Estate Planning Guidance for Trusts

The appropriate trust depends on your goals, the assets involved, your need for continued control, your state of residence, the location of real estate, and the tax and creditor laws that may apply.
It is also important to clarify what is meant by "tax protection" or "asset protection." Avoiding probate, reducing estate taxes, changing income-tax treatment, protecting a beneficiary's inheritance from creditors, and planning for Heathcare and/or Medicaid are separate objectives. A trust that accomplishes one of these goals may not accomplish the others.

In many cases, an estate plan uses more than one type of trust.

1. Revocable living trust

A revocable living trust is created during your lifetime and can generally be amended or revoked while you have capacity. You may normally serve as the initial trustee and continue controlling the trust property.
Potential benefits:

- Avoids probate for assets properly transferred into the trust.
- Provides privacy because trust administration generally occurs outside the public probate process.
- Allows a successor trustee to manage trust assets during incapacity.
- Helps coordinate real estate located in more than one state.
- Permits continuing trusts for children or other beneficiaries after death.

Restrictions and limitations:

- The trust must be funded. Assets left outside the trust may still require probate.
- Beneficiary designations and joint ownership arrangements must be coordinated with the trust.
- A revocable trust generally does not protect your assets from your creditors.
- It does not protect assets from MaineCare or New Hampshire Medicaid eligibility or estate-recovery rules.
- It does not, by itself, reduce federal or State estate tax.
- Retirement accounts generally should not be transferred into the trust during life without specific tax advice.

Maine and New Hampshire treatment:
Both states generally make revocable trust property available to the settlor's creditors during life.
Maine follows 18-B M.R.S. §505, while New Hampshire follows RSA 564-B:5-505.
For 2026, the federal estate and gift tax basic exclusion is $15 million per individual. Maine separately imposes an estate tax and has a 2026 exclusion of $7.16 million, with rates above that amount ranging

from 8% to 12%. New Hampshire does not currently impose a separate estate tax for deaths occurring on or after January 1, 2005. These amounts and rules should be rechecked when the plan is prepared and again after major tax-law changes.

2. Testamentary, minor's, and "pot" trusts

A testamentary trust is created under a will and does not begin until death. A minor's trust holds a child's inheritance until specified ages or milestones. A pot trust holds property in one combined fund for several children, allowing the trustee to spend different amounts based on education, medical care, housing, disability, or other needs.
Potential benefits:

- Prevents a minor from receiving an inheritance outright.
- Allows distributions to be delayed beyond age 18.
- Permits a trusted individual or professional to manage the inheritance.
- A pot trust provides flexibility when children have different ages or needs.
- Can include creditor, divorce, addiction, or financial-management protections.

Restrictions and limitations:

- A testamentary trust does not avoid probate because it is created through the will.
- The client must select appropriate trustees, distribution standards, and termination ages.
- A pot trust may result in unequal distributions among children.
- Continuing trusts require recordkeeping, tax reporting, and ongoing trustee administration.
- Trust income retained rather than distributed may be taxed at compressed federal trust-income-tax rates.

These trusts are available in both Maine and New Hampshire, although the governing-law and trustee provisions should be selected deliberately.

3. Spendthrift or discretionary beneficiary trust

A spendthrift or discretionary trust is commonly used to protect an inheritance left for a child or other beneficiary. The beneficiary does not create or fund the trust; another person creates it for the beneficiary.
Potential benefits:

- May protect trust property from many beneficiary creditors before distribution.
- May provide protection in divorce, bankruptcy, litigation, addiction, or financial-exploitation situations.
- Allows the trustee to control the timing and purpose of distributions.
- Can preserve family assets across generations.

Restrictions and limitations:

- Protection is strongest while property remains in trust. Funds may become exposed after distribution.
- Certain creditors and claims may receive statutory exceptions.
- The beneficiary gives up direct control over the assets.
- Poor trustee selection can create family conflict or administrative problems.
- Mandatory withdrawal rights or fixed distributions may weaken protection.

Both Maine and New Hampshire recognize spendthrift and discretionary trusts for third-party beneficiaries. Maine's principal provisions are found in 18-B M.R.S. §§502–504. New Hampshire's provisions include RSA 564-B:5-502 through 5-504.

4. Special needs or supplemental needs trust

A special needs trust is intended to supplement, rather than replace, benefits received by a disabled beneficiary.
Potential benefits:

- May preserve eligibility for means-tested programs such as Medicaid or Supplemental Security Income.
- Can pay for therapies, equipment, transportation, travel, education, recreation, caregivers, and other supplemental needs.
- Allows a trustee to coordinate trust distributions with public benefits.

Restrictions and limitations:

- First-party and third-party special needs trusts are materially different.
- A first-party trust is funded with the disabled beneficiary's own property and generally requires Medicaid reimbursement at death.
- A third-party trust is funded by someone else and generally should never receive the beneficiary's own assets.
- Mandatory distributions or unrestricted withdrawal rights may disrupt benefits.
- A benefits specialist or experienced special-needs attorney may be needed.

The governing state, the beneficiary's residence, and the particular MaineCare or New Hampshire Medicaid programs involved must be reviewed before funding or making distributions.

5. MaineCare or New Hampshire Medicaid asset-protection trust

An irrevocable long-term-care trust may be considered when a client wants to protect a residence or other property from future long-term-care spend-down.

Potential benefits:

- A properly designed and timely funded trust may prevent transferred property from being treated as an available resource after the applicable look-back period.
- May allow a client to retain a carefully drafted right to occupy a residence or receive specified income.
- May preserve property for children or other beneficiaries.

Restrictions and limitations:

- MaineCare and New Hampshire Medicaid generally apply a 60-month look-back to transfers.
- This is not effective last-minute planning. Transfers during the look-back period may cause a disqualification or penalty period.
- The client normally must give up meaningful access to and control over trust principal.
- Retaining excessive rights may cause the trust property to remain available.
- The transfer may affect capital-gains treatment, basis adjustment at death, property-tax benefits, mortgage or refinancing rights, homeowner insurance, and the ability to sell or replace a residence.
- A transfer may also be challenged under fraudulent-transfer law.
- Estate-recovery rules must be separately analyzed.

Maine's estate-recovery statute can reach certain probate and nonprobate interests, including specified survivorship, life-estate, and living-trust interests. New Hampshire DHHS also maintains an estate-recovery program. Neither a revocable trust nor an ordinary irrevocable trust should be represented as providing automatic Medicaid protection.

6. Irrevocable life insurance trust

An irrevocable life insurance trust, or ILIT, owns or receives life insurance for designated beneficiaries. Potential benefits:

- May remove insurance proceeds from the insured's taxable estate if properly structured.
- Provides liquidity for taxes, expenses, or family needs.
- Protects and controls the proceeds for beneficiaries.
- May be especially relevant for a Maine resident whose estate could exceed Maine's lower estate-tax threshold.

Restrictions and limitations:

- The insured generally cannot retain ownership or prohibited control over the policy.
- Transferring an existing policy may trigger the federal three-year inclusion rule.
- Premium payments often require documented gifts and beneficiary notices.

- The trustee must administer the policy independently.
- The client cannot treat the trust-owned policy or cash value as a personal asset.
- Gift-tax returns or allocation of generation-skipping tax exemption may be necessary.

For New Hampshire residents, an ILIT is primarily driven by federal estate-tax and beneficiary-protection concerns because New Hampshire currently has no separate estate tax. Maine residents must consider both federal and Maine estate-tax exposure.

7. Credit-shelter, marital, and QTIP trusts

These trusts are generally used by married couples for estate-tax planning, surviving-spouse protection, and control over the ultimate beneficiaries.
Potential benefits:

- Can preserve the deceased spouse's assets for children or other remainder beneficiaries.
- May protect assets from a surviving spouse's later creditors or remarriage.
- Can use available federal or Maine estate-tax exclusions.
- A QTIP trust can provide for the surviving spouse while controlling where the remaining property passes.

Restrictions and limitations:

- The surviving spouse's access must comply with the trust and tax rules.
- Separate trusts require administration, accounting, and tax reporting.
- Tax elections and portability decisions must be made after death within applicable deadlines.
- Overly rigid drafting may create unnecessary restrictions if the estate is well below relevant tax thresholds.

Maine planning may require a separate Maine QTIP or credit-shelter analysis because Maine's exclusion is lower than the federal exclusion. New Hampshire does not currently impose a separate state estate tax, so planning is generally driven by the federal tax and the family's nontax objectives.

8. Self-settled asset-protection trust

A self-settled trust is one that a client funds while also remaining a potential beneficiary. Maine and New Hampshire differ significantly in this area.

Maine:
Under 18-B M.R.S. §505, a creditor of the settlor may generally reach the maximum amount that can be distributed to or for the settlor. Maine does not provide the same broad self-settled spendthrift protection available under New Hampshire law. Merely labeling a Maine trust "irrevocable" does not make it creditor-proof.

New Hampshire:
RSA 564-B:5-505A can protect a settlor's interest in an irrevocable trust containing a valid spendthrift provision, subject to detailed statutory requirements and limitations. The statute includes a limitations period generally based on the later of four years after the transfer or, for an existing creditor, one year after the creditor discovered or reasonably should have discovered the transfer.

This protection is not absolute. Fraudulent-transfer law, federal bankruptcy law, governmental claims, child-support obligations, basic-alimony claims, and other statutory exceptions may apply. Property may also become exposed once distributed. A New Hampshire asset-protection trust is not automatically a Medicaid, income-tax, or estate-tax shelter.

9. Charitable and other advanced tax-planning trusts

Charitable remainder trusts, charitable lead trusts, qualified personal residence trusts, grantor retained annuity trusts, dynasty trusts, and generation-skipping trusts may be appropriate for clients with significant charitable, tax, business-succession, or multigenerational planning goals.
Potential benefits may include:

- Charitable deductions.
- Retained income streams.
- Removal of future appreciation from the taxable estate.
- Long-term control and protection of family wealth.
- Coordinated business or real-estate succession.

Restrictions and limitations:

- These trusts are normally irrevocable.
- Technical tax requirements and valuation rules apply.
- The client may lose access to the transferred property.
- Appraisals, tax returns, annual administration, and professional trustees may be required.
- Tax benefits can be lost if the trust is not administered exactly as required.

These strategies require coordinated estate-planning, tax, and financial advice.
Important practical considerations
Before selecting any trust, we should review:

- Your primary goals and which risks you are actually trying to address.
- The location and ownership of all real estate.
- Your approximate net worth, including life insurance and expected inheritances.
- Existing beneficiary designations and jointly owned property.
- Your health and anticipated long-term-care needs.

- Your willingness to give up control or access.
- The proposed trustee and that person's ability to administer the trust.
- Income-tax, gift-tax, estate-tax, and basis consequences.
- Property-tax exemptions, mortgage terms, and insurance requirements.
- Whether family members have disabilities, creditor problems, addiction concerns, or divorce risk.

The best plan may combine a revocable living trust with one or more continuing beneficiary trusts, rather than requiring you to choose only one trust. After reviewing your assets, residence, family circumstances, and objectives, I can recommend which provisions are appropriate and which would add unnecessary expense or restrictions.