Trusts[1]

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All people, regardless of financial status, will have an estate when they die. Generally, an estate is a person's net worth in the eyes of the law. Assets of an estate include bank accounts, home, vehicles, investments, licenses, social media accounts, businesses, life insurance policies, retirement accounts, and other items owned by the person. An estate may also include mortgages and other debts.

An estate plan is an organized manner to distribute one's assets and liabilities after the person dies and to provide instructions for end-of-life decision making. It often consists of several documents indicating how a person wants to distribute his or her estate, future operations of a business, and instructions for health care and end-of-life decision making. The documents commonly include:

- Last Will and Testament,
- Living Will,
- Healthcare Power of Attorney,
- Financial Power of Attorney, and
- Trust.

Wills are described in another fact sheet listed with other ABM Notes. It can be downloaded from the ABM web site.

What is a Trust?

A trust is a fiduciary relationship in which a trustee holds legal title to specific property under a fiduciary duty to manage, invest, safeguard, and administer the trust assets and income for the benefit of designated beneficiaries, who hold equitable title. Trusts can be arranged in many ways and can specify exactly how and when the assets pass to the beneficiaries. Regardless of the type of trust, all trusts are either "revocable" or "irrevocable".

Revocable trusts are those for which the grantor retains the power to modify, amend, or revoke the trust in part or in whole. This power is specifically reserved to the grantor in the trust instrument.

Irrevocable trusts are those for which the grantor may not make any changes to the terms of the trust after its execution and may not regain title to the trust property.

When does a trust take effect?

A "testamentary" trust is a trust created to take effect upon the grantor's death by including a gift in trust in the grantor's will. The split of title and the imposition of duties does not occur until the grantor dies, making it a testamentary trust. A precondition to the validity of a testamentary trust is for the grantor's will itself to be valid.

An "intervivos" trust (or living trust) is a trust that the grantor creates to take effect while the grantor is still alive. An intervivos trust can be for the benefit of the grantor as well as for others.

[1] The purpose of this fact sheet is for educational purposes only. Changes in the law may have occurred since publication. No statements should be considered as legal advice. People should consult with a licensed attorney about their individual cases.

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Moreover, a grantor can also be trustee of his or her own intervivos trust while still alive.

Who are the Parties to a Trust?
There are a number of people involved in a trust.

a. *Grantor* (or settlor) – the person who creates a trust by splitting title to property and imposing fiduciary duties.

b. *Trustee* – the person who holds legal title to the trust property. The trustee has all of the duties, responsibilities, and liabilities associated with property ownership, but receives none of the benefits of that ownership.

c. *Beneficiary* – the person who holds equitable title to the trust property. The beneficiary is entitled to enjoy the trust property, but typically has no control over the trustee or how the trustee manages the legal title to the property.

What are the purposes of a trust?

1. *Estate Tax Planning:* If a trust is properly constructed, the trust can maximize use of exemptions available from federal estate tax. Federal estate tax is currently imposed on estates exceeding $12.92 million per individual for 2023; however, that amount may decrease in 2026 to $5.6 million (adjusted for inflation). A trust can be a useful tool in reducing the value of the grantor's taxable estate, thereby potentially reducing, or eliminating estate tax liability.

2. *Minors*: Minors lack legal capacity to manage property, and they usually have insufficient maturity to do so as well. A trust permits the grantor to make a gift for the benefit of a minor without giving the minor direct control over the property or by including restrictions to limit a minor's access to the assets until a specified age.

3. *Special Needs:* A special needs trust can help transfer money or property to a beneficiary with a disability without jeopardizing that beneficiary's ability to receive Supplemental Security Income and Medicaid benefits. The trustee cannot give money directly to the disabled beneficiary, but they can use special needs trust funds to pay for common disability-related expenses, such as personal care attendants, out-of-pocket medical and dental expenses, and physical rehabilitation.

4. *Spendthrift*: Some individuals may be competent to manage property, but are prone to use it in an excessive and frivolous manner. By utilizing properly drafted spendthrift trust provisions, a grantor may protect the trust property from the beneficiary's own excesses, as well as from the beneficiary's creditors.

5. *Charitable trusts*: Charitable trusts must be considered to benefit the public, whether for the relief of poverty, the advancement of knowledge, education, or religion, the promotion of health, or the accomplishment of governmental purposes.

6. *Incentive trusts:* These are trusts with terms to induce positive or specific behavior in beneficiaries by specifying criteria that must be met for disbursement of funds. Examples include: a beneficiary must pass a drug or alcohol test to receive a distribution or that the beneficiary will receive matching funds from the trust equal to their own W-2 or 1099 from working for the prior year.

Summary
A trust is a fiduciary relationship in which a trustee holds legal title to specific property under a fiduciary duty to manage, invest, safeguard, and administer the trust assets and income for the benefit of designated beneficiaries, who hold equitable title. Trusts can be arranged in many ways and can specify exactly how and when the assets pass to the beneficiaries.

Trusts can be useful tools when developing and carrying out an estate plan. However, they can be complicated and laws vary significantly by state. People should seek professional counsel when considering a trust for their estates.