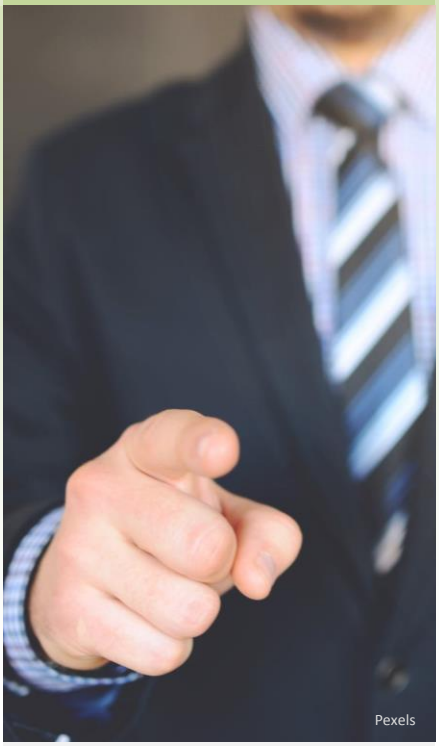
What You Need to Know About Trusts



What is a Trust?

A Trust is a legal document used in estate planning. Trusts create a legal relationship between a Grantor (the person who creates the Trust) and a Trustee (the person in charge of the Trust property). The grantor transfers property to the Trustee, who then manages and invests the property for the benefit of the beneficiaries.

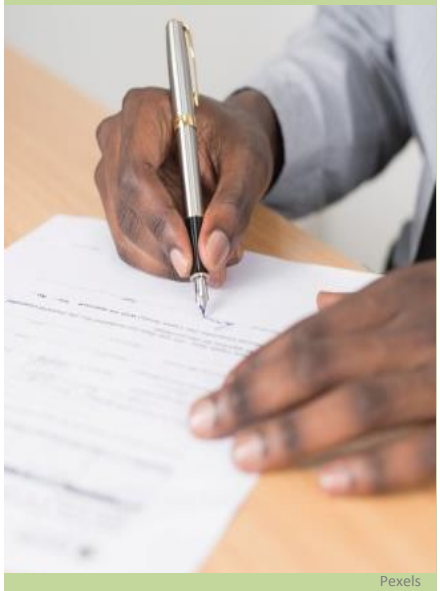
There are two occasions when a Trust can be created: while you are alive or after your death. A living trust is created during your lifetime by a written document signed by you (as grantor) and the Trustee. A testamentary trust is created within your Will so it does not take effect until your death.

Who Can Serve as Your Trustee?

Anyone who is 18 years or older and is of sound mind may be appointed as your Trustee. A business entity may also serve as Trustee if they are doing business in Indiana and have Trust powers as authorized by the state of Indiana. You can also have more than one Trustee that may serve as Co-Trustees.

You may wonder, if you (the grantor) create a Trust during your lifetime, does this mean you give up all control over the Trust property? The short answer is not necessarily. The Trustee, who may also be the grantor, has control over the Trust. However, this is subject to any rights retained by the grantor. **(cont on next pg)**

Contents



Pexels

For example, depending on the provisions of the Trust, the grantor may retain the right to withdraw income and any amounts of principal upon request. The grantor may also keep the right to change or revoke the Trust. In addition, the grantor may preserve the right to direct the Trustee as to how he or she invests Trust funds. In fact, you can serve as your own Trustee in most cases.

What is Included?

The Trust at a minimum should do the following:

- Name the Trustee(s) and successor Trustee
- Decide who is to receive the Trust income, in what proportion, and for how long
- Determine when, to what extent, and for what purpose the Trustee may distribute the Trust property
- Stipulate when the Trust will terminate
- Name who will receive the Trust property when it is terminated
- List the duties and powers of the Trustee
- (For Living Trusts) State whether it is revocable or irrevocable

Advantages of Trusts

There are several advantages to having a Trust, depending on your assets and circumstances and the Trust's terms and funding. If you become incapacitated, a Trust can avoid the need to appoint a guardian over your assets.

Revocable and Irrevocable Trusts keep your estate plan confidential because those Trusts, unlike Wills, are not made a part of the public record. Trusts allow you to plan for the disposition of your assets over an extended period of time. They can also avoid probate if you have out-of-state real estate.

Another key reason people create Trusts is its advantages for those with minor beneficiaries. When a minor inherits property outright, the Court must appoint a guardian over the estate during the child's minority. This need can be eliminated using a Trust.

Also, Trusts can provide for the management of assets until the beneficiary reaches a designated age. In some cases, families have relatives who are disabled. These families can utilize a Trust to help provide for their needs while protecting any public assistance benefits they may already be receiving.

Dangers of Trusts

There are many people or businesses who try to sell Trust packages under a variety of names or programs. They may try to say that this package will allow you the opportunity to protect your assets from the Court, nursing home, or tax collector.

However, you must be very careful when responding to those programs. Most of these programs are sold by non-lawyers whose goal is to sell you a product, even if you don't need it. For many people, a Trust is unnecessary and would then be a waste of money. For others, though, they have real circumstances or desires that would require creating a Trust.

If you think you need a Trust, you should consult with one of our estate planning attorneys. Trusts are legal documents that can affect your taxes, estate plan, and other financial matters. Thus, you should discuss your circumstances and needs with a reputable attorney who can help you decide whether or not you really need a Trust.

Amending or Revoking Your Trust

During your lifetime, you may update your estate plan as your circumstances change. If you have a Revocable Trust, one of the useful features is your ability to amend and/or revoke the trust as needed. You can change the terms of your trust, alter it, or end it altogether. If you created a joint trust with your spouse, you must both agree in writing to amend any trust provisions (such as beneficiaries or the successor trustee).

There are several situations that may warrant amending your trust: you get married, you have children, you add valuable property to the trust, your spouse dies, a beneficiary dies, you move to a new state, you change your mind about who you want to inherit, or you change your mind about the successor trustee. You may need to revoke your trust if you have extensive revisions to make or you get divorced.

Because you have likely already transferred property to the trust, it is usually better to amend your trust rather than revoking it if you have any changes. Revoking your trust and creating a new one would require that you switch over all your property to the new trust.

It is much better, then, to amend and restate your trust – meaning that you restate (or rewrite) your trust with whatever changes you need. Amending and restating your trust allows you to keep the original date and keep your property in the trust.

Do You Need a Will and a Trust?

If you have a Trust, you may think you do not need a Will as well. After all, Trusts accomplish a similar purpose to Wills: you decide who will receive your property. However, even if you have a Trust, you should have a Will along with it.

One reason you should have a Will along with your Trust is because a Trust only deals with property that has been transferred to the Trust. You may not be able to transfer all your property to the Trust or you may come into property shortly before you die.

If you don't remember or are unable to transfer some property to your Trust, then it will not pass under your Trust. Having a Pour-Over Will prevents this problem from happening. A Pour-Over Will directs that any remaining property not titled in your Trust will "pour over" into your Trust.

Also, a Will can accomplish things that a Trust cannot. For example, you can name a guardian for your minor or disabled children in your Will. While it is always beneficial to have a Will, it is not always necessary to have a Trust. Our attorneys can help you decide whether or not you need a Trust along with your Will.

Pexels

The "No Contest" Clause

A "no contest" clause is a provision in your Will or Trust that reduces or eliminates a beneficiary's inheritance due to his conduct during the administration of your estate. The goal of these clauses is to deter disgruntled beneficiaries from waging costly and divisive litigation after you die.

You can dictate that a beneficiary who contests the validity of your Will or Trust forfeits all or even a portion of the inheritance he otherwise would have received.

"No contest" clauses are enforceable except under certain provisions. For example, one exception to a no contest clause is if the contest is brought for "good cause." Basically, an heir will not forfeit his inheritance if probable cause exists to pursue a Will or Trust contest.

"No contest" clauses offer a new tool to include in your estate plan that will help deter litigation over your estate after you die.

Pexels

Troyer & Good, PC

6303 Constitution Dr.
Fort Wayne, IN 46804

260-440-3241

The Legacy Law Office

www.troyergood.com

Types of Trusts

You should always consult an estate planning attorney to determine if you really need a Trust. If your attorney advises you to use a Trust, then there are a variety of Trusts that might be appropriate for your estate plan.

Testamentary vs. Inter Vivos

A Testamentary Trust is created in your Will and becomes effective when you die. An Inter Vivos, or Living, Trust is created during your lifetime, funded during your lifetime, and used to manage assets before your death as well as after.

Revocable vs. Irrevocable

A Revocable Trust means that you keep the power to change the Trust. You can modify any part of the Trust at any time or even completely revoke it if you choose. Upon death, most Trusts become irrevocable, making your wishes permanent at that time.

An Irrevocable Trust generally means that you cannot change or revoke the Trust. (Amendments can be made by the Trustee, but it is more difficult than amending a Revocable Trust). In some cases, an Irrevocable Trust is preferred for tax or Medicaid planning purposes.

Self-Declaration of Trust vs. Third-Party Trustee

A self-declaration of Trust names you as the Trustee of your own Trust. You would have total control over your Trust assets, and you would name a successor Trustee who would step in at your death or incapacity to administer the Trust.

If you want the management of the Trust property to be in the hands of another individual or professional during your lifetime, you can name a third-party Trustee.

How Can Troyer & Good Help Me?

Our estate planning attorneys have a combined experience of over 30 years. We can help you assess your needs and goals to determine if you need a Trust. If you could benefit from a Trust, our attorneys can create an agreement that is tailored to your needs.

We are dedicated to serving our clients. We believe this is best accomplished by listening closely to your goals and concerns and then explaining our legal analysis in a straightforward manner.

Schedule an appointment by calling 260-440-3241 or visiting our website.