

# An Overview of Trusts

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Although trusts have existed for hundreds of years - they trace their roots to sixteenth century England - they are sometimes misunderstood. They are not old-fashioned or out-of-date, and they are not only for the most affluent.

There are many types of trusts, and they can be complex. But the best way to think about a trust is simply this: A trust is a flexible and advantageous way for a person to leave his/her assets to future generations and simultaneously reap certain present benefits, if he or she so desires.

A trust is a right in property held by one party for the benefit of another. The person setting up the trust is called the grantor, trustor, or settlor; another party will hold the trust assets and is called the trustee. The property placed in the trust may be called by such names as the trust, trust assets, the trust fund, or the trust estate.

The trust contract establishes a fiduciary relationship under which the trustee agrees to manage and protect the trust property for the benefit of a third party, known as the beneficiary. The beneficiary can be a person or persons, or it can be an organization, such as a charity. The beneficiary receives benefits or income from the trust property, although the grantor and beneficiary sometimes can receive benefits at the same time. The trust assets are transferred to the beneficiary or remainderman upon the grantor's death or remain in further trust for continuing beneficiaries. Trusts are widely used to minimize estate, income and gift taxes, which can be extraordinarily costly.

Legal title to property passes to the trust once the grantor places property in the trust. The trustee assumes responsibility for the trust property and acts as its administrator on behalf of both the grantor and the beneficiary. A trustee can provide professional asset management services and can also handle the grantor's financial affairs if the grantor cannot do so due to accident or disability. The grantor's precise relationship to the trust is set forth in the trust agreement. The grantor may still hold the right to use and control the assets in the trust as well as any income those assets may generate.

Broadly, trusts fall into several categories, including living trusts and testamentary trusts, and revocable trusts, and irrevocable trusts.

As its name suggests, a living trust is set up while the grantor is still alive. A living trust may be used to ensure that the grantor's financial obligations to his or her family are met in the event that the grantor is unable to provide for them, perhaps due to illness. A testamentary trust, on the other hand, is a trust created by a will, and property is transferred to the trust only after the grantor dies.

A revocable trust offers a high level of flexibility in that it can be changed, or revoked entirely, at any time by the grantor, as the grantor retains sole control of the trust. A revocable trust offers no current income tax advantages to the grantor, but the grantor can make principal and income withdrawals at any time. Such a trust offers a good opportunity to use the unified tax credit available under federal estate tax laws.

By contrast, an irrevocable trust cannot be substantially altered or revoked, and the trustee is given sole control of the trust. By relinquishing the opportunity to change the provisions of the trust, however,

grantors can significantly reduce the taxes that will be owed by their beneficiaries when the assets are eventually passed on to them. This is accomplished by removing from the grantor's estate both the trust property and future income and appreciation that arise from the property. Some examples of irrevocable trusts include charitable trusts, dynasty trusts, and asset protection trusts.

As you can see, the specific type of trust an individual may establish will depend on a host of specific circumstances. But regardless of how simple or complex your clients' needs may be, we can help you find the right trust solution.

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