Trusts

What you need to know about trusts

Using a trust can be an excellent way to see that those you care about are well taken care of beyond your lifetime. Your estate planning attorney can help you decide which trusts, if any, are right for you.

What kinds of trusts are there?

An inter vivos (i.e., during life) trust is created during your lifetime. A Revocable Living Trust is an example of an *inter vivos* trust. A Revocable Living Trust is a probate avoidance tool (a way to circumvent the probate process). You sign a Trust Agreement and then transfer all of your assets into the name of the trust. When you pass away, all of your assets are in the Trust, nothing is in your estate, and there is no need to open a probate. Revocable Living Trusts should always be accompanied by a Pour-over Will that acts as a safety net in case you forget to transfer an asset into the Revocable Living Trust. If you own property out of the state or are concerned with privacy, you should consider using a Revocable Living Trust.

A **testamentary trust** is created upon your death by your Will. People with young children often create a Family Trust in their Will to provide for their children. The terms of a Family Trust can be customized to reflect your wishes. You can make a "pot" trust where all the assets are held together in one trust; or you can make separate shares for each of your children. The assets in the trust can be distributed at different ages, such as a third at age 25, 30 and 35. While the assets are in the trust they can be protected from creditor's claims.

A **Special Needs Trust** is one created for a child or adult with special needs. Carefully drafted, a Special Needs Trust can provide supplemental income for a person with special needs who may require governmental support.

A **Pet Trust** is one created to take care of your pet when you are gone. Probably the most famous pet trust is the one created by Leona Helmsley for her dog, Trouble. There are many things to consider when creating a trust for your pet. Professor Byers of the Texas Tech University School of Law has an excellent website on this topic. http://www.professorbeyer.com/Beyer/About.html. However, you should consult a professional with expertise in this area.

A **Credit Shelter Trust** (also called a **Bypass Trust**) is a tax planning tool used by married couples to provide creditor protection and control in addition to preserving the estate tax exemption amount of the first spouse to die.

Another way to preserve the estate tax exemption amount of the first spouse to die is by filing an estate tax return upon the death of the first spouse and electing to "port" the unused portion of the estate tax exemption to the surviving spouse. This is known as portability and the amount ported is known as the DSUE. Unlike the assets in the credit shelter trust which can grow during the life of the surviving spouse and still not be included in her estate when she passes away, the amount ported (DSUE) is fixed. Nor does portability have the benefits of creditor protection and control. And if the surviving spouse remarries and her second spouse dies, she loses the ported amount (DSUE) and takes that of her most recently deceased husband. Your attorney can help you decide whether you need a credit shelter trust.

How do I create a trust?

When you create a trust, you are the Trustor/Settlor. The person with whom you entrust your assets is the Trustee. The people who benefit from the trust are the Beneficiaries. Trusts are created by a legal document, the Trust Agreement, which outlines your specific goals. Its terms will govern the trust and speak for you after you are gone. The Trust Agreement is the roadmap that gives the Trustee specific instructions regarding the administration of the property in the trust.

How do I select a trustee?

The person who administers the trust is the Trustee. You, the Trustor, may appoint a professional or corporate trustee, yourself (for a trust during your life), your spouse, or a friend or family member to serve as Trustee. The Trustee has a fiduciary duty to follow the terms of the trust and act in the best interests of the beneficiaries of the trust.

How is a trust maintained?

The Trustee is charged with maintaining the trust assets in the best interest of the beneficiaries. Often professionals such as financial advisors, accountants and attorneys are engaged to assist the Trustee.

New trust laws were introduced in Washington in 2012 and amended in 2013. The Washington Trust Act governs trusts and the reporting required to beneficiaries. A few key requirements of this Act relate to notice requirements to the beneficiaries of irrevocable trusts. This is not a complete discussion of the updated requirements under the Washington Trust Act. Be sure to consult a professional with expertise in the new trust laws to advise you on your duties if you are acting as a Trustee.

How much does a trust cost?

The cost to set up a trust varies substantially depending on whether there is a standard trust document that suits your needs or whether you need something customized to your particular situation and wishes. Some attorneys will prepare the documents for a flat fee and others will charge according to their hourly rates.

The trustee may also be compensated. Rates for trustee compensation vary depending on the experience and duties of the trustee.

This pamphlet was prepared as a public service by the Washington State Bar Association. It contains general information and is not intended to apply to any specific situation. If you need legal advice or have questions about the application of the law in a particular matter, you should consult a lawyer.

Washington State Bar Association
1325 4th Ave., Ste. 600
Seattle, WA 98101-2539
800-945-WSBA • 206-443-WSBA
www.wsba.org