

TEXAS TRUST BASICS

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Many people are under the misperception that only the wealthy can make use of a trust in their estate plan. While that may have been the case a century ago, trusts have evolved over the past 100 years to be extremely useful estate planning tools for the average person. Once you have a basic understanding of trusts, you may find that a trust would make an excellent addition to your own estate plan.

WHAT IS A TRUST?



At its most basic, a trust is a legal arrangement in which an individual gives fiduciary control of property to a person or institution for the benefit of beneficiaries. If you give your mother money that is intended to be

given to your sister at some point down the road, you have created a rudimentary trust.

TRUST ELEMENTS

All trusts require four basic elements – a grantor, a trustee, assets, and beneficiaries. First, someone must create the trust. This person is referred to as the grantor, trustor, or settler. Next, you must appoint someone (a person or a company) to be the trustee. The trustee is responsible for administering the trust and managing the trust assets. Once you have the trustee, you will need to designate assets to fund the trust. Although trust

assets can be cash, they can also be real or personal property, a life insurance policy, or anything else that qualifies as an asset. Finally, you must designate beneficiaries. These are the people, organizations, or even pets that will receive the benefits of the trust.

TESTAMENTARY VS. INTER-VIVOS (LIVING)

There are numerous different types of trusts; however, all trusts fall into one of two categories – testamentary or inter-vivos. A testamentary trust is a trust that is created in your Last Will and Testament and only becomes effective when you die. An inter-vivos trust, more frequently referred to as a living trust, is created outside of your Will and becomes effective prior to your death once you sign it, have it notarized, and transfer property into the trust.

REVOCAABLE VS. IRREVOCAABLE

By definition, a testamentary trust is always revocable during your lifetime because you are free to revoke your Will at any time. Likewise, once you die, the trust become irrevocable because it is part of your Will. A living trust, on the other hand, can be revocable or irrevocable. If you retain the right to change anything in the trust, then it is a revocable trust. This includes the right to change terms, beneficiaries, or provisions of the trust. It is very important to understand that for the most part an irrevocable trust cannot be changed, modified, revoked, or terminated once it becomes effective. As is often the case, there are some exceptions to the rule such a when a judge orders a trust modified or terminated; however, if you create

an irrevocable trust you should do so under the assumption that you will not be able to change anything after its creation.

The distinction between revocable and irrevocable trusts becomes important under a number of circumstances, most of which deal with ownership of property. Once you transfer property into an irrevocable trust, you no longer own the property; however, property transferred into a revocable trust is still considered to be your property because you have the ability to access it at any time by terminating or revoking the trust.

TRUSTS AND PROBATE

One of the biggest advantages to a living trust is that it allows the assets held by the trust to avoid probate. Probate is the legal process that is often required after death whereby estate assets are inventoried and eventually distributed to beneficiaries. Probate can be a time consuming and costly process. Only assets owned by the decedent at the time of death become part of the probate process. Therefore, assets held in an irrevocable living trust do not become part of probate. This not only speeds up the overall probate process, but typically allows a beneficiary access to assets much faster than under traditional probate procedures. Of course, these benefits only apply to an irrevocable living trust. Remember that assets held by a revocable trust are still considered your property as are assets intended to fund a testamentary trust.

TRUSTS AND TAXES

A trust can also provide numerous tax advantages if created properly. All assets owned by you are potentially subject to estate and gift taxes at the time of your death. Assets that were transferred into an irrevocable living trust, however, are no longer owned by you and therefore not subject to estate taxes. You may also see tax benefits during your lifetime at both the federal and state level depending on the type of trust you create and the terms of the trust.

TRUSTS AND CONTROL

The wealthy have used trusts to control family fortunes for as long as trusts have existed; however, even the average person can also take advantage of the continued control over assets offered by a trust. Imagine that you are still relatively young and have yet to make your fortune but you do have a life insurance policy worth \$250,000. Your children may still be minors or young adults and you do not wish to just hand over the entire \$250,000. You can transfer the policy into a trust and then create trust terms that dictate how and when the funds are to be distributed. By doing this, you can essentially retain a certain degree of control over the assets long after your death.

SPECIAL TRUSTS

A number of special trusts have evolved over the years that are geared toward specific issues or concerns that the average estate planner may have. A few of the more common types include:

- **Special needs trust** – these are used when you have a special needs beneficiary who needs to continue to qualify for government benefits such as SSI or Medicaid. When drafted properly, you can provide additional support and funds without disqualifying the beneficiary from much needed assistance.
- **Asset protection and spendthrift trusts** – these are both designed to protect assets held by the trust from creditors. Typically, language in the trust prevents the assets from being used as collateral or from liens being placed against the assets as a result of the debts of the beneficiaries.
- **Funeral trust** – if you want to provide funds to pay for your funeral and burial expenses, you may wish to purchase a life insurance policy dedicated just for that purpose and then transfer the policy into a funeral trust. Along with providing for payment of your funeral service, you can also include specific terms that indicate what type of burial and service you wish to have upon your death.
- **Educational trust** – not only do these trusts offer significant tax advantages, but you also have the ability to include very specific terms that reflect your wishes for the beneficiary. For example, if you want your child or grandchild to attend a specific school then you can make distributions of trust assets contingent upon the beneficiary attending that school.
- **Pet trust** – if you have a family pet that you wish to protect and provide for in the event of your death, a pet trust can allow you to do that.

Now that you have a better understanding of trusts, you should be prepared to sit down with your estate planning attorney and decide if a trust will make a beneficial addition to your estate plan.

[Living Trust Network ---Types of Trusts](#)

[American Bar Association -- Trusts](#)

About the Author



Stephen A Mendel

Stephen A. Mendel is a member of the American Academy of Estate Planning Attorneys, a national organization that serves the needs of legal professionals whose practices focus on estate planning and asset protection. The Academy fosters excellence among its members and helps them deliver the highest possible service to their clients. Stephen A. Mendel provides a broad spectrum of strategies and planning tools that can accomplish very diverse goals.

Mr. Mendel is an attorney who focuses a substantial part of his practice on estate planning. Mr. Mendel's guiding principle is to provide his clients with quality legal services tailored to each client's specific needs and goals.

Mr. Mendel has been providing quality estate planning for Houston and surrounding area clients for many years. His firm helps numerous people who are concerned about protecting their families from the devastating legal effects of disability and death. The aim of the firm is to help you accomplish your estate planning goals and to take the mystery out of the planning process.

Specific services include, but are not necessarily limited to, design and preparation of wills & trusts, asset protection, use of family limited partnerships as part of the planning process, buy-sell agreements, business counseling, and succession of closely held, family owned businesses.

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