

## **WILLS AND TRUSTS and NAMING AN EXECUTOR**



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A **will** is a legal document that spells out how you want your affairs handled and assets distributed after you die. A trust is a fiduciary relationship in which a trustor gives a trustee the right to hold title to property or assets for the benefit of a third party.

What is the advantage of a trust over a will?

A **trust** offers several advantages over a will. First, a trust enables your heirs to avoid probate, whereas wills are required to go through probate. Probate is the process through which a court transfers ownership of your assets to the people designated in your will.

## **Informational Q&A**

### **Trusts**

#### **What are the Disadvantages of a Trust?**

- Costs. When a decedent passes with only a will in place, the decedent's estate is subject to probate. ...
- Record Keeping. It is essential to maintain detailed records of property transferred into and out of a trust. ...
- No Protection from Creditors.

#### **Does a trust override a will?**

- A will and a trust are separate legal documents that typically share a common goal of facilitating a unified estate plan. ... Since revocable trusts become operative before the will takes effect at death, **the trust takes precedence over the will**, when there are discrepancies between the two.

#### **Who needs a trust instead of a will?**

Anyone who is single and has assets titled in their sole name should consider a Revocable Living Trust. The two main reasons are to keep you and your assets out of a court-supervised guardianship and to allow your beneficiaries to avoid the costs and hassles of probate.

#### **How do trusts avoid taxes?**

They give up ownership of the property funded into it, so these assets are not included in the estate for estate tax purposes when the trust maker dies. Irrevocable trusts file their own tax returns, and they are **not subject** to **estate** taxes, because the trust itself is designed to live on after the trust maker dies.

#### **Should you put bank accounts in a trust?**

Putting a bank account into a trust is a smart option that will help your family avoid administering the account in a probate proceeding. Additionally, it will allow your successor trustee to access the account should you become incapacitated.

#### **What happens when you inherit money from a trust?**

If you inherit from a simple trust, you must report and pay taxes on the money. By definition, anything you receive from a simple trust is income

earned by it during that tax year. ... Any portion of the money that derives from the trust's capital gains is capital income, and this is taxable to the trust.

### **How much money do you need to set up a trust?**

As of 2019, attorney fees can range from \$1,000 to \$2,500 to set up a trust, depending upon the complexity of the document and where you live. You can also hire an online service provider to set up your trust. As of 2019, you can expect to pay about \$300 for an online trust.

### **How does a trust work after someone dies?**

How Do You Settle A Trust? The successor trustee is charged with settling a trust, which usually means bringing it to termination. Once the trustor dies, the successor trustee takes over, looks at all of the assets in the trust, and begins distributing them in accordance with the trust. No court action is required.

### **What assets should be placed in a trust?**

Aside from putting a house into a trust, there are other assets you should consider titling in the name of the trust. Usually, it is best to include all real estate, stocks, CDs, bank accounts, investments, insurance and other assets with titles.

### **Who owns the property in a trust?**

The trustee controls the assets and property held in a trust on behalf of the grantor and the trust beneficiaries. In a revocable trust, the grantor acts as a trustee and retains control of the assets during their lifetime, meaning they can make any changes at their discretion.

### **Is an inheritance considered income?**

Inheritances are not considered income for federal tax purposes, whether you inherit cash, investments or property. However, any subsequent earnings on the inherited assets are taxable, unless it comes from a tax-free source.

### **How does a beneficiary get money from a trust?**

There are three main ways for a beneficiary to receive an inheritance from a trust: Outright distributions. Staggered distributions. Discretionary distributions.

### **How long can a house stay in a trust after death?**

A trust can remain open for up to 21 years after the death of anyone living at the time the trust is created, but most trusts end when the trustor dies, and the assets are distributed immediately.

### **Is there a yearly fee for a trust?**

Generally speaking, annual trust fees run between 1-2 percent of the total value of assets administered under the trust. If a trust is not supervised by the probate court, there are really no restrictions or limitations on the compensation that can be paid to a trustee for his or her services.

### **Why a living trust is so expensive?**

Living trusts are much more expensive to set up and maintain than a will. ... In many instances, the trustor has failed to transfer all of his "probate assets" to his living trust. Consequently, when the trustor dies, this probate asset becomes subject to probate. His estate winds up in probate court anyway.

### **Can you sell a house that is in a trust?**

If you are wondering, "Can you sell a house that in a trust?" The short answer is yes, you typically can, unless the trust documents preclude the sale. But the process depends on the type of trust, whether the grantor is still living, and who is selling the home

### **Which states do not tax trust income?**

Currently, eight states — Alaska, Florida, Nevada, New Hampshire, South Dakota, Texas, Washington, and Wyoming — do not tax the income of nongrantor trusts. May 1, 2021

### **Who controls a trust?**

The Trustee

First, the basics. A trust is an arrangement in which one person, called the trustee, controls property for the benefit of another person, called the beneficiary. The person who creates the trust is called the settlor, grantor, or trustor.

### **Do you own property if it is in a trust?**

Legally, that means the trust, rather than you, owns the home. However, you can be the trustee of the property and have significant control over it and what happens to it after you die. Jul 6, 2021

## **What happens when someone dies with a trust?**

How Do You Settle A Trust? The successor trustee is charged with settling a trust, which usually means bringing it to termination. Once the trustor dies, the successor trustee takes over, looks at all of the assets in the trust, and begins distributing them in accordance with the trust. No court action is required.

## **What are the requirements to start a trust?**

The following elements are essential for the formation of a Charitable Trust:

- An Author or Settlor of the Trust.
- The Trustee.
- The Beneficiary.
- The Trust Property or the Subject Matter of the Trust.
- The objects of the Trust.

## **Who Cannot be a beneficiary of a trust?**

In trust law according to Section-9 of Indian Trust Act 1886 "Every person capable of holding property may be a beneficiary. A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

## **How many trustees are required for a trust?**

Two

Many Trust deeds will require a minimum number of trustees, usually at least two, acting at all times. A Trust deed may also include a requirement for at least one trustee to be independent (someone who does not have an interest in, and will not benefit from, the Trust). Jul 9, 2020

## **What a trustee Cannot do?**

The trustee cannot fail to carry out the wishes and intent of the settlor and cannot act in bad faith, fail to represent the best interests of the beneficiaries at all times during the existence of the trust and fail to follow the terms of the trust. A trustee cannot fail to carry out their duties. Sep 14, 2020

## How do you settle a trust after death?

Settling a trust after death

1. The procedure for settling a trust after death entails:
2. Step 1: Get death certificate copies.
3. Step 2: Inventory the assets in the estate.
4. Step 3: Work with a trust attorney to understand the grantor's distribution wishes, timelines, and fiduciary responsibilities.
5. Step 4: Asset appraisal.

Ask the attorney who drew up the Trust for assistance, if needed.

### Basic Information:

If the trust is a revocable trust—meaning the person who set up the trust can change it or revoke it at any time--the trust beneficiaries other than the settlor have very few rights. Because the settlor can change the trust at any time, he or she can also change the beneficiaries at any time. Often a trust is revocable until the settlor dies and then it becomes irrevocable. An irrevocable trust is a trust that cannot be changed except in rare cases by court order.

Beneficiaries of an irrevocable trust have rights to information about the trust and to make sure the trustee is acting properly. The scope of those rights depends on the type of beneficiary. Current beneficiaries are beneficiaries who are currently entitled to income from the trust. Remainder or contingent beneficiaries have an interest in the trust after the current beneficiaries' interest is over. For example, a wife may set up a trust that leaves income to her husband for life (the current beneficiary) and then the remainder of the property to her children (the remainder beneficiaries).

State law and the terms of the trust determine exactly what rights a beneficiary has, but following are five common rights given to beneficiaries of irrevocable trusts:

- Payment. Current beneficiaries have the right to distributions as set forth in the trust document.
- Right to information. Current and remainder beneficiaries have the right to be provided enough information about the trust and its administration to know how to enforce their rights.
- Right to an accounting. Current beneficiaries are entitled to an accounting. An accounting is a detailed report of all income, expenses, and distributions from the trust. Usually, trustees are required to

provide an accounting annually, but that may vary, depending on the terms of the trust. Beneficiaries may also be able to waive the accounting.

- Remove the trustee. Current and remainder beneficiaries have the right to petition the court for the removal of the trustee if they believe the trustee is not acting in their best interest. Trustees have an obligation to balance the needs of the current beneficiary with the needs of the remainder beneficiaries, which can be difficult to manage.
- End the trust. In some circumstances, if all the current and remainder beneficiaries agree, they can petition the court to end the trust. State laws vary on when this is allowed. Usually, the purpose of the trust must have been fulfilled or be impossible.

## **Wills**

### **Do all wills go through probate?**

There is no requirement that a will or property go through probate, but if the decedent owned property that is not arranged specifically to avoid probate, there is no way for the beneficiaries to obtain legal ownership without it. There are some exceptions to this.

### **What should you never put in your will?**

Types of Property You Can't Include When Making a Will

- Property in a living trust. One of the ways to avoid probate is to set up a living trust. ...
- Retirement plan proceeds, including money from a pension, IRA, or 401(k) ...
- Stocks and bonds held in beneficiary. ...
- Proceeds from a payable-on-death bank account.

### **How long after someone dies is the will read?**

In most cases, a will is probated and assets distributed within eight to twelve months from the time the will is filed with the court. Probating a will is a process with many steps, but with attention to detail it can be moved along. Because beneficiaries are paid last, the entire estate must be settled first.

The rights of a trust beneficiary depend on the type of trust and the type of beneficiary.

## **CHOSING AN EXECUTOR**

One of the many important decisions when making an estate plan is whom to trust to be the executor (of the will) of the deceased's estate. Usually, the executor is named in the last will and testament and is likely the surviving spouse, adult child, a trusted family member, or a trusted friend. Sometimes the executor is an attorney, bank officer, or other impartial agent.

The person named for this important role should be asked if they are willing to assume responsibility and if they understand what the duty entails and what they will be responsible for when the time comes.

The duty of executor can be a very **complicated and time-consuming role**, and no one should be "surprised" to learn they are the executor of an estate. The executor has a legal duty to act primarily for the benefit of another with duties involving good faith, trust, special confidence, and candor.

Many times, married couples just assume their spouse will be the executor of the estate, and that spouse might have no idea of the complexities and requirements, which can vary from state to state.

A person who manages money or property for the deceased must exercise a standard of care as imposed by law or contract with specific responsibilities. The administration of an estate generally requires a fair amount of time and energy. Often **compensation** is allowed, and a court or commissioner of accounts must approve the compensation, which is often a percentage of the assets handled.

Some other duties of an executor include:

### **For Wills:**

- Understand the rules of probate (the official proving and recording of the will as the authentic and valid last will and testament of the deceased).
- Know which asset types that do and do not pass through probate.

### **For Trusts:**

- Keep assets under control as a fiduciary, separate from individual, personal and business assets.
- Prepare a complete inventory of all assets in the estate (stocks, bonds, brokerage accounts, bank accounts, life insurance policies, real property, automobiles, and any other assets). Having a complete and accurate inventory of the assets enables the executor to properly manage the estate and satisfy all of the terms of the will.
- Open a separate fiduciary (estate) bank account at a bank that can provide you with the original canceled checks or statements with images of all canceled checks.



- Take possession of the assets of the deceased and inquire about safe deposit boxes and accounts they may have maintained.
- Make an online search for any unclaimed property in the name of the deceased.
- Close bank accounts and transfer funds in a separate account (create an estate account with a separate tax identification number).
- Follow the disbursements to heirs as instructed in the will. (Note: there may a will within the Trust documents
- Document all transactions and prepare to file income tax.

For more information on all the documents an estate plan might include, download MOAA's Estate Planning Guide.

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