REVOCABLE VS IRREVOCABLE TRUSTS

Trust ownership of CRE, from the lender-comfort seat

Better context. Better conviction.

Sample — Executive Summary & Section 1

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Revocable vs Irrevocable Trusts

A practitioner reference -- Valore Registry

Trust ownership of commercial real estate is common enough that every capital markets professional will encounter it repeatedly, yet the documentation and underwriting protocols vary enough across lender types -- and trust structures -- that mishandling one creates material deal friction. This brief covers the working taxonomy of trust structures used in CRE ownership, the tax and liability treatment of each from a finance rather than estate-planning perspective, lender documentation requirements by institution type, the effect of trust ownership on sale and refinance transactions, the specific structures that practitioners see most often (revocable living, dynasty, DAPT, QPRT, GRAT, CRT), and the pitfalls that create title, servicing, and enforcement problems. It is not legal advice; where structural choices carry meaningful legal consequence, counsel is required.

EXECUTIVE SUMMARY

The key lender concern with any trust-held property is the same: is there a legally authorized signatory, does the trust have the power to borrow and pledge, and will enforcement be unimpeded if the loan goes bad. Revocable living trusts are routine with proper documentation; irrevocable trusts require progressively more legal work as complexity increases. The practical decision for practitioners: classify the structure first using Section 2's lender-acceptance matrix, then collect the documentation Section 3 specifies. Pitfalls in Section 6 -- especially the single-trustee gap and the DAPT bankruptcy 10-year lookback -- are the most common sources of deal delay and enforcement failure.

1. The foundational distinction: revocable vs. irrevocable

A trust is either revocable or irrevocable. That binary determines how the IRS treats the income, how the grantor's estate treats the assets, and whether a creditor of the grantor can reach the property. For a CRE practitioner, those three consequences carry direct underwriting implications.

Dimension	Revocable (grantor) trust	Irrevocable trust
Grantor control	Full – amend or revoke at will	Surrendered to trustee
Estate inclusion	Included in grantor estate	Generally excluded
Creditor protection	None – reachable by grantor creditors	Strong, if properly structured and seasoned
Income tax	Grantor-taxed (disregarded)	Grantor or separate taxpayer, by design
Lender comfort	High – treated like individual borrower	Variable – cert of trust + trustee authority scrutinized
Refinance / sale	Routine	Routine; trustee signs

Figure 1. The two structures, read from the lender-comfort seat. The full income/estate/basis breakdown follows below.

Revocable trusts

A revocable trust -- frequently called a living trust or inter vivos trust -- is one the grantor can amend, revoke, or dissolve during their lifetime. Because the grantor retains control, the trust is a grantor trust under IRC §§671--677 for the entire period of revocability: all income, deductions, and credits attributable to trust property flow through to the grantor's personal federal return as if the trust did not exist for income tax purposes.[1] There is no separate federal income tax return for a revocable trust while the grantor is living (though a tax identification number separate from the grantor's SSN is sometimes used for convenience; a revocable trust administered for a sole grantor can also use the grantor's SSN during the grantor's lifetime).[2]

Estate-tax treatment is straightforward: a revocable trust's assets are fully included in the grantor's gross estate under IRC §2038 because the grantor has retained the power to revoke.

On the asset-protection side, a revocable trust provides none. The grantor's creditors can reach assets held in a revocable trust; the grantor's retained power to revoke renders the trust property effectively the grantor's own under state fraudulent-transfer law and creditor-remedy statutes. This is the tradeoff practitioners often have to explain: a revocable trust is excellent for probate avoidance and continuity of management, but it creates no liability firewall.

Upon the grantor's death, a revocable trust becomes irrevocable by operation of law. The trust then obtains its own EIN, begins filing Form 1041, and the grantor's step-up in basis under IRC §1014 generally applies to assets held in the trust at death -- one of the features that makes revocable trusts attractive for CRE with embedded appreciation relative to other estate-planning vehicles.

Irrevocable trusts

An irrevocable trust cannot be amended or revoked by the grantor absent consent from beneficiaries (and even then, modification procedures are constrained under UTC §411 and its state equivalents).[3] The critical consequence is that the grantor has parted with the property. Whether that parting is complete for income-tax purposes depends on whether the trust retains grantor-trust characteristics under IRC §§673--677.

Counterintuitively, an irrevocable trust can still be a "grantor trust" for income-tax purposes if the grantor (or a non-adverse party) retains certain powers enumerated in IRC §§673--677 -- for example, a swap power (the right to substitute trust assets for assets of equivalent value under §675(4)(C)), or retained administrative powers that benefit the grantor. Where those powers exist, income and deductions flow to the grantor's personal return even though the property is irrevocably outside the grantor's estate for estate-tax purposes. This is the structural heart of the "intentionally defective grantor trust" (IDGT) technique: irrevocable for estate tax, grantor trust for income tax.

Where no grantor-trust powers are retained, an irrevocable trust is a separate taxpayer: it files Form 1041, pays tax on undistributed income at the trust's compressed rate schedule (the 37% bracket currently begins at $15,650 of taxable income for trusts in 2025, vs. $609,350 for single individuals), and issues K-1s to beneficiaries on distributed income.[[redacted]]

The CRE practitioner's concern is that an irrevocable structure changes who signs, under what authority, and whether lender consent was required for the transfer.

Feature	Revocable trust	Irrevocable trust (grantor-trust powers retained)	Irrevocable trust (no grantor-trust powers)
Income tax return	Grantor's Form 1040	Grantor's Form 1040	Trust Form 1041
Estate inclusion	Yes (§2038)	Generally no	Generally no
Creditor reach	Yes	Depends on state/structure	Generally no (with exceptions)
Basis step-up at death	Yes (§1014)	Depends	Generally no
Separate EIN required	Not required during grantor's life (optional)	Often used for admin	Yes

Feature	Revocable trust	Irrevocable trust (grantor-trust powers retained)	Irrevocable trust (no grantor-trust powers)
Transfer-on-sale requires	Nothing beyond trustee authority	Nothing beyond trustee authority	Nothing beyond trustee authority
Lender documentation burden	Low -- certification + resolution + grantor's credit	Moderate -- full trust review, borrowing-authority opinion	High -- legal opinion on authority, DAPT/dynasty analysis, succession review
Agency (Fannie/Freddie) eligible?	Yes (revocable inter vivos only)	No	No
Common CRE use case	Individual investor holding investment property	Dynasty trust, IDGT, DAPT	Dynasty, DAPT, CRT (unencumbered)
Rate/term impact	None	Minimal if clean structure	Possible spread premium (bridge/debt fund)

That’s the sample.

The full **Revocable vs Irrevocable Trusts** brief runs the complete reference end to end — every section, all tables, full citations.

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