

# What is a Trust?

*presented by*

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# What is a Trust?

In its simplest form, a trust is an agreement that provides for the management of property. A trust involves at least three parties:

1. The **Trustmaker**, sometimes referred to as the settler or grantor, is the person who creates the terms or rules of the trust;
2. The **Trustee** is the person who agrees to accept the Trustmaker's property and manage it as the trust directs, and;
3. The **Beneficiary** is the person who receives the benefit of the property held in the trust. Typically, this is the Trustmaker during his lifetime and the children of the Trustmaker when the trust terminates. Beneficiaries may also be grandchildren, other relatives, friends, or charities.

## The Revocable Living Trust Document

A revocable living trust (RLT) is a trust document created during the Trustmaker's lifetime. An RLT is often referred to as an inter vivos trust, which means it is established during during the Trustmaker's life. The term "Living Trust" is also used. The trust is revocable due to the Trustmaker's ability to terminate or amend the trust.

The Trustmaker generally names himself/herself as the Trustee and the beneficiary of the trust during his/her lifetime. The Trustmaker also names disability Trustees to act for his/her benefit in the event of disability and death to management the assets of the trust following the Trustmaker's death. The death Trustee is typically charged with the responsibility of settling the obligations of the trust and distribution to the beneficiaries.

After a Trustmaker has executed a revocable living trust, the Trustmaker then needs to fund the trust. Funding is the process through which the individually-owned assets of the Trustmaker are re-titled and transferred into the trust. If assets are not placed into the trust, the Trustee lacks authority to manage the assets, since the Trustee only has authority with respect to assets contained within the trust.

Re-titling is performed in different fashions for different assets. For example, a checking account held in the name of John and Mary Sample will be funded into the Sample's Revocable Living Trust by re-titling it as John Sample and Mary Sample, Trus-

tees of the Sample Living Trust dated (the date the trust is signed.)

A similar action will be taken in regard to all of their other assets, such as real estate, automobiles, boats, investment accounts, securities, and any other asset with a title. Assets that do not have titles will be transferred into the trust by an assignment of personal property. An assignment of personal property is merely a document, which indicates the Trustmaker's intention to transfer all of property without title into his/her revocable living trust.

Once the revocable living trust has been funded, it will control all of the assets in its name. Inversely, a trust will not control assets not titled in its name. A well drafted revocable living trust will not only include direction on how to manage property, but also give instructions for how the Trustmaker or the Trustmaker's family and loved ones are to receive the benefits of the trust. The trust also makes provisions for how the Trustmaker is to be cared for in the case of the Trustmaker's disability and/or death.

A well-written living trust document will outline the Trustmaker's financial and personal intentions, be clear in its directives and be protectively locked within the law.

## **What may a Trust do?**

Trusts can be tailored to achieve a variety of objectives. Trusts can provide property management for yourself, your spouse and children, and others that may be dependent upon you. A trust is also an excellent device for management of property for the benefit of a beneficiary for whom outright property ownership is not appropriate, is burdensome or is impossible. Trusts also are used to give lifetime use of property to a person (or a group) while ensuring that others eventually will inherit the remainder of the property. This can be particularly effective if the Trustmaker has the goal of avoiding estate taxes in subsequent generations, as well as, in second marriage situations. A fully funded Trust will avoid probate, which should reduce or eliminate the delay and costs of distributing property upon death normally associated with Probate.

Revocable living trusts can sometimes be difficult to conceptualize, especially for people who have not read or seen one actually work. An analogy of "baby-sitter instructions" can be used to describe a living trust. When parents leave their minor children with a baby-sitter for a getaway weekend, the baby-sitter typically receives several minutes of verbal instruction accompanied by written notes detailing all sorts of matters that need thought, attention, and action. Even after leaving, isn't it a common scenario that the parents stay close to a telephone and are not reluctant to use it to add instructions and to confirm that all is right with their children and household? A well-drafted living trust is like a set of baby-sitter instructions for the care of loved ones. The instructions tell the Trustee

(the baby-sitter) how to care for the beneficiaries (their children). The instructions are as detailed as possible to cover all of the expected and unexpected events that might occur. Not only do these instructions tell the Trustee how to use the money and property to care for the beneficiaries, but will frequently explain to the Trustee why the Trustmaker left those instructions.

When you think of baby-sitter instructions, you might think that they would only apply to loved ones. On the contrary, one of the most important features of a Revocable Living Trust, and that a Will does not have, is its ability to provide instructions for the care of the Trustmaker.

A Revocable Living Trust is valid and operational the day it is signed. If the Trustmaker becomes ill or incapacitated, the living trust can control the Trustmaker's property for his benefit or for the benefit of others without the intervention of the court. By contrast, a Will can only function after the death of its maker and is unfortunately subject to probate; a Revocable Living Trust cares for its Trustmaker immediately and avoids both a living and death probate.

## Why create a Trust?

Everyone who wishes to accomplish complete estate planning objectives should consider and implement a living trust-centered plan. A living trust-centered plan is the only type of estate planning that can meet all of the elements of our definition of effective estate planning.

Our definition of effective estate planning:

*I want to control my property while I am alive.*

*I want to take care of myself and my loved ones if I become disabled.*

*I want to give what I have to whom I want, the way I want, and when I want.*

*If I can, I want to save every last tax dollar, professional fee, and court cost possible.*

### Reason One: Control

The most important element of our definition of estate planning for nearly every client we have met with is control. The most important step you need to take to gain con-

control of your assets is to create an effective estate plan. If you do not write your own plan, the state will write it for you.

If you die without an estate plan, you are deemed to have died intestate. In this case, state laws direct how your assets are to be inventoried, valued and distributed. If you should become incapacitated without affecting formal planning for that event, there is another set of state laws that directs what will happen to you and your property. State laws also control other aspects of one's life and property. For example, joint tenancy property may be tied up in the courts if one of the joint tenants becomes incapacitated or if there are creditor problems.

To exercise estate-planning control, you must take responsible action to implement and use your own estate plan to dictate your wishes, rather than leaving it to the state or others to make those decisions.

## **Reason Two: Incapacity**

After control, the definition of estate planning addresses incapacity. Statistics show that the odds of suffering a debilitating mental or physical disability in any given year are about six times greater than the odds of dying. Due to the great risk of incapacity it is imperative to plan for such a life-changing event. Through proper and effective planning, you can control how you are cared for during incapacity. Additionally, you may purchase long-term health care and/or disability insurance or implement savings plans. It is also possible to leave instructions about physical care in the event of incapacity.

Estate plans can clearly direct how property and money should be used for the incapacitated and your loved ones, thereby overruling the state's own dictates. In order to exercise this control, one must do so while still competent.

## **Reason Three: Giving Your Property to Whom You Want *and* When you Want**

After you have controlled your property while you are alive, and have planned for your incapacity, then you can look forward to giving your property to others at a time or times of your choosing.

Please remember - the Trustmaker is able to transfer property during life as well as at death through the use of an effective trust plan. Our laws allow the Trustmaker to control his property, and to pass it in the manner he chooses to the beneficiaries with amazing latitude and flexibility. This is true — but the process *must* be initiated while one is still able.

## Reason Four: Planning for Taxes and Expenses

The final part of our definition of estate planning addresses taxes, fees, and costs.

While saving on taxes and expenses is an important aspect to effective estate planning, please be assured that we will not recommend actions that will ever compromise the first goal of maintaining control. The secret of good planning is to reduce taxes and costs while always retaining control. Don't let the "tail wag the dog" when it comes to tax planning.

Even for Estates where taxes are not an issue, probate fees and avoiding them is always an issue. The amount of probate fees and costs varies significantly depending upon the size and makeup of an estate, but can be significantly reduced or eliminated in almost all situations.



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The Law Offices of Richard J. Herndon are located in Kearney, Missouri, twenty minutes north of Kansas City. Rick has been helping clients in the areas of Estate Planning, Probate Avoidance, Living Trusts, and Estate Settlement since 1986. He received his Bachelor's Degree in Accounting from Northeast Missouri State University and his Law Degree from the University of Missouri at Kansas City. Clients include individuals with estates of all sizes as well as small business owners. He has taught classes on Estate Planning and Living Trusts for various organizations and has also presented his own seminars in those areas. Rick's practice philosophy centers on educating clients as to their options and implementing their wishes using team based approach which may involve other financial advisors and consultants.

Rick Herndon has been extremely active in civic affairs, having previously served on the Kearney Board of Education, as a Director of the Kearney Fire and Rescue Protection District, and on the Pastoral Council of the Church of the Annunciation. He is an active member of the Knights of Columbus and has coached youth baseball and softball for over fifteen years. Rick and his wife, Cheryl, have been married for 37 years and have three children and six grandchildren.