



Estate Planning Terms and Types of Trusts



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ESTATE PLANNING TERMS

Custodian for Minors Account

A custodian account can be an excellent way to make a financial gift to a child — whether it's to a maker's own child(ren), or those of a relative, or a friend. This type of account, established under the Uniform Gifts to Minors Act (UGMA) or the Uniform Transfers to Minors Act (UTMA), is set up by an adult for the benefit of a minor.

DNR Advance Directive or Do Not Resuscitate Directive

An advance, written directive made by a maker not to have cardiopulmonary resuscitation (CPR) or other advanced life support treatment performed in an emergency situation to restore the heart and lungs when the maker's heart or breathing has stopped. This differs from a DNR order, which is a written order issued by a physician.

Durable or Springing Financial Power of Attorney

A durable financial power of attorney (POA) is a written directive made by a maker allowing a trusted individual(s) to manage the maker's finances in the event the maker becomes incapacitated and is unable to make those decisions. The maker can grant as much or as little power as deemed appropriate. A durable financial POA means the power is always there even when the maker holds capacity, as it goes into effect the moment it is signed, *as opposed to* a springing financial POA, which goes into effect or "springs" only when the maker becomes incapacitated as certified by physician(s) or a judicial determination. A financial POA may be withdrawn or terminated by the maker in writing but automatically extinguishes upon death. A durable POA *may* also contain health care directives.

Fiduciary

A person to whom property or power is entrusted for the benefit of another. The fiduciary owes the maker the duties of good faith and trust.

Joint Tenancy With Rights of Survivorship

A written document which, if properly designated, allows the deceased's share of the jointly owned property to automatically pass to the other joint tenant(s) *without* the need for probate.

Living Will, a.k.a. Advance Directive

A written instrument which outlines a maker's wishes about medical treatments that sustain or prolong life while the maker is terminally ill, in a coma, or a persistent vegetative state, and can no longer communicate. It is a written instruction which allows the maker to specifically state the maker's own end-of-life goals, *as opposed to* those decisions which may be made on the maker's behalf by his or her health care surrogate.

Medical Health Care Directive, a.k.a. Medical Power of Attorney, a.k.a. Medical Proxy

A written, advance directive which allows the maker to select a trusted person (surrogate or health care attorney-in-fact) to make medical decisions about the maker's medical care if the maker is medically declared by a physician to be temporarily or permanently unable to communicate and make medical decisions on behalf of the maker.



Payable on Death Account (POD) Designation, a.k.a. Totten Trust

On a payable on death account designation, the maker names a beneficiary(ies) who get the account when the maker passes. These accounts should be *carefully* coordinated with the remainder of the maker's estate plan and should be used with caution as they can backfire.

Physician Orders for Life-Sustaining Treatment (POLST)

A program designed to transfers a patient's wishes for care into medical orders. The documents, which outline desired care, follow patients across care settings. POLST, called by different names in some areas, is approved in 15 states, and other states are working to implement the process.

Probate

The legal process by which an estate is settled and the property of the estate is distributed.

Trust (see below for listing of various types of trusts)

A maker's (settlor or grantor) "rule book" for the safeguard, distribution, and control of the maker's assets. A properly funded trust with clearly stated goals will ensure that the maker's assets are distributed by the trustee(s) as desired by the maker, with the goal of, among other things, avoiding probate. Certain assets may not be available for funding into the trust at the time of the maker's passing, such as the proceeds from a wrongful death or medical malpractice lawsuit, and therefore it is important for the maker to also have a pourover will properly executed in accordance with the laws of the state in which it is executed.

Wills

A will, also known as a last will and testament, is a written document by which a maker directs how the maker's assets are to be distributed upon death. A will *may* create a testamentary trust within the instrument, but the will may need to be probated by a court after the maker's passing, which can be an expensive and time-consuming process.

Holographic Will

A handwritten will that is signed by the maker, but not signed by required witnesses. Only about one-half of US states find holographic wills valid [if] the will meets certain minimal requirements.

Pourover Will

A pourover will addresses property which the maker of the trust failed to transfer into the trust during his or her life (and assuming the asset was not held in joint tenancy and that there was no pay-on death beneficiary designation) which will pass to the trust at the death of the maker of the will. Stated simply, the trust is the beneficiary of the will.

Self-Proved Will

A self-proved will has a properly executed affidavit attached which contains a sworn statement from the witnesses who watched the will-maker sign the will attesting to the validity of the will, which makes it easier to prove in probate (court).



TYPES OF COMMONLY USED TRUSTS

Note: This is not an exhaustive list of the trusts. There are other types of far less commonly used trusts that are not described here.

A-B Trust, a.k.a. Marital Deduction Trust

This trust is the joint use of a marital trust (also called an A trust) and a bypass trust (also called a B trust) to take advantage of the unlimited marital deduction and help reduce potential estate tax liability. At the death of one spouse, his or her testamentary will or trust establishes a bypass trust with an amount equal to the current federal estate tax exemption. Any amount in excess of the current federal estate tax exemption goes into a marital trust for the benefit of the surviving spouse. This approach allows couples to take advantage of both spouses' estate tax exemption and helps to minimize the federal taxes for large estates.

A Trust, a.k.a. Marital Trust

A marital trust creates a trust to benefit a surviving spouse and the heirs of the couple. Assets are moved into the trust when the first spouse dies, and the surviving spouse generally is provided with the ability to access the income as well as principal for a variety of reasons. It is generally used with a bypass trust.

B Trust, a.k.a. Bypass Trust, a.k.a. Family Trust, a.k.a. Credit Shelter Trust

This trust is generally used in combination with a marital deduction trust (A trust) to help save on estate taxes. Upon death, the bypass trust is funded with up to the then-current estate tax exemption amount. The trust can provide income to a surviving spouse and/or other family members during the spouse's lifetime. Subject to certain restrictions, the grantor may also grant the trustee the power to distribute trust principal for particular needs of the grantor's spouse and/or other beneficiaries. If properly structured, the assets in the trust would not be included in the surviving spouse's estate at his or her death.

Beneficiary's Trust (Separate Share Trust or Spendthrift Trust)

These trusts are managed by an independent trustee for the welfare of a beneficiary, granting the trustee full authority to make decisions regarding how trust funds may be spent for the benefit of that beneficiary. Separate share trusts allow parents to establish a trust with separate features to accommodate the unique needs of each child, while a spendthrift trust, or a trust with a spendthrift clause, protects the assets from the claims of creditors.

Blind Trust

A blind trust allows the trustees, or anyone who is holding power of attorney, to handle the assets of the trust *without* the knowledge of the beneficiaries. These trusts can be useful in situations where the beneficiary should be kept unaware of the contents of the trust to avoid conflicts of interest. They are often used for politicians.

Charitable Lead Trust (CLT)

This charitable trust enables the trust creator to transfer wealth to a charity on an annual basis for a specified period of time. After that time, the trust's assets are transferred to a non-charitable beneficiary. The income tax deduction would be equal to the annuity given to the charity. The gift of assets to the remainder beneficiary



(after the term) is reduced based on the Internal Revenue Code (IRC) Section 7520 interest rate. Upon the trust

Charitable Remainder Trust (CRT)

This charitable trust enables the trust creator to transfer assets to benefit a charitable cause(s). Once the assets are transferred to the trust, the income beneficiary is entitled to receive an annuity for a given period of time. The difference between the value that went to charity and the annuity received will be the amount of the income tax deduction. Upon the trust creator's death, the remaining assets are transferred to a charity, designated by the trust creator.

Credit Shelter Trust

A credit shelter trust allows a married trust creator to utilize his or her federal estate tax exemption at his or her death and preserve those assets in trust for the benefit of trust beneficiaries. After the taxpayer's death, a trust manages these assets according to the provisions of the trust document.

Crummey Trust

The Crummey trust, named after the *Crummey* case, 397 F.2d 82 (9th Cir. 1968), is a trust used to prevent a gift tax liability. The tax law permits individuals to make gifts to others of up to the gift tax exemption limit, but the trust must provide that the gift is for present use, rather than use in the future, by following a given set of procedures.

Domestic Asset Protection Trust (DAPT)

This type of trust allows a trust creator to establish a trust for his or her own assets in one of several states that offer anti-creditor protection attributes, such as the state of South Dakota. These trusts are irrevocable once established and require a spendthrift clause to restrict the transferability of a beneficiary's interest in the trust assets.

Grantor Retained Annuity Trust (GRAT)

This irrevocable trust allows a trust creator to freeze the value of a particular asset(s) to remove current and future appreciation from one's estate. In turn, the trust creator would receive a fixed annuity for a given period of time equal to the fair market value of the trust asset discounted by the IRC Section 7520 interest rates, to be used to value certain charitable interests in trusts. This strategy is deemed to be successful if the trust assets can appreciate at a rate greater than the IRC Section 7520 interest rate. The difference between the gift and the annuity is considered a tax-free gift. Should the trust creator die prior to the term, all of the assets are considered part of the estate. Upon the end of the term, remaining assets in the trust go to the beneficiary as a gift.



Grantor Retained Unitrust (GRUT)

This trust allows a trust creator to freeze the value of a particular asset(s) by removing current and future appreciation from one's estate. In turn, the trust creator would receive an annuity (that varies based on market fluctuations) for a given period of time equal to the fair market value of the trust asset discounted by the IRC Section 7520 interest rate. This strategy is deemed to be successful if the trust assets can appreciate at a rate greater than the Section 7520 interest rate. The difference between the gift and the annuity is considered a tax-free gift. Should the grantor die prior to the term, all of the assets are considered part of the estate. Upon the end of the term, remaining assets in the trust go to the beneficiary as a gift.

Intentionally Defective Grantor Trust (IDGT)

An intentionally defective grantor trust is a wealth transfer technique which allows a taxpayer to sell or gift assets to a trust to remove the value of those assets from a taxpayer's estate; the result is a reduction in the potential estate tax liability. It also removes any further appreciation associated with those assets, so the trust is considered defective for income tax purposes. The trust functions as a grantor trust, meaning the taxpayer is responsible for paying the income taxes, which assists the taxpayer in reducing the size of his or her estate as well as providing gifts net of taxes.

IRA Trust

An IRA trust is specifically established to be the beneficiary of an individual retirement account (IRA). By following several tax rules, in a properly drawn IRA trust, the same distribution rules apply as to a nonspouse beneficiary.

Irrevocable Life Insurance Trust (ILIT)

This trust is created to manage and own life insurance. The strategy prevents the life insurance proceeds from being included in the trust creator's estate for estate tax purposes. It generally does this by making use of Crummey powers or other beneficiary withdrawal rights under a specific set of rules.

Qualified Domestic Trust (QDOT or QDT)

A qualified domestic trust is utilized to support a surviving spouse who is not a U.S. citizen and therefore, not eligible to have assets passed to him or her through the unlimited marital deduction. This type of trust, in effect, provides a non-U.S. citizen with an estate planning benefit that is similar to that of a U.S. citizen.

Qualified Personal Residence Trusts (QPRT)

A qualified personal residence trust (QPRT) is a trust created to facilitate the transfer of one's residential property to beneficiaries. Generally, the trust creator retains the right to live in that home for a period of time. Since he or she retains the right to live in the home, the value of the home for gift tax purposes is reduced, thus providing a transfer value of less than the home's fair market value. After the term of the trust is met, the value of the home and its appreciation are removed from one's estate. Should the trust creator desire to continue to live in the home, he or she would become a tenant of the beneficiaries.



Qualified Terminable Interest Property Trust (QTIP)

This is a type of marital trust. It enables the trust creator to retain control over the ultimate distribution of the trust's assets after the death of the surviving spouse. This type of trust is extremely useful for second marriage families and for families wanting to protect assets from predatory marriages.

Revocable Living Trust (RLT)

The inter vivos trust, also known as a revocable living trust (RLT), is a grantor trust established to make sure that assets go to the trust creator's intended beneficiaries. With a properly funded RLT, the trust creator's estate is preserved and avoids the potential costs and hassles of probate.

Special Needs Trust or Supplemental Trust

A special needs trust is set up for a person with special needs to supplement any benefits the special needs beneficiary may receive from government programs. A properly drafted and implemented special needs trust will allow the beneficiary to receive government benefits while still receiving funds from the trust. There are three main types of special needs trusts: first party, third party, and pooled trust.

Spousal Lifetime Access Trust (SLAT)

A spousal lifetime access trust allows a trust creator to make distributions to his or her spouse during the trust creator's lifetime as a way to transfer wealth and prevent estate taxes. The trust can be drafted to provide the spouse distributions for health, education, maintenance, and support during the trust creator's lifetime. Upon the death of the trust creator, the SLAT generally benefits the children or grandchildren of the trust creator.

Testamentary Trust

A testamentary trust is a trust created in a will at the explicit instructions of the trust creator. It is irrevocable since it does not come into existence until death. The will may be subject to probate.

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