



DO I NEED A TRUST?



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Planning for the future can feel intimidating, frustrating, and uncomfortable. But proper estate planning can protect your family's financial future and put your mind at ease that your wishes are being respected. You've probably heard about setting up a trust but aren't sure whether you need one or how it would benefit you. The fact is that a trust can be an invaluable estate planning tool if you set it up and use it correctly. Here is what you need to know about trusts and their many benefits.

What is a Trust?

A trust is a legal arrangement that creates a "container" to hold assets, like real estate or money, to be managed by a third party, called a Trustee. The person creating and funding the trust is referred to as the "Grantor," and the "Beneficiary" is someone who eventually receives some or all of the assets in the trust.

Do I Need a Trust? 10 Benefits of Having a Trust

In the past, few people considered creating a trust unless they had substantial assets to protect. However, this is no longer the case. Do you need a trust? The simple answer for many people today is, yes. Here are some of the many benefits of having a trust.

1. Avoid Probate Court

One of the biggest reasons to include a trust in your estate plan is that it can prevent your loved ones from having to deal with the probate court. Probate is the legal process your estate goes through after you die. It's a court-supervised proceeding in which the Will is authenticated, the named Executor locates and assesses assets and debts, taxes get paid, and the remaining estate gets distributed to heirs.

Probate can be costly and time-consuming, which is why you want to avoid it if possible. Fortunately, assets held in a trust can bypass the probate process, which saves your beneficiaries time, money, and stress.

2. Reduce Estate Taxes

Another benefit of trusts is that they can help your beneficiaries reduce or eliminate estate taxes. In California, there is currently no state-level estate tax. But the federal estate tax goes into effect for estates valued at \$12.92 million (2023).

When you transfer assets into a trust, you can reduce your overall taxable estate. In short, trusts are an excellent tax planning vehicle for larger estates.

3. Place Conditions on Distributions

Some people don't want to "rule from the grave," but there's a lot to be said for not entrusting large amounts of money to loved ones who may not be responsible or mature enough to handle it. A trust allows you to place various conditions on distribution after your death, so a beneficiary doesn't receive a large payout all at once.

For example, you can state that a beneficiary will only be entitled to the income from their assets until they reach a certain age, and then they can withdraw just a portion (say 30%) once they reach age 30 or an age you choose. You can even go further and set up other milestones or provide incentives to your beneficiaries to give them some financial stability or encourage other behavior.

Some examples include:

- **Educational investments** — You can tie distributions to match a beneficiary's college savings plan or designate a certain amount to help with education.
- **Other incentives** — You can incentivize loved ones to participate in charitable work or designate money to pay for family reunion trips to encourage lasting bonds.
- **Tied to milestones** — You can tie distributions to milestones like age, earning a degree, getting married, or buying a first home.

You'll want to be cautious with some of these conditions. Depending on your relationship with the beneficiaries and your motives, you wouldn't want them taking actions (like getting married) only to get an inheritance.

4. Get Creditor Protection

Trusts can provide some protection from creditors once they become irrevocable. For example, if you are in a business with a high risk for liability, it might make sense to have

funds in a certain type of trust that would be sheltered from a lawsuit. You will want to consult with your attorney about how your state's laws impact your situation and particular risks.

5. Designate Complex Beneficiaries

If you have many beneficiaries and would like to designate distributions in different proportions or scenarios, then a trust is an ideal solution. For example, you might have four children but not want your assets divided equally among them for some reason. Or, if one child passes away, you may wish for their share to go to a charity instead of being divided among the other children. You can set up different distribution scenarios for each child if you wish, also.

6. Provide for Minor Children

Trusts are essential when minor children are involved because they will require a legal guardian who will also be in charge of funds. The trust can be specific about how funds can be used to care for your children so no one can waste or misuse them. If you left those funds directly to the minor, a guardian would be able to spend them frivolously and wouldn't have to account for their actions.

7. Provide for Children with Special Needs

If you have children with special needs, whether they are minors or not, you will want to create a trust that addresses the long-term care and financial assistance they will need after you are gone.

8. Provide for Grandchildren

If you wish to leave assets to your grandchildren after you are gone but don't trust the parents to set aside money according to your wishes, you can create a trust for your grandchildren. By leaving money outright to the parents, there are no guarantees about what will happen to it.

9. Safeguard Against Fraud

With just a Will or "Pay on Death" designation on financial accounts, it's all too easy for someone to take advantage of a vulnerable senior by having the beneficiary changed. It's

not uncommon for people in hospice or nursing care to be coerced by unscrupulous caregivers into signing a form that changes the beneficiary from a loved one to themselves.

Updating a beneficiary on a trust is much more involved, however, so it requires the assistance of an attorney. If the grantor is not of sound mind or appears to be under duress, this type of fraud can be stopped in its tracks.

10. Avoid Costly Guardianship

While no one wants to think about a time when they may no longer be able to make their own decisions, this happens all too often. The last thing you want is for family members to have to file for guardianship in your state's court when you become incapacitated. Instead, you can specify who will become the successor trustee in the worst-case scenario. This ensures your wishes will be respected and assets aren't wasted on a guardianship battle.

Different Types of Trusts

Trusts are highly versatile legal documents that allow you to create customized languages to express your wishes and achieve your goals. There are several different types of trusts you can choose to create:

Revocable Trust

Also referred to as living trusts, revocable trusts are created during the grantor's lifetime. As long as the grantor has the mental and physical capacity to do so, they can revoke or change the trust at any time.

Irrevocable Trust

Just like it sounds, an irrevocable trust can't be changed once it's established. Once you name a beneficiary and put assets into the trust, it's a permanent arrangement. However, this type of trust offers the most protection from estate taxes, creditors, bankruptcy, and potential lawsuits.

Testamentary Trust

A testamentary trust is one that is created through your last will and testament. The trust isn't activated until you pass away. Your Will can give instructions as to how the trust should be created, distributed, and managed. However, a testamentary trust must go through probate, so it becomes part of the public record and is subject to additional costs and delays.

Special Needs Trust

A special needs trust can provide income to a disabled loved one without disqualifying them from government benefits, like Social Security Disability Income. The trustee, not the special needs beneficiary, controls the funds, so you will want to choose this person wisely.

Medicaid Planning Trust

This is a type of irrevocable trust that is meant to protect assets when the grantor requires Medicaid eligibility. The trust will need to be established at least 60 months prior to applying for benefits and must meet certain other requirements to safeguard assets.

Charitable Trust

A charitable trust is one way to donate money to the charity of your choice in a tax-efficient manner. Because assets placed in the trust aren't considered personal, they aren't subject to estate taxes. There are several different types of charitable trusts you can establish depending on your goals.

Bypass Trust

Many married couples choose to create a bypass trust, which allows one spouse to leave assets to the other's estate tax-free. When the first spouse passes away, the assets in the bypass trust are split in two, some going into an irrevocable family trust and the rest into a revocable marital trust. When the surviving spouse passes away, their assets go to the beneficiaries.

Do I Need a Trust If I Have a Will?

It's helpful to have a trust even if you have a Will, depending on your financial and legal needs. A Will names your beneficiaries and how assets will be distributed. You can also specify your burial wishes in your last will and testament.

Can't I Just Name Beneficiaries on My Financial Accounts?

If you have named beneficiaries on your financial accounts, this is a good first step. But it's not always enough of an assurance that the assets will end up in the hands of the people you want.

Making an account "Payable on Death" to a minor or special needs child actually puts the control in the hands of the guardian. Also, leaving a lump sum of money to a young adult isn't always the best idea. By setting up a trust, you have more control over how the money gets disbursed and spent.

How to Create and Use a Trust

Creating a trust isn't something you want to do on your own. You might be able to find a do-it-yourself form on some questionable website, but this isn't going to give you the results and benefits you need. In fact, a trust created incorrectly could make you vulnerable to legal challenges, eliminating the time and cost savings it was meant to provide.

If you're thinking about creating a trust for any reason (you should), speak with an experienced estate planning attorney who will ask the right questions. Your attorney will create a trust that is personalized to match your needs, goals, and specific wishes.

Naming Your Trust

Naming your trust is relatively simple but still important. Most people name their trust something logical, including the family name. It should be simple enough to remember because you will need the information when retitling all of your assets. You can include the date the trust was created in the name, but this isn't necessary.

What to Add to a Trust

Certain assets should be added to your trust to provide the financial protection and benefits you need. To do this, you will retitle these assets with the Trust as the owner. Some of the assets you'll want to add to your trust include:

- Homes and other types of real estate
- Bank accounts, like checking, savings, and money market accounts
- Retirement accounts, naming the Trust as the beneficiary
- Stocks and bonds held in certificate form
- Brokerage accounts and non-retirement investments should be retitled in the name of the Trust
- Non-qualified annuities
- Business interests
- Large assets
- Tangible property like vehicles, collectibles, antiques, and jewelry

Keeping Your Trust Relevant

Most people create a revocable trust or living trust. This is a trust you can dissolve at any time or make changes to over the years. It's important that you continue to revisit your estate planning documents regularly so they remain relevant to your wishes and current situation. If your family structure changes or you obtain additional assets, you may wish to make some adjustments. Your estate planning attorney can help.

Contact an Experienced Estate Planning Attorney in La Mesa, CA

Estate planning is important for everyone — not just the wealthy. If you haven't created a trust and proper Will yet, Garmo & Garmo can provide the qualified assistance you need. Our La Mesa estate planning attorneys want to learn about your situation and wishes, so we can craft a customized trust and estate plan that protects you and your loved ones. Please call us at (619) 441-2500 or reach out to us online to schedule a free consultation.