):**

Upon the first death, everything flows to the surviving spouse and it is entirely revocable and amendable by the surviving spouse. The surviving spouse has an option to create a second, irrevocable trust at the first death. This option is generally only exercised for estate tax purposes. Based on current federal law, there is almost no reason to exercise this option. State law could vary – it is best to have the surviving spouse consult a tax professional to make the best decision at that time based on the laws that are in place at the first spouse’s death.

Upside: Easy to administer for the surviving spouse – same tax return as usual and minimal administration at the first death.

Downside: Lack of control for the deceased spouse – the surviving spouse can make changes to the trust.

**Option 2 - AB Trust/QTIP Trust:** Upon the first death, the trust is required to split into 2-3 trusts – the survivor’s side is still revocable by the surviving spouse, but the deceased spouse’s assets go into at least one irrevocable trust. This is more common in blended family situations.

Upside: More “control from the grave” for the deceased spouse – their assets will go to their stated beneficiaries.

Downside: Difficult to administer for the surviving spouse – multiple annual tax returns and possibly significant administration expenses at the first death (accountant, appraisal, attorney).

### **Irrevocable Trusts**

Irrevocable Trusts are created for tax planning benefits typically for those up against the federal estate tax exemption amounts. Encore does not currently provide irrevocable trusts.