



An Elder and Special Needs Law Firm

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Do I Need a Trust?

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“Do I need a trust?”

This is a common question posed by clients, especially regarding a revocable trust. Clients are often surprised to learn that few persons *need* a trust in their estate plan. Circumstances do arise that require a trust, but often clients asking this question do not need a trust. The client may *want* a trust due to convenience or privacy, but the trust is typically not a requirement to meet their goals. Our goal at the Stinson Law Firm is to recommend a trust only when *needed* and guide a client to make an informed decision about creating a trust when one is *wanted*.

What is a Trust?

A simple illustration is to analogize a trust to a bucket. The bucket can hold a variety of assets—bank accounts, real estate, stocks, bonds, etc. The Grantor, or Settlor, creates the Trust by writing a set of instructions (the trust or trust document). The Grantor appoints a Trustee who is in charge of the trust and follows instructions provided by the Grantor in the trust document. The Trustee will invest trust assets and make distributions of trust assets to the Beneficiary according to those instructions.

What are the types of Trusts?

Trusts can be classified based on what they can or cannot do, how they are created, the purpose for which they are created, who created them, and more. For example, a trust might be revocable (the Grantor may dispense with the Trust prior to its termination date) or irrevocable (the Trust is permanently in place until its termination date). A Trust may also be referred to as an inter vivos or living trust (created during the life of the Grantor) or testamentary (created at the death of the Grantor). A special needs trust is created to supplement public assistance and pay for the special needs of a disabled individual. A Grantor Trust is one in which trust income is taxed to the Grantor.

To make matters more confusing, some entities market their trust document under their own proprietary “trademark.” Consequently, it is usually a good idea to seek professional assistance

to help determine whether the trust provisions an individual requires are within the trust document.

When Might an Individual *Need* a Trust?

At times, an individual's situation dictates the need for a Trust. The following are examples of when a Trust is typically needed:

- The individual has assets in excess of the **Federal estate tax** exemption equivalent (\$5.49 million in 2017).
- The individual has **special needs** and desires to protect a financial windfall, while retaining valuable and needed public benefits assistance.
- The individual wants to **preserve a legacy** for the individual's spouse, children, or other beneficiaries. This could be a particular asset (farm or business) or a sum of money that the individual wants to protect from the costs of long-term care.
- The individual wants to leave funds to a beneficiary in need of supports. This could be a **special needs child**, a **minor**, a beneficiary having **marital difficulties**, a beneficiary with significant **debt**, or a beneficiary with **addiction** issues.

When Might an Individual *Want* a Trust?

Even though the individual may not *need* a trust, the individual may *want* a trust as a matter of convenience or privacy. Some examples of when an individual may *want* a Trust follow.

- The individual desires to avoid **probate** (going to Court to administer the individual's final affairs). The purpose of probate avoidance could be to create barriers to keep excluded family members from interfering with the individual's desired estate plan or to keep a problem creditor at bay. It is important to note that many individuals believe avoiding probate precludes the need for the family to hire an attorney at their death and reduces costs. While it is true that costs in administering a trust at the death of the individual are typically cheaper than administering a probate estate, the individual will have a significant investment in establishing the trust. An attorney is also likely to be needed to counsel the Trustee in the final administration of the trust. Another issue to note with probate avoidance is that there are other methods to avoid probate. An attorney can help review the advantages and disadvantages of a trust as compared to other probate avoidance methods.
- The individual desires to keep their affairs **private**. If an estate is opened with a Court, the individual's final affairs will be public record. A trust allows the individual's final affairs to be administered in a more private forum.
- The individual may seek to **ease the burden of administration** by establishing a trust. Settling the individual's final affairs through a trust typically occurs around a conference table instead of in a Court. Also, since most assets are in or distributed to a "single receptacle" it is easier for the individual's family to gather and distribute the individual's assets.

- For individuals with multiple accounts with beneficiary designations, a trust may be a good item to have in the estate plan as a “**receptacle**” for these items. Prior to death, if the individual wants to change a beneficiary, he or she simply changes the beneficiary of the trust, instead of updating multiple beneficiary designation forms.
- An individual may want to add a level of **control** over a beneficiary’s inheritance. The individual may want the beneficiary to attain certain milestones to “earn” the beneficiary’s inheritance such as a certain education level or the illustration of an ability to understand and manage an investment portfolio.

How Does One Establish a Trust?

First, an individual must determine the terms the trust should contain. This will depend on the purpose of the trust. Then, a Trustee must be chosen. Once this information is known, the legal trust document is created. An attorney can assist you in determining the trust terms necessary to meet the purpose of the trust and can craft the language of the trust document to meet the your goals.

Who May Serve as Trustee?

For revocable trusts, most individuals will serve as initial Trustee of their trust. Other trusts, such as a special needs trust or irrevocable trust designed to protect assets from long-term care, may prohibit or frown upon the individual serving as Trustee. In either case, a third party will eventually serve as Trustee. This person or third party should be trusted and be an individual who handles their own financial affairs well. This could be another family member or other unrelated individual. A poor reason to choose a Trustee, though, is simply based on the person being the “oldest child” or the child with no other role in the estate plan. If the child has his or her own financial issues, he or she is probably ill equipped to successfully manage the trust. Consequently, some individuals will choose a professional fiduciary or financial institution to serve as Trustee. An attorney can assist you in choosing the most appropriate person or entity to serve as Trustee.

For some individuals, circumstances will arise requiring a trust to be added to their estate plan. In addition, many individuals will want to include a trust in their estate plan for convenience and privacy. If you would like to review whether a trust should be part of your estate plan, call us. The goal at the Stinson Law Firm is to secure your present and future and leave you with the peace of mind you deserve. Contact us today.

**Certified as an Elder Law Attorney by the National Elder Law Foundation*

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