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RightRisk™

RightRisk News

What is a Trust? Why Would I Want One?

Dates to Remember

Forage Insurance
- September 30th

RI-PRF Coverage
November 15th, 2020
for 2021 crop year coverage

Acreage Reporting
- November 15th

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All people, regardless of financial status, will leave an estate when they die. Generally, an estate is a person's net worth in the eyes of the law. Assets in an estate include bank accounts, home, vehicles, investments, licenses, social media accounts, businesses, life insurance policies, retirement accounts, and other items owned by the person. An estate may also include mortgages and other debts.

An estate plan is a method for distributing one's assets and liabilities in an organized manner after the person dies and provides instructions for end-of-life decision making. It often consists of several documents indicating how a person wants to distribute his or her estate, future operations of a business, and instructions for health care and end-of-life decision making. Documents commonly include: (1) Last Will and Testament, (2) Living Will, (3) Healthcare Power of Attorney, (4) Financial Power of Attorney, and (5) Trust.

Typical Estate Plan Documents

- ◊ Last Will and Testament
- ◊ Living Will
- ◊ Healthcare Power of Attorney
- ◊ Financial Power of Attorney
- ◊ Trust

What is a Trust?
A trust is a fiduciary relationship in which a trustee holds legal title to specific property with the duty to manage, invest, safeguard, and administer the trust assets and income for the benefit of designated beneficiaries, who hold equitable title. Trusts can be arranged in many ways and can specify exactly how and when the assets pass to the beneficiaries. Regardless of the type of trust, all trusts are either revocable or irrevocable.

Revocable trusts are those for which the grantor retains the power to modify, amend, or revoke the trust in part or in whole. This power is specifically reserved to the grantor in the trust instrument.

Irrevocable trusts are those for which the grantor may not make any changes to the terms of the trust after its execution and may not regain title to the trust property.

When does a trust take effect?
A *testamentary* trust is a trust created to take effect upon the grantor's death by including a gift in trust in the grantor's will. The split of title and the imposition of duties does not occur until the grantor dies, making it a testamentary trust. A precondition to the validity of a testamentary trust is for the will itself to be valid.

An *intervivos* trust (living trust) is a trust that the grantor creates to take effect while the grantor is still alive. An intervivos trust can be for the benefit of the grantor as well as for others. Moreover, a grantor can also be trustee of his or her own intervivos trust while still alive.

Who are the Parties to a Trust?

There are a number of people involved in a trust.

1. *Grantor* (or settlor) – The person who creates a trust by splitting title and imposing fiduciary duties.

2. *Trustee* – The person who holds legal title to the trust property.

How Much Risk is Right for You?

The trustee has all of the duties, responsibilities, and liabilities associated with property ownership, but receives none of the benefits of ownership.

3. *Beneficiary* – The person who holds equitable title to the trust property. The beneficiary is entitled to enjoy the trust property, but typically has no control over the trustee or how the trustee manages the legal title to the property.

What are the purposes of a trust?
There are several reasons why a person might create a trust.
1. *Estate Tax planning*: A trust can maximize the use of exemptions available under the federal estate tax if it is properly constructed. A trust can be a useful tool in reducing the value of the grantor's taxable estate, thereby potentially reducing or eliminating estate tax liability.

2. *Medicaid planning*: An irrevocable, Medicaid trust can be a useful tool to allow a grantor to qualify for Medicaid insurance and prevent depletion of one's estate caused by the cost of long-term care.

3. *Minors*: Minors lack legal capacity to manage property and often have insufficient maturity to do so. A trust permits the grantor to make a gift for the benefit of a minor without giving the minor control over the property or imposing restrictions to limit a minor's access to the assets until a specified age.

4. *Special Needs*: A special needs trust can help transfer money or property to a beneficiary with a disability without jeopardizing that beneficiary's ability to receive Supplemental Security Income and Medicaid benefits. The trustee cannot give money directly to the disabled beneficiary, but can use special needs trust funds to pay for common disability-related expenses, such as personal care attendants, out-of-pocket medical and dental expenses, and physical rehabilitation.

5. *Spendthrift*: Some individuals may be competent to manage property but are prone to use it in an excessive and frivolous manner. By utilizing properly drafted spendthrift trust provisions, a grantor may protect the trust property from the beneficiary's own excesses, as well as the beneficiary's creditors.

6. *Charitable trusts*: Charitable trusts must be widely recognized as benefiting the public, whether for the relief of poverty; the advancement of knowledge, education, or religion; the promotion of health; or the accomplishment of governmental purposes.

Summary
A trust is a fiduciary relationship in which a trustee manages, invests, safeguards, and administers the trust assets and income for the benefit of the beneficiaries. Trusts can be arranged in many ways and can specify exactly how and when rights of ownership pass to the beneficiaries.

Trusts can be useful tools when developing and carrying out an estate plan. However, they can be complicated and laws vary significantly by state. Individuals should seek competent, professional counsel when considering a trust to accomplish their estate planning goals.

RightRisk™

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