



Estate Protection Plan

What is a Trust and why do I need one?

A Trust is a written agreement that sets up specific rules about how property and assets that have been transferred into the Trust are to be administered and distributed. There are basically two types of Trusts that are relevant to families with minor children: (1) a living trust; and (2) a testamentary trust.

A **living trust** is created and funded while you are alive. When created, a living trust can be revocable or irrevocable. However, in most cases, in order to allow you to properly manage your property and assets held by the Trust we suggest that the living trust you create be revocable. This allows you to change the trust, add to the trust, take assets from the trust or terminate the trust anytime you want. An irrevocable trust does not allow you this flexibility.

Why Establish a Living Trust?

1. Avoid Probate. Because your living trust is a private contract between you (as the person creating the trust) and the trustee (the person administering the trust) any assets titled in the name of your trust at the time of your death will avoid probate.
2. Accelerate Distributions to your Beneficiaries. Because your living trust is not required to proceed through the tedious court process of probate, your assets and property are able to be disbursed to your beneficiaries almost immediately if necessary.
3. Keep your Estate Plan Private. Unless your beneficiaries and successor trustee get into a dispute requiring judicial intervention, your living trust will not be filed with court because the assets and property titled in your living trust pass without the need to be probated. In contrast, if you just have a will, your will must be filed with court and probated in order to pass your property and assets to your beneficiaries.
4. Cost Savings to your Beneficiaries. Typically the cost to administer your living trust is significantly less than the cost to administer your will through the court probate process.
5. Planning for Disability or Incapacity. If you should become incapacitated or incompetent, a living trust will avoid the need for the establishment of a conservatorship. A conservatorship is a court proceeding brought for purposes of managing your financial affairs if you are unable to do so. Through your living trust you can specify how your mental incapacity should be determined, like by a letter from your treating physician.

Conversely, a **testamentary trust** is established through your will or trust with provisions to be carried out after your death. In most cases, unless you establish a testamentary trust to manage the shares of any beneficiary who is a minor, the courts will require that a conservatorship be established to administer your minor beneficiaries' share of your estate. Not only is this an additional cost that is assessed against your minor beneficiaries' share of their estate, but your minor beneficiaries will automatically receive their share of your estate when they turn 18. You need to carefully assess your beneficiaries' financial maturity, whether or not they are minors, to determine their ability to manage their financial affairs. In most cases, including a testamentary trust in your will or living trust it is necessary to be sure your values, as it pertains to the disbursement of your estate to your beneficiaries, are achieved.

Through the establishment of a testamentary trust, you are able to make discretionary or non-discretionary disbursements. **Discretionary disbursements** include those disbursements over which you want your trustee to have discretion to make. For example, you may want to allow your trustee to make disbursements to your beneficiaries for such things as educational expenses, purchasing a house or starting a new business. A testamentary trust can be customized to allow for such discretionary disbursements by your trustee including limiting how the disbursements can be used as well as the amount that can be disbursed.

Non-discretionary disbursements include those disbursements which are able to compel through the provisions of your trust. An example of a non-discretionary distribution provision includes a mandatory distribution to your beneficiaries when they attain a specific age or withholding distributions to your beneficiaries if they are engaged in some activity for which you are opposed.

To start your Estate Protection Plan and to get any other questions you may have answered, contact our office at (763) 389-0178 to schedule a meeting or send us an email by clicking [here](#).



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