

ESTATE PLANNING – TRUST BASICS

Understanding Some Basic Information About Trusts May Help You Decide If a Trust Could Be a Beneficial Addition to Your Estate Plan



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An estate plan should be as unique and individual as the person creating the plan. There are, however, some common features in estate plans. A Last Will and Testament, for example, is the foundation of any estate plan. Beyond that, many people choose to include one or more trusts in their estate plan.

Although trusts were once used almost exclusively by the wealthy as a mechanism by which they could transfer and control the family wealth, in the 21ST century trusts are frequently used by clients to accomplish a wide variety of goals. Understanding some basic information about trusts may help you decide if a trust could be a beneficial addition to your estate plan.

WHAT IS A TRUST?

A trust is a separate and distinct legal entity which allows you to appoint someone to hold and manage funds transferred into the trust for the benefit of others. The person who creates the trust is known as the grantor, also referred to as the trustor or settlor. The person who protects and manages the trust assets is the trustee. The person, entity, or even animal, who benefits from the trust is the beneficiary.



If you (as trustor) ask your co-worker (as trustee) to hold \$20 for you and then give it to another co-worker (as beneficiary) at the end of the day, you have created a rudimentary trust. In fact, many trusts are almost that simple; however, a trust can also be extremely complex and multi-faceted.

CHOOSING A TRUSTEE



Choosing a trustee for your trust is typically the most important part of the trust creation process. Although your initial reaction may be to appoint a spouse, adult child, parent, or other family member as trustee, you should ask yourself if that is truly the wisest choice. Even a relatively small trust must be managed well to succeed. Your trustee will have a number of important duties that require a certain degree of financial and legal knowledge and skill. In addition, your trustee will be required to communicate with, and distribute funds to, the beneficiaries of the trust, a position that could create conflict within the family if the trustee is a family member. If your goal is to save money by appointing a family member as trustee, remember that saving money on trustee fees won't matter if the trust is not managed well enough to be growing the trust funds. For all of these reasons, people often decide to appoint a professional as trustee.

TRUST TERMS



One of the biggest attractions to a trust is the ability to create your own trust terms. In a way, a trust allows you continued control over the assets you transfer into the trust through the terms you create. For example, the terms of your trust could require a beneficiary to complete college or finish a drug treatment program before receiving a disbursement.

As long as your terms are not illegal or unconscionable you have virtually unlimited latitude to create whatever terms you wish for your trust. Gifting assets to a beneficiary in a Will, on the other hand, does not provide any continued control over the asset. Once a gift has been made in a Will the beneficiary is free to use the asset in any way he or she wishes.

REVOCABLE OR IRREVOCABLE?

A trust can be revocable or irrevocable. An irrevocable trust, as the name implies, cannot usually be changed once it becomes effective. This means you cannot remove or add a beneficiary, change the funding source, or replace the trustee. Although a court may modify or even terminate an irrevocable trust under very limited circumstances, a grantor should consider an irrevocable trust to be set in stone once created. A revocable



trust, on the other hand, allows the grantor to modify or even terminate the trust at any time and for any reason.

So why would you create an irrevocable trust if it cannot be changed?

There are a number of reasons why an

irrevocable trust is preferable or even necessary. One of the most common reasons why an irrevocable trust is created is to decrease an estate's exposure to gift and estate taxes. Because the grantor does not retain the right to make any changes to an irrevocable trust once created, the assets transferred into the trust are no longer considered to be owned by the grantor and are, therefore, not part of the grantor's estate at the time of his or her death. Transferring assets into an irrevocable trust can also potentially protect those assets from creditors. In fact, some trusts are

specifically designed to shelter assets and require the creation of an irrevocable trust to accomplish the intended goal.

TESTAMENTARY OR LIVING?

A trust must also be either a testamentary trust or a living (or *inter vivos*) trust. A testamentary trust is a trust that does not actually take effect until the death of the grantor, while a living trust becomes effective as soon as all of the legalities of creation are complete and the trust has been funded. Testamentary trusts are often used by parents of minor children as a method of guarding estate assets for those children until they reach a certain age.



SPECIAL PURPOSE TRUSTS

As previously mentioned, a trust can include almost any term you wish to include. Likewise, a trust can be used for almost any conceivable purpose and you may appoint almost anyone as a beneficiary. As a result, the variety of trusts that can be created is virtually limitless. Although trusts are highly personal and diverse, there are some special types of trusts that are used to accomplish specific goals, including:

- **Charitable Remainder/Lead Trust** – one allows you to direct disbursements to a charity first for a designated number of years with the remainder to go to a non-charitable beneficiary, while the other disburses to a non-charitable beneficiary first with the remainder going to a charity at the end of a specific period of time.

- **Pet Trust** – yes, even the family pet can benefit from a trust. If you are concerned what will happen to Fido when you die, you can eliminate that concern by creating a pet trust. In your trust you can appoint someone to care for the animal, appoint a trustee to manage the trust funds, and even provide specific trust terms such as what vet will treat the pet after you die.

- **Special Needs Trust** – this type of trust lets you provide for the special needs of a loved one without the risk that your gift will disqualify the beneficiary from much needed assistance programs such as Medicaid and SSI.
- **Asset Protection/Spendthrift Trusts** – these trusts, when properly constructed, can protect assets from creditors of the beneficiaries (including you if you designate yourself as a beneficiary) and/or from the financial mismanagement of a beneficiary.

Now that you have a basic understanding of what a trust is and what a trust can accomplish you may wish to consult with your estate planning attorney about including a trust in your estate plan.

US Trust, [Trust Basics](#)

American Bar Association, [Trusts](#)

Living Trust Network, [Types of 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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