

## RLT (Revocable Living Trust)

### RLT

Created by client (called “Grantor,” “Settlor,” “Trustor,” “Trustmaker,” etc.). The client has full right to amend and revoke the trust or any provision thereunder during the client’s lifetime. A RLT, can provide detailed instruction and authority for a client’s family in the event of his/her disability. A RLT if funded, can also avoid the need for probate and provide for effective distribution of assets at death to heirs outright or in lifetime asset protection trusts. The client retains access to all income and all principal from the trust at any time. All assets in a RLT remain available to the client’s creditors, predators and long-term care costs and are considered “available” for purposes of Medicaid qualification and Veterans Benefits eligibility.

### FEATURES

- Client can be sole or co-trustee.
- Client retains right to income and principal from the trust.
- Client retains the right to modify or revoke the trust in any manner at any time.
- Pure grantor trust under IRC §§671-678 (income) and IRC §§2036-2042 (estate).
- Client can provide extensive “directions” for use of assets and income in case of disability.
- Client can pass assets to beneficiaries in asset protection trust with personalized instructions.

### USES

- Clients who want to avoid probate and get their assets to their beneficiaries effectively and timely.
- Clients who wish to provide extensive instructions and authority in event of disability.
- Clients who want to maintain full control and access to all assets at all times.
- Clients who want to provide asset protection to their heirs after death or to protect against “spend thrift” or loss to disabled beneficiaries care costs.

### BENEFITS

- Income and principal available to client and client can terminate at any time.
- Keeps client affairs private (don’t have to share with children or public).
- Retains ownership for full step-up in tax basis to asset values at death.
- Permits assets to be distributed to beneficiaries in asset protection trust.
- Can protect assets from creditors, predators or long-term care costs needed for community spouse after client’s death.

### COUNSELING ISSUES

- Transfers “to” or “from” will be subject to a look back.
- All assets are considered “available” to Medicaid and other creditors.
- Standard vs Personalized Planning options (see separate summary)
- Commitment (transaction or relationship)

## MIT™ (My Income Trust) / PARTIAL MIT™

### MIT™

Created by client (called “Grantor,” “Settlor,” “Trustor,” “Trustmaker,” etc.). Client retains the right to all income from the trust, but gives up all right to direct access to the principal of the trust. The client may retain the right to use trust assets (ie. live in house) and maintains full control over the trust assets (allows grantor to purchase trust assets that grantor may use pursuant to trust terms.) Client’s assets are protected from the reach of creditors, predators or long-term care costs. This trust is utilized when client’s assets exceed the Medicaid qualifying amounts. In all, but Nebraska, assets retained in MIT™ are not considered available resource for Medicaid qualification but transfers to it create an uncompensated transfer and a likely penalty period for transfers to it.

### Partial MIT™

Same as MIT™ except client retains the right to only *part* of the income from the trust, because generally not needed by the client and wants to protect part of income from creditors, predators and long-term care costs. A second option is to allocate 100% (or less) to only one spouse (with lower income) to provide maximum funds for needs but protect from creditors, predators or long-term care costs of spouse with sufficient income (if lesser income spouse dies first.)

### FEATURES

- Irrevocable Pure Grantor Trust (iPug®) created by client (individual or joint).
- Client can be sole or co-trustee.
- Grantor trust under IRC §§671-678 (income) and IRC §§2036-2042 (estate).
- Client retains income from trust assets for life or period of time.
- Client gives up right to access principal.
- Client can provide discretionary distribution of principal to individuals or a “class” (ie. children).

### USES

- Clients with excess resources do not meet the Medicaid qualifying conditions.
- Clients who want to protect their assets and don’t need direct access to them, but don’t want to give up control and want to continue to benefit from the income from assets.
- Married clients whose joint income is below the MMMNA.
- Business owners who want to protect business from creditors, predators and long-term care costs but want to maintain full control of business and receive all income from it.

### BENEFITS

- Protects assets from creditors, predators or long-term care costs, keeps income available, and client retains full control of assets.
- Keeps client’s affairs private (don’t have to share with children or public).
- Permits assets to be distributed to beneficiaries in an asset protection trust.
- Retain ownership for step-up asset values at death.
- Client maintains full control of assets and can use assets to extent trust permits.

### COUNSELING ISSUES

- Transfer penalty assessed on all transfers to trust.
- Client gives up access to principal. (Client may never get sued or fall ill.)
- Income may go to creditors, predators or long-term care costs.
- Management of trust after disability (if businesses in trust.)
- Principal may be accessed in accordance with State law - right to revoke or amend - usually consent of beneficiaries.
- Standard vs Personalized Planning options (see separate summary)
- Commitment (transaction or relationship)
- Included in client’s estate at death (step-up in basis).
- Completed gift upon transfer from trust to beneficiary during grantor’s life.

## **FIT® (Family Irrevocable Trust)**

### **FIT®**

Created by client (called “Grantor,” “Settlor,” “Trustor,” “Trustmaker,” etc.). Client does not retain the right to income or principal from the trust but retains full control over trust asset management and distribution. This trust is utilized when the client’s assets and/or income exceed the Medicaid benefits limits or when clients do not need use of income or assets to maintain lifestyle but want to maintain control of the assets and ability to distribute to family/others during grantors lifetime. All assets in FIT® are protected from creditors, predators or long-term care costs. All transfers to FIT® are considered uncompensated and create a likely penalty period for Medicaid eligibility. Assets retained in the FIT® are not considered available resources for Medicaid qualification.

### **FEATURES**

- Irrevocable Pure Grantor Trust (iPug®) created by client (individual or joint).
- Client can be sole or co-trustee.
- Grantor trust under IRC §§671-678 (income) and IRC §§2036-2042 (estate).
- Client retains 100% control of all trust assets but no direct access to income or principal from the trust.
- Client can provide discretionary distributions of income or principal to individuals or a “class” of intended beneficiaries.

### **USES**

- Clients who want to protect their assets and income from them, but not give up control.
- Clients with spouse in a nursing home or expected to be and does not want to give up investment income to Medicaid.
- Married clients whose joint income is above the MMMNA.
- Clients don’t need direct access to income or principal to maintain lifestyle.
- Business owners who want to protect business and its income from creditors, predators and long-term care costs but want to maintain full control of business. (Any income desired would come directly from business.)

### **BENEFITS**

- Protects income and assets from creditors, predators or long-term care costs but keeps it available to family.
- Client retains full control and management of all assets.
- Client’s affairs kept private (does not have to share information with children).
- Permits distributions to client’s beneficiaries in asset protection trusts.

### **COUNSELING ISSUES**

- Transfer penalty assessed on all transfers to trust.
- Client gives up access to income and principal and can only access it if beneficiaries “give it back”.
- All income taxed to client even though client doesn’t receive it.
- Included in client’s estate at death (step-up in basis).
- Completed gift upon transfer from trust to beneficiary during grantor’s life.
- Standard vs Personalized Planning options (see separate summary)
- Commitment (transaction or relationship)

## KIT® (Kids Irrevocable Trust)

<b>KIT®</b>	<p>This trust is typically created by the children of clients but can be created by any individual (“third-party”.) Typically with assets gifted to children by clients this trust is used to provide asset protection from the transferee’s creditors, predators, long-term care costs, divorce, etc. when assets have already been transferred to kids (or other third-party) by the client. The KIT® can permit payments of income and/or principal to the client, the client’s grandchildren, siblings or other class of beneficiaries, but not the client’s children (the grantors). Assets in KIT® are not owned by the client, and therefore, not considered available if client applies for Medicaid.</p>
<b>FEATURES</b>	<ul style="list-style-type: none"><li>• Irrevocable Pure Grantor Trust (iPug®) created by client’s CHILDREN.</li><li>• Client can be sole or co-trustee.</li><li>• Pure Grantor trust to <i>children</i> under IRC §§671-678 (income) and IRC §§2036-2042 (estate).</li><li>• Client can be beneficiary of income or principal of trust without it being considered “available” to creditors, predators or long-term care costs.</li><li>• Trust typically terminates at death of client and can be distributed back to children (grantors) outright or in a MIT™/FIT® structure.</li></ul>
<b>USES</b>	<ul style="list-style-type: none"><li>• For clients who have transferred assets to their children before retaining you.</li><li>• VA Benefits Planning (also consider CGT)</li></ul>
<b>BENEFITS</b>	<ul style="list-style-type: none"><li>• Protects assets from creditors, predators, long-term care costs and divorce of children/others who assets were transferred to.</li><li>• Ensures transferred assets and income available to client if needed.</li><li>• Client can keep control of assets (if children name them trustee).</li><li>• Can obtain “step up in basis” at client’s death if children grant testamentary general power of appointment to client.</li></ul>
<b>COUNSELING ISSUES</b>	<ul style="list-style-type: none"><li>• Client must share some/all financial information with children.</li><li>• Assets gifted to children (loss of control). No guarantee kids will create KIT®.</li><li>• Gift is subject to gift tax and no step-up in basis to kids (if non-cash transferred.)</li><li>• Right to income or principal <u>may</u> have to be disclosed to Medicaid when client applies (should not matter but can create extra hoops to jump through.)</li><li>• Gift tax issues to kids upon creation (cross gift issues between kids?) and upon distributions from KIT®.</li><li>• All income earned on trust taxed to kids regardless of who Trustees distribute it to (not kids).</li><li>• Can create “friction” in children’s marriage because involves children’s taxes and be subject to equitable distribution if children divorce (if not set up properly.)</li><li>• No asset protection trust for children of client upon death of client (unless converted to MIT™/FIT®).</li><li>• Can result in higher income tax paid (at kid’s rate rather than parent’s).</li><li>• Children (grantors) cannot be part of “class” to distribute to.</li><li>• Included in kids estate at death.</li><li>• Completed gift from kids upon distribution to anyone during kids life.</li><li>• Standard vs Personalized Planning options (see separate summary)</li><li>• Commitment (transaction or relationship)</li></ul>

# TAP™ (Tax All-Purpose Trust) / CGT™ (Completed Gift Trust)

## TAP™

Created by client (called “Grantor,” “Settlor,” “Trustor,” “Trustmaker,” etc.). This trust is a non-grantor trust created by client typically to minimize estate taxes. The client retains no rights to control, modify, amend or to benefit in any way from this trust, ever! Typically transfers to a TAP™ are completed gifts for estate and gift tax purposes and are not included in the taxable estate of client. Trust provides “Crummey Powers” to ensure transfers to it are not a taxable gift to the client (up to the maximum annual gift tax exclusion amount multiplied by the number of eligible beneficiaries.)

## CGT™

Same as TAP™ Trust but does not contain “Crummey Powers.” Assumes all transfers to trust are completed gifts in which the annual gift tax exclusion does not apply and therefore may be subject to gift tax. Generally, not a concern if client’s total assets are less than the maximum federal gift and estate tax exemption amount (since no gift tax is actually paid unless [or until] lifetime gifts exceed estate tax allowable amounts.)

## FEATURES

- Non-Grantor Trust created by client (individual or joint)
- Client (grantor) cannot retain any rights to control, change, modify or benefit from trust in any way, ever.
- Requires a trustee other than client or someone “controlled” by client pursuant to IRC §672.
- Non-Grantor trust which typically requires its own tax identification (separate tax-paying entity)
- Spouse can be beneficiary (as long as not a co-grantor) and protected from spouse’s creditors, predators or long-term care costs (requires independent trustee with ascertainable standards.)
- May opt to convert to Grantor Trust for income tax purposes only (avoids annual tax filings.)

## USES

- Typically used as an Irrevocable Life Insurance Trust (ILIT) to avoid life insurance proceeds from being included in client’s taxable estate.
- Wealthier individuals (above the state or federal estate tax exempt amounts) to avoid inclusion of assets in taxable estate.
- “Stand Alone” to use for any individual purpose (“grandchildren’s trust,” “stand alone IRA trust,” “camp trust,” etc.) for individuals with potential taxable estates (consider FIT® for similar goals if no taxable estate anticipated.)

## COUNSELING ISSUES

- Trust cannot be changed by client (grantor) although grantor may permit third-party (ie. trust protector) to change
- No rights to grantor once completed and funded
- Consider use if state gift/estate taxes less than federal
- “3 year rule” - All [taxable] gifts made within 3 years of grantor’s death will be “brought back” into taxable estate if grantor (ie. if a life insurance policy is transferred in instead of being originally purchased by trust.)
- Trustee management to utilize and benefit from “Crummey Powers” (TAP™ only).
- Annual tax return filing requirement.
- Standard vs Personalized Planning options (see separate summary)
- Commitment (transaction or relationship)