A beneficiary controlled trust is fast becoming a favorite estate planning tool as rising real estate prices push up the value of middle class estates.

In a beneficiary controlled trust, the primary beneficiary acts as co-trustee and exercises nearly all of the rights, benefits, and control over trust property that a person would have over that same property with outright ownership - but without the normal exposure to creditors, lawsuits, divorce courts, or the IRS.

Here are the elements of a beneficiary controlled trust:

1. The donor, often a parent or grandparent, is the grantor of the trust.

2. The beneficiary cannot be the grantor and cannot put any of his or her assets into the trust.

3. The trust is irrevocable. Once the assets are in the trust, they cannot be removed except under the terms of the trust.

4. The beneficiary of the trust is the primary beneficiary. The interests of the primary beneficiary take precedence over the interests of any descendants who might also be beneficiaries.

5. The trust has two trustees, one of whom is the beneficiary. The beneficiary is the primary trustee, also known as the investment trustee. The second, independent trustee is known as the distribution trustee.

6. The second trustee can be a friend, financial advisor, attorney, or a financial institution such as a bank.

7. The primary beneficiary has the power to replace the second (independent) trustee which gives the beneficiary the power to control the trust.

8. The second trustee cannot be a "related or subordinate party" as defined by the Internal Revenue Code.

9. The trustees can acquire assets for the beneficiary's use and enjoyment.

10. The trustees can invest in a business/corporation that can employ the beneficiary.
11. The primary beneficiary can protect the trust assets for future generations.

12. Assets in the trust are protected from the claims of creditors, ex-spouses, and the IRS.

13. Does not allow a creditor to force a distribution that would be attachable by the creditor.

14. The beneficiary is also protected in the event of a lawsuit or bankruptcy since the beneficiary does not technically own any trust asset.

15. At the beneficiary's death, assets pass to the beneficiary's children and not to a spouse or creditor - or to the taxman.

16. In most cases, the assets are protected from estate taxes.

By proper construction, a beneficiary controlled trust creates an almost insurmountable shield against the claims of creditors and ex-spouses.

For grantors who want their descendants to have the use of their property and assets - and not that rotten non-working husband or trampy wife - a beneficiary controlled trust is a superior strategy to outright gifts.

The inheritance becomes more valuable to the beneficiary in trust than through outright gifts. The assets can be used for living expenses, mortgage payments, new cars, and even vacations, all while having the added protections of a trust.

Expect beneficiary controlled trusts to grow in popularity as middle class estates become larger.