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Do You Need A Trust? 8 Important Goals A Trust Can Help You Achieve



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Has it been awhile since you reviewed your estate planning strategy? If so, it may require some updating based on [recent changes to laws](#) impacting your tax and retirement planning.

An estate plan can help you accomplish a number of important goals, including naming an individual or institution to act as your proxy in settling your estate and distributing your property following your death, transferring property to the people or organizations you designate in the most tax-efficient and expeditious manner, naming guardians for minor

children, documenting the type of care you prefer to receive should you become ill or incapacitated, and managing tax exposure, to name a few.

If you haven't engaged in estate planning in the past, the first step is to meet with an estate planning attorney who can help you draw up a will and other important legal documents. A will governs the distribution of your property upon your death. Other important documents include a durable power of attorney (POA), appointing an individual or entity you trust to act on your behalf in regard to financial and legal matters during your lifetime; a living will (also known as a healthcare proxy), enabling you to specify the kind of medical care you do or do not want to receive should you become ill or incapacitated. A living will also enables you to appoint an individual to make healthcare decisions on your behalf if you're unable to do so yourself. Your estate planning attorney can also help you determine if establishing a trust would be beneficial.

Will vs. trust – What's the difference?

While everyone needs a will, not everyone needs a trust. In general, a trust provides greater flexibility and control over how your property and assets are distributed and when. One of the primary purposes of forming a revocable living *trust* is that it avoids probate; the court-supervised process required to prove the validity of a deceased person's will is valid. This, in turn, can make it faster and easier for your named trustee(s) to distribute your assets to your heirs. This can be especially important if your heirs depend on your income to meet daily living expenses.

However, it's important to note that simply establishing a trust does not protect your assets. Any assets you want protected by the trust must be retitled in the name of the trust. Anything that is not titled to the trust when you die will generally have to go through probate. There are certain exceptions to this, including life insurance distributions and retirement plan assets that are distributed directly to the named beneficiary upon the owner's death, and certain accounts and property titled payable on death (POD) or transfer on death (TOD). Laws governing the ability to title property or accounts as POD and TOD vary from state to state.

Is a trust right for you?

There are many different types of trusts, each offering advantages and disadvantages, which you should discuss with your estate planning attorney before setting up. However, all trusts fall within two broad categories: revocable and irrevocable. A **revocable trust** allows you to retain control of all the assets in the trust, and “revoke” or change the terms of the trust at any time. An **irrevocable trust** cannot be changed or dissolved. When you transfer property into an irrevocable trust, you relinquish all ownership and control over the property (even though you may still be able to benefit from the property). Because the property is no longer yours and you can’t control it, it’s not included in your taxable estate, so you won’t have to pay estate taxes on the property.

Since the Tax Cuts and Jobs Act of 2017 (TCJA) doubled the estate tax exemption, which in 2020 is \$11.58 million for individuals and \$23.16 million for couples, fewer individuals and families have a need to establish an irrevocable trust for the purpose of reducing estate taxes. In fact, according to estimates from the [Tax Policy Center](#), the TCJA’s increased exemption level reduced the number of taxable estates from about 5,500 in 2017 to less than 2,000 in 2018. However, it’s important to remember that the increase in the estate tax exemption is scheduled to expire after 2025 (along with most other provisions of the new law). That makes it important to work closely with your tax and legal advisors to determine the best solution for your family’s needs and goals.

What can a trust help you achieve?

Below are eight ways a trust can help you achieve specific legacy planning goals.

- 1. Avoid probate – The probate process can take months, and often, a year or more to complete. It can be very expensive.** In some states, attorney and court fees can take up to 5% of an estate's value. A trust is designed to settle your estate in a timely and relatively inexpensive manner.
- 2. Maintain privacy and confidentiality – Probate** is a matter of public record. That means your will and other private financial and business information become part of the public record as soon as your estate is presented for probate. A trust, on the other hand, maintains privacy and confidentiality. It is only for the eyes of those involved – trustees and beneficiaries.
- 3. Protect beneficiaries** – A trust can provide beneficiaries protection from lawsuits, creditors, or divorce. Establishing an irrevocable trust means a future creditor or claimant

cannot satisfy a judgment against the assets held in that trust. A trust can also protect the interests of a minor child by setting guidelines for when distributions are made.

4. Provide for children with special needs – A special needs trust provides for the health care and personal needs of a minor child or adult with special needs. It also helps to ensure that eligibility for Medicare benefits is maintained.

5. Maximize flexibility – Because you dictate the terms of the trust, you can place restrictions on how trust assets are managed. If you're concerned that a beneficiary may not manage assets wisely, you can appoint an independent trustee to help make smart decisions on his or her behalf. You can also restrict how assets may be used. For example, the trust could stipulate that assets may only be used to support a beneficiary's lifestyle needs, such as the purchase of a home or car, or the payment of medical bills, but may not be distributed directly to the beneficiary.

6. Preserve family wealth – In many cases, divorce and remarriage can result in assets that were intended to remain in the family leaving the family. A trust can ensure your estate is preserved for grandchildren and even great grandchildren.

7. Promote family values – A trust can be a powerful tool for passing down family values relative to education, home ownership, land conservation, community service, religious beliefs, and more. For example, if charitable giving is an important family value, the trust could stipulate that heirs must donate a fixed percentage of assets each year to a charitable organization of their choosing.

8. Reduce family conflict – Unlike a will, challenging a trust is difficult and costly. Having a trust in place that clearly articulates your wishes for your beneficiaries and heirs reduces the potential for misunderstanding, making it more likely that all parties will embrace and respect your wishes.

Whether you have a trust in place or are thinking about establishing one, it's important to meet regularly with your legal, tax and financial advisors to ensure your strategy and estate planning documents not only reflect changing state and federal tax laws, but changes in your goals and circumstances. To learn more about estate and legacy planning, download our free guide: [Estate Planning Simplified](#).

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