

# Trusts

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A trust is a legal arrangement where someone, called a trustee, holds property for the benefit of someone else, called a beneficiary. The person who places his or her assets into the trust is called the trustor or settlor. The trust can be part of a decedent's will if the will provides that all or part of the estate is to be distributed to a trustee with directions to use the trust in specific ways.

## Kinds of Trusts

There are various kinds of trusts, including testamentary, special needs, and living. A trust that is part of a will is called a testamentary trust. Another kind of trust is called a special needs trust which is set up to assist a disabled person who is receiving public benefits. A special needs trust can be part of a decedent's will or can be created in other ways by court order. Perhaps the most common trust is the living trust. Settlers of living trusts put their property into the trust during their lifetime, with provisions for use of the property during their lifetime and after they die. A living trust can be a useful tool for managing assets during a person's lifetime and for distribution of assets without a probate proceeding when a person dies.

## Seek the Advice of an Attorney

It is important that anyone considering a trust should talk to an attorney experienced in estate planning. Trusts are individual documents that only work well when they are correctly written to meet the specific needs of the individual trustor and his or her family. Sometimes people make trusts with unethical people who "cold call" them on the telephone or

tell them that a trust will help avoid taxes which may not be true.

There are organizations called "trust mills" that telephone people, usually elders, and convince them to make trusts which may be expensive, poorly written, and not appropriate for their needs. "Trust mill" trusts are "one size fits all" documents. The elder deals with a person who says he or she is a "trust advisor." The attorney whose name is on the trust never meets the person and does not know the person's individual circumstances.

## **Probate Court Supervision of Trusts**

Trusts come under the Probate Court's supervision for a variety of reasons. For example, special needs trusts may come before the Probate Court for determination of whether a child or incapacitated adult qualifies for this type of trust and if so who should be appointed the trustee. The Probate Court reviews periodic accountings of the special needs trustee. Living trusts although advertised as a way to avoid the Probate Court, come to the Court if the language of the trust is not clear or if a beneficiary thinks the trustee is not acting properly and the beneficiary wants a new trustee. The beneficiary can file a petition with the Probate Court asking the Court to review the trust and require the trustee to submit an accounting of how the assets have been handled.

Trusts are legal arrangements created for the orderly administration of a person's assets, usually while they are still living. Consulting an experienced estate-planning attorney to prepare a trust is the safest way to be certain that this happens.