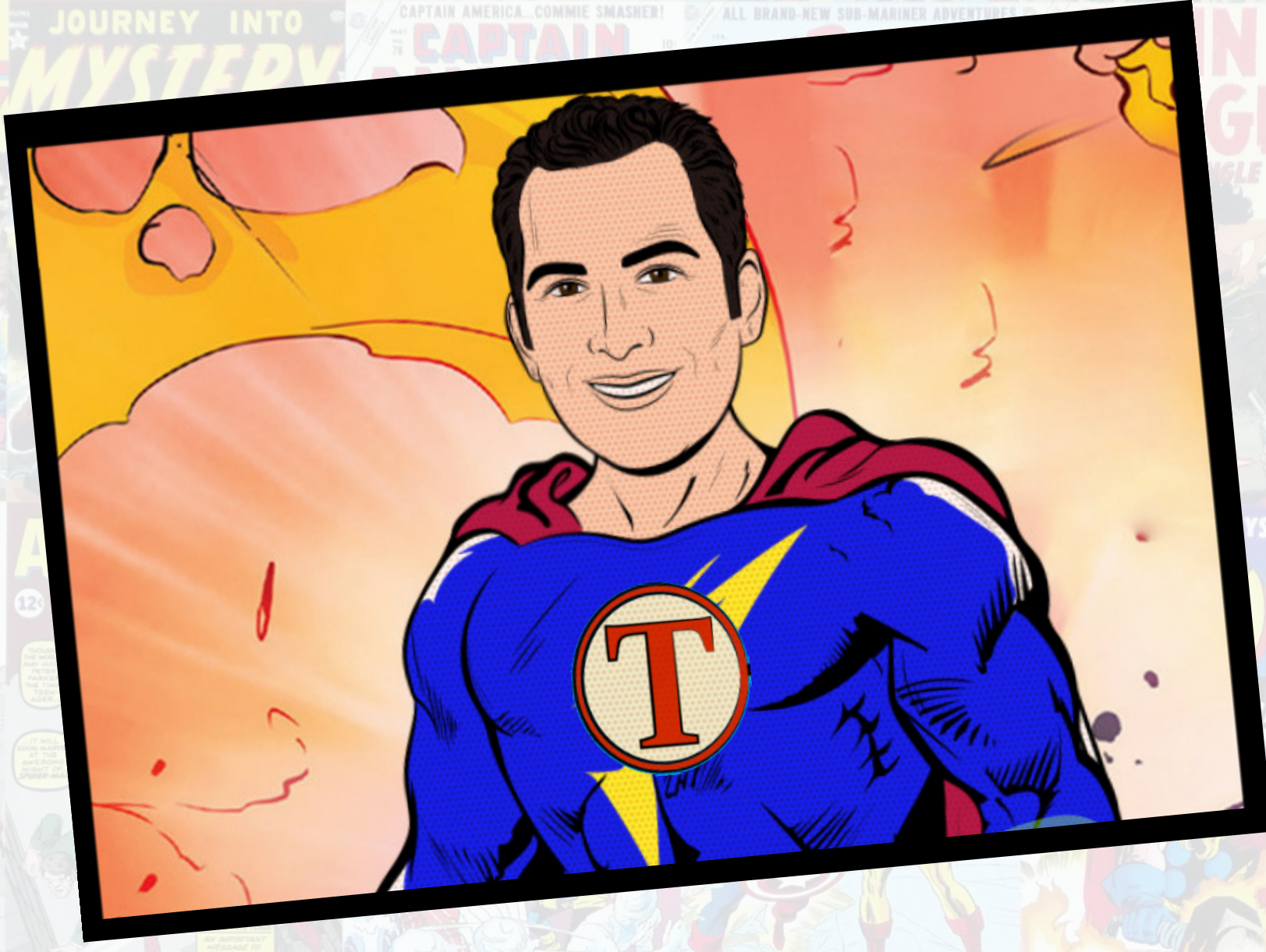




**BORCHERS TRUST LAW**  
Borchers Trust Law Group, P.C.



# SUPER TRUST POWERS

**Author and Super Trust Hero,  
Marc Cusano, Esq.**

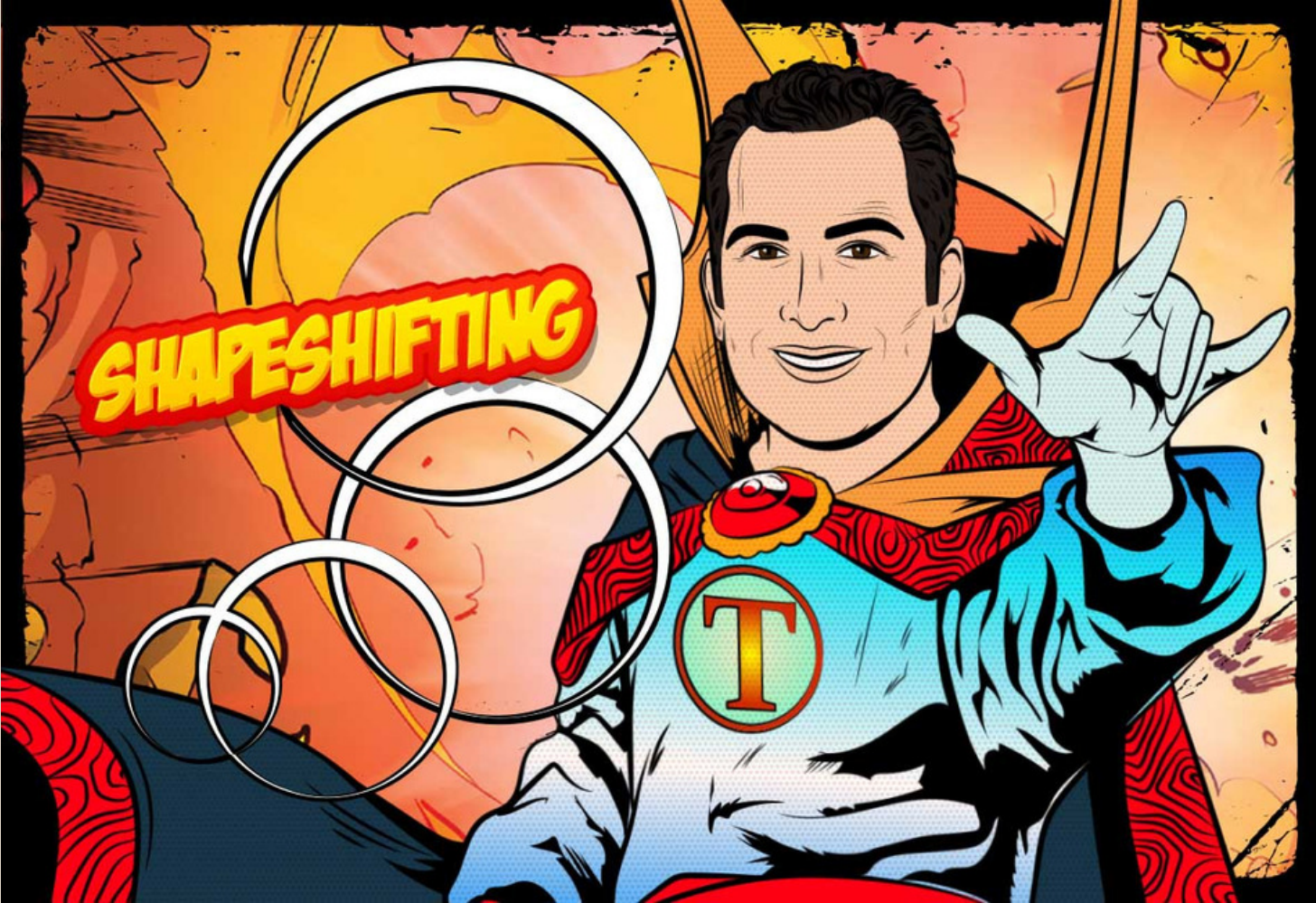


If you find reading about estate planning dry and uninteresting,  
but still want to learn about this important topic,  
*there is now a solution!*

Enjoy this unique comic-book look at the complex topic of trusts, which are essential estate planning tools. Estate Planning Attorney Marc Cusano shares the essential features of trusts by looking at their five Super-TRUST-powers and their secret weapons.

*This may cause you to wonder...  
What are the five Super-TRUST-powers?*

- 1** Atomic Manipulation and Shapeshifting
- 2** Invincibility
- 3** Healing Ability
- 4** Super Speed
- 5** Teleportation



# W

hen I was young I could fly. No really, I could. As long as I had a good running start down the hallway I could make a horizontal jump at least 3 or 4 feet into the air and onto my parents' couch. This was made possible not only by my natural flying abilities (of course) but also by the red cape my mother had spent hours sewing for me.

## I had superpowers.

Although they typically don't come with a red cape, trusts are a type of real life superhero. OK, maybe that's a stretch, but as an estate planner I get energized about the power of trust-based planning. Trusts do have superpowers.

What kind of powers, you ask? In honor of this season's smattering of superhero blockbusters, it is fitting that we examine some of the most desired superpowers and their equivalent in the world of trusts. Does your trust have these superhuman abilities?

### **Super-TRUST-Power: Atomic Manipulation and Shapeshifting** **Secret Weapon: Revocability and Decanting**

By having the ability to alter the atomic makeup of an object, or to transform into anything (or anyone), you could create, change, or eliminate anything at any time and for any purpose. You could turn water into wine, your dead Christmas tree into a soft pillow as you drag it out of the house, or transform into an acrobatic lumberjack capable of "limbing up" neighborhood trees after a nor'easter in mere seconds, causing your neighbors to love you conditionally...until the next storm.

Trusts can be created with these same abilities. A trust that permits you to amend or revoke it, wholly or in part, and for any purpose, is referred to as a revocable trust. Create it, change it, change it again, terminate it, or create a new one. The sky's the limit. The choice (and the power) is yours. And you don't even need those Infinity Stones.

By utilizing a revocable trust, the court-involved process of probate can be eliminated, family members are granted immediate access to funds when you're gone, thousands of dollars in taxes may be saved, and your children's inheritance can be protected from many of life's troubles. Not to mention that you can act as the trustee during your lifetime, managing the trust for your own benefit and to your liking.

I know what you're thinking: every superhero has a weakness. So what's the kryptonite of the super-TRUST-power of a revocable trust?

Unfettered power to manipulate and control a revocable trust to match your wishes at any time is less than desirable when it comes to protection over your assets. This is often the case when wanting to preserve funds for long-term care or shield them from liability, which require the type of trust that cannot be changed, terminated, or controlled by its creator. Also known as an irrevocable trust, it generally lacks the ability of change.

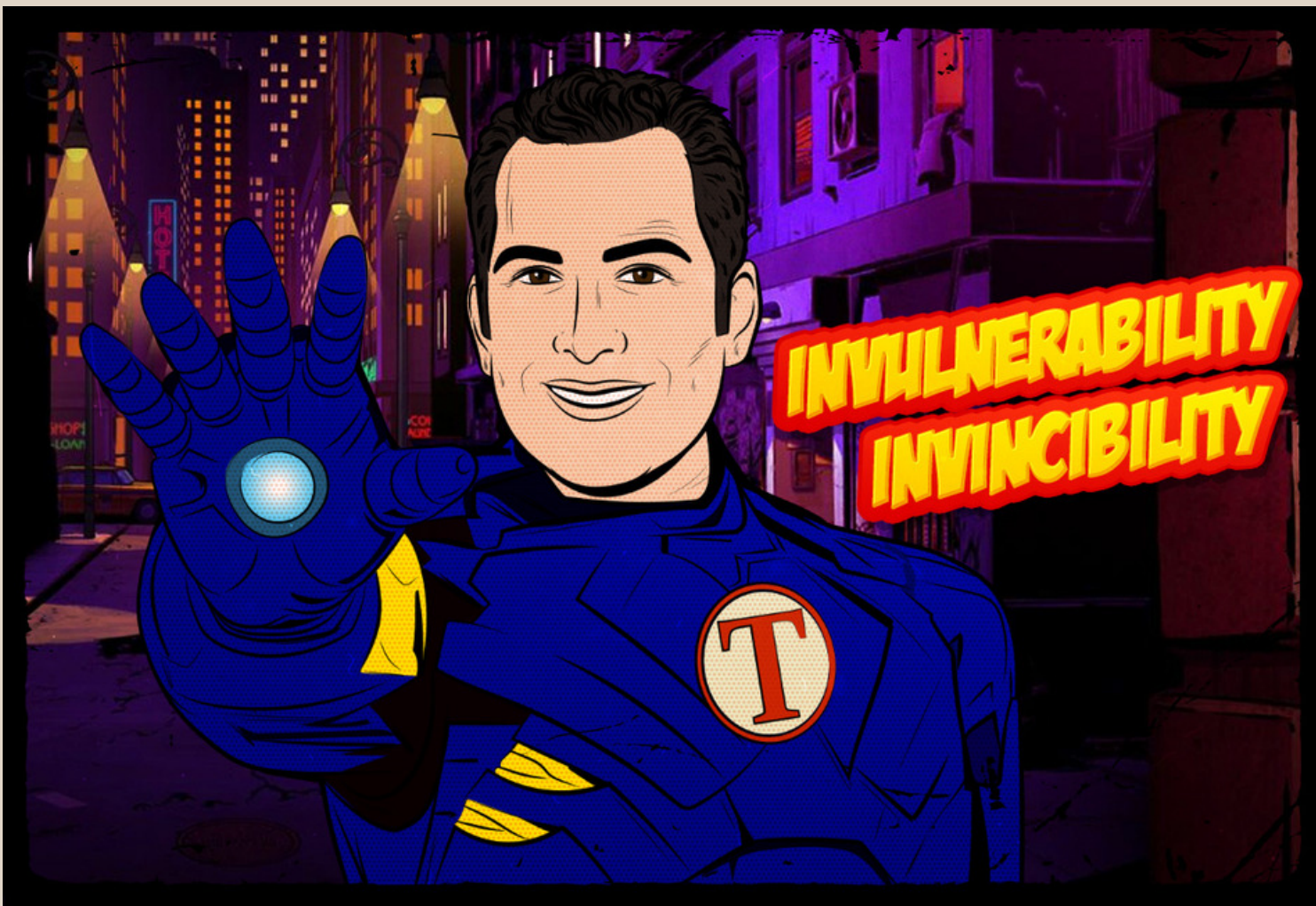
## **So long, atomic manipulation. Enter: the Shapeshifter!**

What if the assets inside an irrevocable trust could be moved to another irrevocable trust with different, more favorable terms, all while retaining the original protections and objectives? Now we're talking! Believe it or not, a trust can more or less change shape while keeping its core intact. This is commonly called "trust decanting" because, just as wine can be decanted into one container from another to leave behind the unwanted sediment, so too can a trust property be moved into another trust to leave behind undesirable terms and conditions from the original trust.

The key to unlocking the shapeshifting prowess of a trust is the presence of a special provision written into the original document, or at least a provision that gives the trustee the option to make distributions "for the benefit of" a beneficiary, both of which could help you "revoke" the irrevocable by decanting.

The super-TRUST-powers of revocability and decanting can join forces to provide you with control over your affairs and also protection from angry plaintiffs, disgruntled creditors, unreasonable ex-spouses and, yes, even Uncle Sam (the government; not your uncle Sam – there's a different trust for him).





**P**ossessing immunity to any form of physical harm. Impenetrable. Unable to be broken or suffer pain.

With the power of invincibility, you could literally take a bullet for your spouse, shovel 16 inches of snow

from your driveway without back pain, or proudly wear a Yankees jersey to Fenway Park (I am NOT, of course, speaking from experience).

### **Super-TRUST-Power: Invincibility**

#### **Secret Weapon: Inheritance and Spendthrift Protections**

Recall the 1985 classic movie Rocky IV, when Russian boxer Ivan Drago threatened the beloved American fighter Rocky Balboa in the ring saying, “I must break you”. During the resulting fight, Rocky proceeded to get repeatedly knocked down by Drago and would immediately pop back up like a punching bag, to which Ivan Drago eventually laments to his trainer, “This man is not human.”

## **Invincible. Superhuman. Unbreakable.**

In the world of trusts, we ask whether the trust itself is breakable and its contents accessible. One quality of an unbreakable trust is called a spendthrift provision. This clause not only protects beneficiaries who are poor at managing money or suffer from addictions, but also protects trust assets from the interference or control of creditors, personal liability, bankruptcy proceedings, or other legal process. It does this by prohibiting the beneficiary from assigning or transferring their rights in the trust to someone else.

In order for a spendthrift provision to protect you (as opposed to your heirs), the trust must be irrevocable, since you cannot set up a revocable trust for yourself which gives you absolute control while also prohibiting you from exercising that control. That’s nonsensical. It’s like being the parent of a two year old—you have control and you don’t have control, and then you have control again only to lose it when they dart for the altar at church Sunday morning right smack in the middle of the preacher’s sermon.

In superhero talk that means you can’t mix the powers of atomic manipulation and invincibility! Nonetheless, the presence of spendthrift language in your trust can have the effect of raising the shields against most attacks.

What if a trust has no spendthrift protections or, alternatively, you want to build the Fort Knox of trusts and add inheritance security above and beyond such a provision?

To further make a trust impervious to the pain of Divorce, Debts (creditors), Disputes (lawsuits), Death taxes, Disability (state benefits) or Destructive spending habits – the pesky “Killer D’s”, arch enemies of trusts – we can build-in inheritance protections for beneficiaries. Why? Once a trust winds down and the balance passes to the next generation, the protective forcefield of the trust is shed, thereby making the inherited assets vulnerable to attacks. Envision Rocky Balboa not only getting knocked down but never getting back up.

**A broken man.  
And thus, a broken trust.**

Instead, consider passing assets “in trust” rather than “outright” to your loved ones, which can ensure the attacks of the Killer D’s lose their sting.

How, you ask? By and through a separate trust for each beneficiary, most often as a sub-trust of your revocable trust that becomes effective upon your death and is created for each beneficiary to receive their inheritance. It permits them to enjoy their inheritance through the trust “for any purpose.”

This discretionary structure offers superb Killer D protection because the acting trustee, as the representative of the trust, takes the bullet, allowing your beneficiaries to emerge unscathed! Attack after attack, the trust keeps popping back up, causing the assailant to conclude, “This must be a super-TRUST!”





**R**estore biotic organisms to their optimal health, curing wounds, broken bones, or disease. Potentially heal from any form of bodily damage. The power to heal is an attractive power in our day.

Imagine being in the position to instantaneously cure yourself of the flu, heart disease, or better yet, any form of cancer – including in someone else.

Your primary care physician and specialists would get lonely. Or, you could heal a dying field mouse caught in a trap underneath your kitchen sink instead of tossing it in the recycling bin over your spouse’s vehement objections.

I know what you’re thinking (not about the mouse – focus, please): could a trust with healing abilities put lawyers out of work? Uh...nope, sorry. But it could make less work for your trustee and heal a hurting trust. Enter the Trust Protector.

**Super-TRUST-Power: Healing Ability**  
**Secret Weapon: Trust Protection**

A trust that you cannot change (i.e., an irrevocable trust, or a trust that becomes irrevocable at death) may have no method for amendment if it becomes necessary to do so. For instance, the trust may become “sick” due to its old age and in need of changes to comply with current law or with your intentions, or the trust could succumb to disease in the form of a derelict trustee neglecting their duties or engaging in self-dealing.

If you don’t have the power to make the needed changes, then you or your beneficiaries may have to go to court to have the trust healed or reformed, with a judge serving as the attending physician.

**That sounds inconvenient and expensive.**  
**And it is.**

Sometimes you just wish the plumber was standing out back, ready to work. Waiting around the house for help while the upstairs shower drain leaks repetitively into your living room only to have that help arrive hours (and buckets) later to then create a new leak – in your wallet – is the reason, I’m sure, most of us pretend to be superheroes when we’re young.

Forget healing the body, let’s heal some pipes! Isn’t “Pipeman” the next blockbuster to be released in theaters next summer?

In any case, what if you could outsmart such disasters?



**Designating an individual to serve as the “Pipeman” of your trust would avoid the necessity of court involvement.**

This person is more formally called a Trust Protector, and could make improvements, ensure your objectives are fulfilled and put your trustee in position to do their best for your beneficiaries. The Trust Protector cannot be related to you or to your beneficiaries, and is prohibited from serving as the trustee. Although, you can retain the power to remove and replace them at any time. Your attorney or CPA are often smart choices for this role.

While the ability to heal a sick trust may not be as glamorous as curing an incurable disease (or a leaky pipe!), it ranks towards the top in the realm of trust planning. Things break, people break and yes, even trusts break. While a plumber can fix a broken pipe and a surgeon can fix a broken body, trusts are often left without a specialist capable of making it whole again.

**Designating a Trust Protector to act as the repairman of your trust is simply akin to the everyday choices we make concerning these other needs.**





**E**xperience the rush of accelerating to speeds so fast you are nothing but a blur.

Move near, at, or beyond the speed of sound or light. Change diapers in record time, run to the Cape and back for a lobster roll during your lunch hour, or discreetly make a cameo appearance in the middle of your daughter's dance recital without anyone noticing. The Earth is the limit.

In our on-demand culture, speed is coveted. This is the hallmark of estate planning with trusts – efficient administration and easy, immediate access to funds. Make no mistake, the quality of your plan is just as important as its efficiency, but who does cartwheels over the thought of the sloth-like probate process when someone has died, especially if the courts can be avoided entirely with a trust?

### **Super-TRUST-Power: Super Speed & Agility**

#### **Secret Weapon: Instant Transfer of Control, Avoids Probate**

The term “probate” comes from the Latin term probare, which means to test or prove. Specifically, it's the process of proving the validity of a will. But when does proving the validity of anything in court happen quickly? It's sort of like the process of proving to a two-year-old that your cell phone isn't working because the battery is dead and they reply “it's not,” and you show them it's true by pressing all the buttons to no avail and they reply again “it's not dead,” so you throw up your arms in frustration and the phone slips out of your hand and into the fish bowl where it floats to the top – truly dead now – and your child remarks, “it's not dead – it's just sleeping with the fishes”.

A long process indeed.

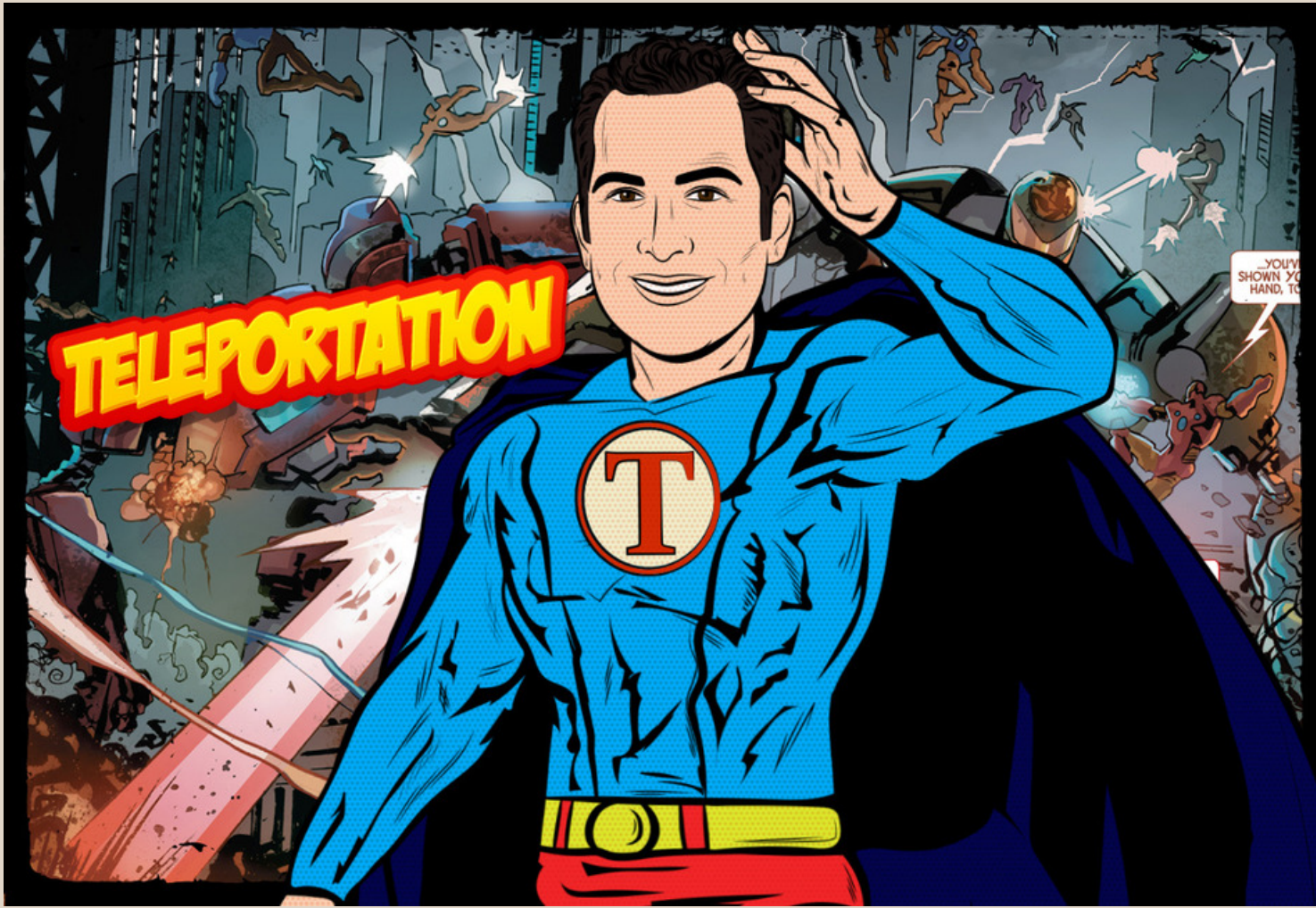
Unlike a will, a trust will speed up the administration of your affairs by granting immediate, unfettered access to any account, bypassing the courts, and moving control instantaneously to the individual(s) you have designated. As a result, they could list the house on the market, pay incoming bills, complete tax returns, care for underage children and continue running a business, all without the delay of waiting for court approval. And if that's not enough speed for you, how about totally wrapping up the estate in a matter of months instead of years?

Recently, a woman came to us who had just lost her mother. Mom was a “do-it-yourselfer” having managed her financial affairs up until the week before she died at 92 years of age. She died with a will but without a trust. The will was done by an attorney who had since retired and closed his doors. All of mom’s accounts were titled in her name and therefore inaccessible to the family pending court approval of the will. All family members live out of state, and no one had the original will. There was a verbal offer to purchase mom’s home but no one yet had the legal authority to sign a formal agreement to put that offer in writing. Needless to say, it has been several months with little progress on wrapping things up, not to mention capitalizing on the potential homebuyer.

**At a time when loved ones are grieving, a slow-moving estate settlement serves not only to elongate that grief but also to exacerbate it.**



Make this process a blur instead with the speed of a superTRUST!



If you possessed the power of teleportation, where would you go? Would you teleport yourself to work to bypass a stressful daily commute? Or move yourself upstairs at night after you've fallen asleep on the couch? You could play catch with yourself, or even transport onto the football field to intercept a pass from Tom Brady.

Maybe you would transport strategically across all time zones to maximize your sleep time.

That's great, but why do we want to teleport a trust? After all, shouldn't they be locked up in a safe deposit box or something?

Trust teleportation puts the focus not on the physical document itself but rather on its situs, or place where it is administered. In other words, if its terms need clarification, which state laws will apply? Or, which state has the right to tax the trust? What state court has jurisdiction to hear lawsuits against the trustee? To obtain a favorable outcome on these and other issues, one state's laws might be more preferable.

### **Super-TRUST-Power: Teleportation Secret Weapon: Changing Jurisdiction**

Transporting the administration of a trust from one state to another may be desirable for a number of reasons, but the most common are tax savings and asset protection.

#### **Tax Savings**

Imagine a trust that is currently run in a state with a high income tax rate. You might ask, "If grandpa can hibernate in Florida for six months and one day each year to take advantage of 'the nice weather,' then can a trust likewise decide to pack up its assets, hire a moving company, and leave town for greener pastures to avoid paying state income tax?" Since all grandfathers are wise, the answer is yes!

Assets generating a lot of taxable income each year could be segregated into a separate trust that is written to force the trust, rather than its maker (grantor), to pay the taxes. Assuming the situs [location] of the trust is properly established to tie the trust to a state with no income tax, like Florida, then all income is received into the trust tax free.

It's like taking a trip down the interstate, trying to make good time. A few miles away from the state border you reason with yourself, foolishly, to speed up well above the speed limit because "the cops can't pull me over once I cross the border" since that is outside their state's jurisdiction.

**Your location matters. And so it is with a trust.**

This is not without considerations, though, such as whether it really is best for the trust to bear tax responsibility as opposed to the maker of the trust. Generally speaking, a trust pays tax at the highest (federal) tax rate of 37% once reaching a much lower income threshold (\$12,500). An individual (grantor) does not reach the 37% rate until \$500,000 of income.

## Asset Protection

Have you ever dreamed of writing a trust that is out of reach of most creditors and not taxable to you but still eligible for certain tax benefits at death and in which you are the primary beneficiary for life? Have your cake (protection) and eat it too (enjoy the assets) would be an understatement with the flexibility a trust grants in regards to situs.

Some jurisdictions permit what are commonly called “self-settled asset protection trusts.” They are self-settled in the sense that you create, fill and benefit from the trust, yet the assets that you fill it with are protected from creditor claims.

How is trust teleportation accomplished?

The epic sci-fi series and films Star Trek provides the image that comes to mind for many of us when talking about teleportation. Any fan of the show just needs to hear the words “Beam me up, Scottie,” the words of Captain Kirk when requesting to be transported back to the Starship Enterprise from some obscure planet. Futuristic sound effects would accompany a slowly disappearing Kirk from his current location, only to see him then reappear back on the ship.

While it usually takes lawyers slightly longer than that to disassemble a trust and put it back together in a different location, a change of situs can be done! Customarily this involves changing trustees to an independent trustee with ties to the state of choice, having the trust own property in the state and, of course, changing the terms of the trust document itself.

Which brings us to the crux of this superTRUSTpower: including provisions in your trust today that will allow for a change of location in the future. Not having this language in the document will require court involvement and approval to make a move (translation: slow and costly process), which is like Scottie having to ask the Starfleet Command Center for the power to beam up Captain Kirk from Planet Dimorus. In the meantime, Kirk gets shot by poisonous dart-shooting rodents.



As with all machinations by lawyers, there are considerations with this type of planning. Namely, the loss of control to an unfamiliar trustee, little — if any — ability to change your mind and additional costs. But in the right situation this planning is powerful. By making your trust a superTRUST, you too can enjoy the power of teleportation whenever (and wherever) you like.

## Meet the Author:



**Marc Cusano, Esq.** is an estate planning attorney and partner at Borchers Trust Law Group in the greater Boston area.

Marc represents individuals and families in all aspects of estate planning, elder law and probate administration. He also advises business owners in matters of corporate formation, tax planning, asset protection and succession planning. He concentrates his practice in the areas of sophisticated trust planning involving complex estate, gift and income tax issues, as well as business planning and charitable giving.

He has authored articles on a variety of issues relating to estate planning. His articles have been published in *Trusts and Estates Magazine* and *Massachusetts Lawyers Weekly*.

Marc resides in Norfolk, Massachusetts, with his wife, Deanna, and their three children. He has been a superhero fan from birth.

Want to talk to the Super Trust Hero himself?  
Feel free to reach out:



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