

11. Trust: An Introduction

Trusts are commonly used to handle property that belongs to children, particularly who are not yet age 18- the legal age for adulthood. Simply put, without a trust, property passing at your death to your children will go to them directly without supervision when they become 18. A court-supervised guardianship will administer your child's property until age 18. If you fail to plan adequately, the result can be chancy at best and a disaster at worst.

For example, consider the following story: A \$25,000 gift was left to the decedent's distant relative, a young nephew. Without trust provisions, the property was administered in a guardianship. On the boy's 18th birthday, he appeared at the office of the lawyer who had handled the guardianship. The boy told the lawyer that he wanted his money.

The lawyer, who was also a financial advisor, attempted to educate the boy about proper management and investment of his inheritance. Instead, the boy not only wanted the funds then and there, he also wanted the funds in cash and would not take a check. The lawyer and the boy marched down to the bank where the funds were held, the boy still insisting on cash. Even though he desired otherwise, the lawyer had no choice but pay the young man his inheritance of \$25,000.

In the meantime, the lawyer's receptionist had discovered from the nephew's friend that the nephew was going to purchase a car from this friend. After returning from the bank, the lawyer observed the nephew paying \$18,000 cash for a wrecked Ferrari, apparently with the hope that he could restore it to running condition. This waste of inheritance was certainly not what the aunt or uncle intended.

Fortunately, stories such as the above are unusual. In most instances, appropriate planning has been done and property is left in trust for children until they are older than age 18.

This article will give you a better understanding of trusts. It begins by first describing the technical relationship that is called a trust. It will then review other situations in which you might want to utilize a trust. Last, it will define some of the legal terms that are used in discussing trusts.

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What Is a Trust?

A trust is a legal relationship among a trustor, a trustee, and one or more beneficiaries. The trustor is the person who establishes the trust by transferring legal title (ownership) of specific assets to the trustee. The *trustee* is then the legal owner of the property and has the duty to manage the trust property for the benefit of the *beneficiary* named in the trust agreement or provision in a person's Will. The trustee must follow the instructions in the trust document. The trust beneficiary is entitled to the benefits of the trust and is usually an individual, but can be any other legal entity, such as a charitable institution.

Who Can Be a Trustee?

A trustee can be an individual (such as a friend or relative) or a corporation if it is authorized to conduct a trust business in Washington. Such corporations may be banks, independent trust companies, qualifying nonprofit corporations, or law firms that are professional service corporations. More than one person can be named to act as trustee, in which case the co-trustee normally must act by majority vote. Frequently, an individual and a corporation will be named together as co-trustees.

Almost any type of property can be transferred to a trust, including tangible personal property, stocks, bonds, real estate, contracts, life insurance policies proceeds limited partnership interests, and bank accounts.

Under What Situation Might You Want to Use a Trust?

Deciding on how-or whether-to use a trust should begin by thoughtfully considering your goals. Do you want to solve problems during your lifetime, or are you more concerned about the proper disposition of your property after your death?

Delegating the Details

For example, during your lifetime, you might place property in trust to avoid the burden of managing your assets and keeping financial records. In this way, the trustee will handle your investments and related record keeping and tax work, which will then leave you free to pursue your own career or other interests. If your property is being handled in such a trust, and then become legally incompetent, the trustee can continue to handle your financial affairs and to manage your assets. The benefit of your property will still belong to you in accordance with the trust agreement provisions.

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For the Financially Inexperienced

Likewise, if you (or a relative to whom you would transfer property) are not financially experienced or for some other reason are unable to manage investment assets properly, you can place the property in a trust. The trustee then has the responsibility to manage the trust assets properly. Also, if you are concerned about stock of a valuable family business or other family property being properly handled by a young family member, you might persuade the family member to place the property in trust for a number years. In this way you, or another acting as trustee, can control the property while the individual is young, by having the trust provide that the property will not be distributed from the trust until the individual is older.

Transfer of Property at Death

Trusts are often used to transfer property at death. You can create a trust for this purpose either during your lifetime or after death as part of your Will. For example, you

may want to create a trust for the benefit of your younger children. In this way, any property inherited by your children will be managed by a trustee until the children are old enough to handle the property by themselves. The trustee would typically be directed to protect the trust property and to provide benefits to your children as may be needed for their health, support, maintenance and education. Such trusts need not terminate when a child attains age 18, but may continue to an older age when the child may be more responsible and better suited to handle inherited wealth.

Avoiding Probate

Trusts created during your lifetime are often used to avoid probate and act as a substitute for your Will. In this situation, you must transfer your property to the trust during your lifetime. The trust provisions then direct the disposition of that property upon your death. Note, however, the any property not transferred to trust during your lifetime will likely be subject to a probate proceeding at your death, in order to determine where such property should go.

Using a trust to avoid probate proceedings also ensures privacy with respect to your assets and your beneficiaries. Trusts are not subject to public court proceedings when the trustor dies.

It is important to note that trusts used to avoid probate do not provide any estate tax or income tax advantages that cannot be obtained by using a Will. The same techniques for minimizing estate taxes and income taxes can be used in either a Will or such a trust.

Lastly, you may use a trust to provide certain charitable gifts in ways that provide tax advantages. The requirements for such trusts under current tax laws are very precise.

Legal Definitions

An “inter vivos trust” is a trust established during a person’s lifetime. While unwritten (oral) trusts are legally possible, an inter vivos trust is normally created by written agreement outlines specifically the duties and trustee. An inter vivos trust can be made revocable by the trustor (often called a “living trust”) or, alternatively, it can be made irrevocable when executed, which means that it cannot be changed or cancelled.

A “testamentary trust” is a trust established under the terms of a person’s Will. It does not take effect until the person dies and until the Will is admitted to probate. In the case of a testamentary trust, the terms and conditions specifying the duties and responsibilities of the trustee are contained in the Will itself.

In addition to specific trust provisions, a number of Washington statutes create duties, responsibilities, and authorities that apply to a trustee unless the trust agreement or Will state otherwise.