

What is a Trust?

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I often hear from prospective clients asking, “What is a Trust?” A trust essentially is an agreement between two or more people to hold assets (e.g., a house, bank account investment, etc.) for the benefit of someone else—for the benefit of a beneficiary. So, it is a document, and a legal document at that.

I like to use the analogy that you should think of a trust as a basket, and in most cases the trust is not working for you unless you actually place some of your assets into that “basket.” Estate planning attorneys call that “funding the trust.” Sometimes I meet with a prospective client who did planning previously but the trust is only partially or incompletely funded. The failure to properly fund the trust can have unintended consequences for you and your loved ones, such as probate upon your passing (a costly, public, and lengthy court process), increased taxes, unintended individuals inheriting assets, and other consequences.

People who choose to create trusts do so for different reasons and therefore, I customize and personalize my draft of each trust for each particular client. Some common reasons why an individual would create a trust include: to avoid probate; wipe out or minimize estate taxes; protect assets from the cost of long-term care; protect the assets from their children’s creditors, or divorce; or for special needs children and special needs planning.

There is a vast range of different types of trusts. For example, there are revocable trusts and irrevocable trusts. Most revocable trusts allow the creator (you) to retain control over the assets you put into your trust. An irrevocable trust, in contrast, surrenders some level of control for intended reasons, such as reducing taxes or protecting from the cost of long-term care.

As you can see, a lot goes into creating a trust and determining what type is appropriate for each person. Consult a qualified estate planning attorney so you have peace of mind that you have created a plan that accomplishes your goals.

Do you have a suggestion for a future article topic for Attorney Walecka? Reach out to him directly with a question or topic you think would be helpful to readers.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.