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No Need to Fear Trusts

by David Silver

Many people are confused or intimidated by trusts. While some trusts can be complicated, they don't always have to be that way. If you have ever given your phone to someone to take your picture, you basically created a trust – the person might have possession of your phone, but it is still your phone, the person knows that she is only supposed to use the phone to take a picture, and that person will return the phone to you or give it to someone else if you so request. This is a very useful and simplistic version of a trust.

A trust can be a very useful tool in managing your assets while you are alive and after your death. There are numerous different types of trusts that are used to accomplish different goals, such as avoiding probate, holding assets for a minor, preserving assets for an irresponsible individual or providing for a person with special needs without disqualifying that person for public benefits. Not everyone needs to have a trust as part of their estate plan, but they can be very useful and a basic understanding of trusts will help you determine if a trust(s) would be appropriate.

A trust is basically a set of rules and instructions about how certain assets should be used in the future. There are three main parties to a trust: the Grantor, the Trustee and the Beneficiary. The person(s) who creates the trust is called the "Grantor" (or sometimes the "Settlor"). The Grantor usually is also the one who puts assets into the trust, but others could put assets into the trust as well. Assets, such as money, stock, land, etc., can be placed in the trust when the trust is created and/or at anytime later, including after the Grantor's death.

The "Trustee" is the person(s) who is in charge of managing the trust assets and is responsible for distributing the trust assets in accordance with the trust's instructions. The Trustee also manages the trust assets, including deciding where to keep or invest the trust assets, maintaining and preserving the trust assets, preparing any required accountings and paying any expenses of the trust from the trust assets. A "Successor Trustee" is a person(s) who manages the trust after the initial Trustee dies or resigns. Almost anyone can be named as the Trustee, including a relative, a friend, a bank, an investment company or the Grantor. Your trusted banker or investment advisor probably has company rules that prevent them from personally acting as trustees, but their employers could be named. It is very important that you choose responsible and trustworthy people to serve as Trustee(s) and Successor Trustee(s).

The person(s) for whom the trust assets are used is the "Beneficiary," and a "Contingent

Beneficiary" is a person(s) who gets the remaining trust assets after the Beneficiary (usually after death). The Grantor and/or the Trustee could also be the Beneficiary for some trusts. The Beneficiary only has a right to the trust assets according to the rules and instructions within the trust.

Putting assets into a trust ("funding" a trust) depends upon the type of asset. If the trust requires the Trustee to give personal property, like a ring, to a Beneficiary when she turns 21, then this trust is funded by simply handing the ring to the Trustee. If the trust assets include land, then there needs to be a deed to the Trustee in her capacity as a trustee (i.e. "to Jane Doe, Trustee"). For investments, C.D.s, or bank accounts, the Trustee must open a new account with a bank or investment company in the name of the trust and then transfer or deposit the assets into this new account(s). The bank or investment company will require a tax ID number to open an account. If the trust is revocable by the Grantor or if it is something called a "Grantor's Trust," then the Grantor's social security number can be used as the tax ID number, otherwise the Trustee will have to obtain a new Tax ID number for the trust, which can be done online and takes about 5 minutes.

A Revocable Trust is a common tool used by estate planners to avoid probate fees and to make distribution of assets easier after death. If you live in North Carolina and own land or a time share in Florida, your heirs will have to probate your will in both NC and Florida at your death. However, if your Florida land or timeshare is titled to your Revocable Trust, then your successor Trustee would simply deed that land to whomever you designated. Also, while you may have designated your adult children as the beneficiaries of your investment accounts, the Revocable Trust could ensure that, if a child dies at or near the same time as you, then that child's share would go to the deceased child's kids and be held in the trust until these grandkids attain a certain age.

Trusts can often save you or your loved ones time, money and aggravation in the future, and can also offer you piece of mind that some goal will be accomplished after you have passed. While all trusts aren't necessarily expensive to create or manage, the more complex your trust, the more costly it will likely be to create. When determining if a trust is right for you, make sure that the benefits of having a trust clearly outweigh the cost of creation.

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