

Lindstrom Estate & Trust

UNDERSTANDING TRUSTS

TRUSTS

What is a Trust?

A Trust is a private agreement between the Trustor/Grantor (person creating the Trust) and the Trustee (the person responsible for administration of the Trust). As with Wills, there are many types of trusts created for a variety of different reasons (such as protecting assets for a child or disabled person, to plan for estate taxes, or to avoid probate). The most common type of Trust that is created and that people are familiar with is sometimes referred to as a Living Trust or a Revocable Living Trust ("Revocable Trust"). A Revocable Trust is a private agreement between you, the Trustor, and a Trustee. During your lifetime, provided you are not incapacitated, you can be your own Trustee. You, as the Trustor, retain the right to alter, amend or the revoke the Trust at any time. Your named Successor Trustee takes over upon a period of disability or death.

Once the Trust document is created, only part of the process is complete. You need to "fund" the Trust or place your assets into the name of the Trust so that they are controlled by the Trust Agreement. If the Trust is not funded it does not accomplish anything. (Note: There are certain assets that a person does not want to retitle into the name of the Trust in that it can create negative tax consequences - this generally applies to various retirement accounts.) Once created, the Trustee handles administration of the Trust and handles payment of expenses and distribution of assets upon the Trustor's death. Although a Trust will generally avoid the need for a Probate, it is generally advisable to also have a Will. The Will created is referred to as a Pour-Over Will and is a "just-in-case" type of document that is prepared in the event an asset does not get transferred to the Trust or an unknown asset (i.e. potential claim or savings bond) exists that had been forgotten.

Why should I have a Revocable/Living Trust?

The main reasons to prepare a Revocable Trust are Probate avoidance, simplifying administration of the estate, and privacy. For the most part, these concerns are not always as great as generally thought. First, Probate is not always a tremendously lengthy or overly burdensome process subject to many legal challenges. If a person wants to challenge a document they can just as easily challenge a Trust as they could a Will in probate. Such challenges are not common or rarely successful especially considering the signature and witness requirements to ensure validity. Though there are many reasons to create a Trust, all of which can be appropriate, there is one more common situation that can do a lot to save your family and loved ones much undue hassle and expense. That is the case where the Trustor owns real estate in multiple states (i.e. a home in MN, a winter home in FL, and a cabin in WI.). Without a trust, such individual's estate may be the subject of three separate Probate proceedings.

Does a Revocable Trust save my estate from Estate Taxes?

The short answer is no. A Revocable Trust (Living Trust) does nothing more to protect your estate against estate taxes than a Will. However, just as a Will can do, a Revocable Trust can be drafted in such a way as to minimize or eliminate estate taxes under certain circumstances.

Who should I name as Trustee of my Revocable Trust?

If you are still in a position and situation to handle your own affairs, typically you would be named the initial Trustee of your own Trust. Your Trust would also name successor Trustees, to administer the Trust, in the event of disability or death. Such successors would typically be a trusted family member(s). In addition, a financial institution (with Trust powers) would be named as a back-up successor in the event the first named individual(s) were, due to some event, unable to handle the administration.

How do my assets get placed into my Trust?

This can either be handled by you alone or with the assistance of your attorney. You will receive a guide letter setting forth the procedures required to transfer assets into the name of your Trust. However, some of these procedures are best handled with the assistance of legal counsel in that such transfers might require preparation and filing of real-estate deeds, stock transfers, and preparation of a Bill of Sale to get tangible personal property into the name of the Trust.

What do I do once my Trust is completed and funded?

Generally, you should be reviewing your estate plan every 3-5 years (sooner if there is a life changing event such as a death of a family member, death or disability of a named person such as a Trustee, or a substantial change in net worth that may necessitate further tax planning). Also, as you acquire additional assets or should you change banks, for example, you want to ensure that such assets are titled in the name of the Trust.