

## Trusts

A trust is any arrangement whereby property is transferred to a trustee for the trustee to administer for the benefit of the beneficiary. Trusts are primarily used to transfer assets from you to your beneficiaries. There are many different types of trusts that are established for different purposes. A trust may be more than one type of trust. For example, you might establish a testamentary trust that is also a special needs trust.

### **The Trustee**

Every trust must have a trustee, someone who will manage the trust's assets. You may want to name a family member, a trusted advisor or a trusted friend. You should consider naming a successor trustee in case your first choice cannot serve, or you may want to name joint trustees to serve together. Financial institutions may serve as the trustee but only if a substantial amount of assets are placed in the trust. Many people name a family member or friend to serve as a joint trustee with a financial institution.

### **Creating a Trust**

It is essential that you have a lawyer familiar with trusts prepare the trust document for you. The trust must be carefully worded so that its purpose is carried out and it complies with other laws such as the tax laws and laws concerning public benefits such as Medicaid. You should carefully consider all the reasons for and against creating the trust before you decide to create it. Get advice from those experienced with that type of trust.

NOTE: A trust may be more than one type of trust.

### **Testamentary Trusts**

This is a trust established by a Will. Often, it is used to prevent a minor from directly inheriting property or in second marriage situations where a spouse wants assets to

be used for his or her surviving spouse, but intends for those assets eventually to pass to his or her own descendants. Sometimes, it is used to delay a beneficiary from receiving assets until he or she reaches a certain age. Finally, it might be used to appoint a trustee to manage assets on behalf of an adult who is unable to properly manage money.

## **Living Trusts**

Unlike a testamentary trust, "a living trust" is established while you are living. This type of trust is now being heavily marketed as a means of avoiding the probate of your assets after your death. A living trust is useful for some, but it is not the best tool for everyone.

Here are some things to keep in mind if you are considering a living trust:

- You must transfer your property from your own name to the trust in order for it to effectively avoid probate.
- Transfers to trusts may affect Medicaid eligibility.
- A Living Trust may be more expensive than a will.
- Never use a self-help kit to write your own living trust - have a lawyer prepare it for you.

Do not spend the money to have a living trust prepared and transfer your assets to the trust without carefully considering whether it is the right step for you. AARP recommends that if you think you need a living trust, talk with a lawyer who has experience in estate planning. You can read a helpful guide on Estate Planning by visiting AARP's website: [AARP's to-Do List for Estate Planning](#)

Beware of aggressive salespeople who pressure you to make up your mind quickly. Make sure you know all the facts and have gotten good advice before you make a decision about a living trust.

## **Standby Trusts**

A standby trust is a type of living trust. A trust can be established and all of your assets transferred into the trust immediately or it can be established as a standby trust ready to receive assets in the future.

## **Trusts Used in Estate Planning**

Estate Planning attorneys use several different types of trusts to provide substantial estate tax savings for their clients. These are used only when dealing with a large estate because smaller estates are not subject to estate tax.

### **Special Needs Trust**

The special needs trust allows money to be set aside for a disabled beneficiary without interfering with that person's eligibility for Medicaid, SSI or other public benefits. The trustee may only use the funds in the trust to provide those things that are not provided by the government benefits.

### **Revocable and Irrevocable Trusts**

With a revocable trust, you maintain the right to add and subtract assets as you wish. You also retain the right to change the terms of the trust or to revoke it entirely at any time. This flexibility allows you, for example, to change the beneficiaries, the ages at which they are to receive assets, the proportions of the trust fund they are to receive, and the trustees. Generally, revocable trusts, become irrevocable when the person creating the trust dies. When you transfer assets into an irrevocable trust, on the other hand, you cannot change your mind later and withdraw the assets. You also cannot change the terms of the trust. Thus, the irrevocable trust is not as flexible as the revocable trust. However, it may be necessary to create an irrevocable trust to accomplish certain purposes, such as tax savings.

### **Avoiding Probate or Guardianship**

You may be able to avoid the expense and delay of probate because assets that are held in trust at the time of your death are not subject to probate taxes and because your assets are immediately distributed according to the terms of the trust without having to go through the court probate process. However, depending upon the size and complexity of your estate, the probate process is not always that complicated in Virginia and the probate tax savings may not be worth the expense of creating the trust.

The trust provides for management of your assets should you become disabled, thereby avoiding guardianship and/or conservatorship. You can determine how your assets will be managed by giving written instructions in the trust. However, you may be able to accomplish the same results through a durable power of attorney at less

expense.

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