

What Is A Trust?

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Have you ever gone so far down the road of a discussion with someone that you feel embarrassed to admit that you are a little lost on how you arrived at a certain point in the discussion? Chances are that if you have ever met with an attorney, the answer is “YES!” The law is certainly its own language and trusts and estates is an extremely specific dialect within that language. When estate attorneys meet with clients and start formulating plans, there is often much discussion about trusts; but what is a trust, other than some abstract concept introduced by the attorney?



A trust is a relationship in which an individual (the “Grantor”) entrusts someone (the “Trustee”) to hold title to assets for the benefit of a party (the “Beneficiary”) in a manner that suits the Beneficiary’s best interests (acting in a “Fiduciary” capacity).

A trust instrument or agreement (often referred to simply as a “Trust”) is a document created by the Grantor that includes the blueprint, or the instructions, for how the trust is to be managed. Sometimes, the language of the Trust is specific in detailing how the Trust’s assets may be invested, specific circumstances in which distributions may be permissibly made from the trust for the Beneficiary, restrictions placed upon the Trustee, etc. Other Trusts include broad language, allowing the Trustee discretion in applying its judgment to some or all aspects of the Trust’s administration. Many Trust instruments fall into a middle ground, including certain firm rules while also permitting the use of the Trustee’s discretion.

Many people think of trusts as arrangements that are only to be set up for someone who is too young, immature, and/or too untrustworthy to manage certain assets, but the truth is that different Trusts may serve a variety of purposes, including (but not limited to):

- Tax planning
- Incapacity planning
- Probate avoidance
- Conflict minimization

- Asset management
- Creditor protection
- Business transitions
- Legacy preservation
- Freezing of estate values
- Special Needs Planning
- Charitable planning
- Maintenance of privacy
- Provision of anonymity

Regardless of their purposes, trusts may generally be grouped into two main categories: revocable and irrevocable.

Revocable trusts generally do not accomplish any lifetime tax planning and do not provide asset protection; their main purpose is to provide for ease of administration. A Grantor typically will establish a *revocable* trust to allow him/herself to maintain total control over the Trust during lifetime while also planning for a seamless transition of the management of his/her assets in the event of incapacity and the distribution of the estate and avoidance of probate following death. A Grantor is free to revoke or amend his/her revocable trust at any time as long as he/she has the mental capacity to do so.

Irrevocable trusts are today's hot topic, as they are often – but not always - used for significant wealth transfer purposes. With impending changes in the estate and gift tax laws coming in 2025, many people are considering making gifts to irrevocable trusts today to benefit their spouses and children while reducing the size of their taxable estates. Irrevocable trusts may generally not be modified after creation, so it is important that these trusts be carefully drafted and that their provisions are drafted with sufficient and appropriate flexibility to represent the Grantor's wishes while moving with the times.

How do you know if you need a trust? There is no one answer that is universally applicable. Whether you need a trust, the type of trust you need, the provisions to include, contributions to make to such trust, and the taxability of the trust are all important considerations to be discussed with your professional advisors.

If you have any questions or would like to discuss this further, please reach out to your client service team, call us at 404.264.1400, or visit us on the web at [HomrichBerg.com](https://www.HomrichBerg.com).

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