What is a Trust?

A trust is an agreement in which one party, known as the grantor, gives another party, the trustee, the right to hold title to property or assets for the benefit of a third party, the beneficiary. The term “grantor” can refer to an individual or a couple. Likewise, the term “trustee” can refer to one or more individuals. People create trusts to provide legal protection for their assets, and to make sure that those assets are distributed according to their wishes. Trusts are also used to avoid probate, to reduce paperwork, and in some cases avoid or reduce estate taxes.

The trustee agrees to accept, manage and protect assets delivered by the grantor; administer those assets according to the trust’s instructions; and distribute the trust income and principal to the beneficiaries identified in the trust.

The trustee is a fiduciary. As a fiduciary, the trustee must act with reasonable care in administering the trust and selecting trust investments; avoid any conflict of interest or self-dealing in holding, purchasing and selling trust assets; and diligently avoid breaching any of the trustee’s many duties to the settlor and the trust beneficiaries.

The trustee owes a duty of obedience to follow the trust terms, a duty of prudence and reasonableness in making investment and administrative decisions, a duty of objectivity, and a duty of transparency in providing trust information and accountings as prescribed in the trust agreement.

Trusts can be established for a number of reasons. Among them:

- To manage and control spending and investments to protect beneficiaries from poor judgment and waste;
- To avoid court-supervised probate of trust assets and be private;
- To protect trust assets from the beneficiaries’ creditors;
- To protect premarital assets from division between divorcing spouses;
- To set aside funds to support the settlor when incapacitated;
- To manage unique assets that are not easily divisible, e.g. vacation homes, pets, recreational vehicles, mineral interests, timber and commercial real estate;
- To manage closely held business assets for planned business succession;
- To hold life insurance policies, pay premiums and collect the tax-free proceeds to care for beneficiaries, fund closely held stock redemptions or purchases, and provide liquidity to the estate;
- To provide a vehicle for charitable gifting that can reduce income taxes and benefit the settlor, his or her spouse and their children;
- To provide tools for Medicaid and means-tested benefit eligibility for the settlor, a surviving spouse and disabled children;
- To provide structured income to a surviving spouse that protects trust assets for descendants if the spouse remarries; and
- To reduce income taxes or shelter assets from estate and transfer taxes.

Types of Trusts

There are many different types of trusts, but each fits into one or more of the following categories:

Living or Testamentary

A living trust, also known as an inter-vivos trust, is a written document in which the grantor's assets are provided as a trust for their use and benefit during their lifetime. These assets are transferred to their beneficiaries at the time of the grantor's death.

A testamentary trust, also known as a will trust, specifies how the assets of an individual are disbursed after the individual's death

Revocable or Irrevocable

A revocable trust can be changed or terminated by the grantor during his lifetime. An irrevocable trust, as the name implies, is one that the grantor cannot change once it's established, or one that becomes irrevocable upon the death of the grantor.

The most common choice is to use a **revocable living trust,** as part of your estate plan. It includes all your instructions for how you want your estate divided among your loved ones and how each person's share or interest in the trust is managed, administered and distributed. If you have minor children, the trust usually dictates who will make financial decisions for them and provide funds to cover, at a minimum, their education and health costs until they are adults.

There is a good reason that living trusts are easy to amend: As your children grow into adulthood, you often rethink your assumptions in light of actual life events. I recommend revisiting your estate plans at least every five years.