

Law Office Of Inna Fershteyn

# TRUST PLANNING 101: A GUIDE TO PLANNING A TRUST



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[www.brooklyntrustandwill.com](http://www.brooklyntrustandwill.com)

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# What is a Trust?

A trust is a legal agreement that creates an account in which property is held prior to transfer after death.

It is a legal relationship or contract that allows a third party (trustee) to hold assets or properties on behalf of a beneficiary.

A trust does not have to go through the tedious, long, and expensive process of probate.

Most importantly, it allows your loved ones to get direct access to your estate immediately after you pass away.



# Types of Trusts



The two main types are **revocable** and **irrevocable** trusts. There are also other types of trusts that are more specific to certain needs.

1) **Revocable Trust:** It is also known as a living trust. They are created while the trustmaker is alive. They are much more flexible and can be changed or even revoked at any time.

2) **Irrevocable Trust:** It cannot be amended, modified, changed, or revoked after the agreement has been signed.

- 3) Asset Protection Trust
- 4) Charitable Trust
- 5) Constructive Trust
- 6) Special Needs Trust
- 7) Spendthrift Trust
- 8) Tax By-Pass Trust
- 9) Totten Trust

## Will

- A will is a legal document that not only dictates how your estate will be allocated after your death, but also allows you to appoint guardians for minors.
- In the event that individual dies without a Will in place, state laws will coordinate how one's assets will be distributed.
- According to LexisNexis, it is estimated that a shocking 65 percent of American adults die **intestate**, without a Will or other estate plan in place!

## Trust

- A trust is a legal arrangement that allows a trustee to hold assets on behalf of their heirs and beneficiaries.
- It generally allows for the beneficiaries to gain access to assets significantly faster than a will and without the extra costs of probate.

\*While a will splits your estate evenly among your heirs, a trust's flexibility may disproportionately distribute your assets based off of each individual beneficiary's needs.\*



# Changing an Existing Trust

## Changeable Trusts

Not all trusts may be changed due to the manner in which the trust was established. A revocable living trust may be changed, amended, or be completely revoked. However, irrevocable trusts are very difficult to amend and potentially revoke, thus they may not be changed in certain circumstances. It may be possible to modify the terms of the trust and create changes by adding an amendment to the document.

## Changing the Terms of a Trust

Reasons an individual may change terms of a trust include financial status, physical and mental health, as well as repeated changes in family circumstances. Changes in tax laws can make specific provisions unnecessary and therefore should be removed from the trust. In rare cases, it may be possible to revoke and amend an irrevocable trust with the proper consent of the grantor and the beneficiaries.

## Possible Amendments

Changing the successor trustee or selecting successor trustees includes a changing distribution and investment requirements. It is also possible to amend the authority given to trustees and trust protectors. You may also add or withdraw the assets in the trust. Lastly, you may divide a single trust into two or more trusts, or consolidate two or more trusts.

## Benefits in Amending a Trust

Amending a trust ensures that you will avoid any possible litigation with beneficiaries in the future. This will guarantee that your best interests and wishes are the priority and are effectively addressed, even when your wishes change. Amending a trust presents an opportunity to change beneficiaries or include other information that was missing the first time the trust was created.

# Transferable Assets

## Assets That Cannot be Transferred Into a Trust:

Individual Retirement Accounts (IRAs) cannot be transferred into a trust, so these must remain in your own name, but the trust can be named as a primary or secondary beneficiary on your IRA. This also occurs when living trusts are named as a beneficiary of a life insurance policy.

## Assets That Can Be Transferred Into A Trust:

- Real property: You are able to transfer your home, condo, or any other real property to the trust with the re-recording of your property deed, a document which transfers ownership of a home from one party to another.
- Vehicles: This can be verified by going to the DMV website or simply by consulting with your attorney.
- Financial Assets: In order to transfer assets including bank accounts, stock, or investments to a living trust, you will need to speak with a representative from the institution and complete a form.

## Personal Property:

- If you possess legitimate written titles or ownership documents for personal property such as jewelry, collectibles, furniture, or other items that are in your home, you are able to place them into a trust.



# 5 Benefits of a Living Trust

## 1. Avoiding Probate

The Probate process in New York state is an extremely lengthy and costly process that should be avoided in order to save both time and money. Avoiding probate allows for a faster distribution of assets to your heirs without having to attributing any additional expenses to the estate.

## 2. Saving Money

Creating a living trust is initially more expensive than drafting a last will and testament. However, a trust will ultimately save you more money. A living trust will require you to transfer ownership of your property to the trust. A living trust may potentially provide savings for married couples in the form of a joint living trust, which is a monetary benefit to creating a living trust.

## 3. Protection of Privacy

Due to the fact that a living trust does not go through the probate process, this document remains private from the public. This means that it would be impossible for others to search up the distribution of your estate and breach your privacy without your specific consent. Once an individual's legal assets proceed through probate, the documents instantly become available for public access,

## 4. Assists in the case of Incapacitation

A living trust is well prepared for a sudden event that causes incapacitation. In this case, the selected trustee will step in to manage your affairs without any intervention on the court's part.

## 5. Provides Certainty and a Peace of Mind

A living trust guarantees a feeling of certainty knowing you have control over your future. It is guaranteed that your best interests will be adhered to management of your assets.

# Is a Living Trust Right for You?

Living trusts, or revocable trusts, are often established to prevent the probate process over a loved one's assets after they die.

## Taxes on a Living Trust

- A living trust does not save on taxes more than a properly drafted will does. Similar to a will, a living trust can reduce or eliminate Federal or State taxes when appropriate.

## Establishing a Living Trust

- Recent changes have allowed living trusts to become more accessible to a wider audience. In one scenario, it is best to transfer assets into a living trust if they are spread across multiple states.
- In another case, a living trust is the best option if surviving family members are distant relatives that an individual has lost touch with.



# Frequently Asked Questions

## What is a difference between a trust and a will?

A will has to undergo a process of “Probate” in the surrogate's court of the state where the decedent died. It is a long and complicated process regardless of the state you reside in. In New York, it takes over one year to probate the will and the cost of such probate can be as high as 6% of the value of the entire estate. The will is not valid unless it is probated and letters of testamentary are issued. A trust does not need to go through probate and allows beneficiaries access to your estate immediately after decease. It generally costs more to create and organize a trust, but it avoids the extra expenses of probate. A trust also goes into effect on the day of its creation.

## Which assets can I transfer into my Trust?

Any property real or personal can be transferred into the trust with the exception of the IRA plans and Life Insurance policies. Although you cannot transfer your IRAs into the trust there are ways to ensure that the IRA funds will be received by the beneficiaries even if the beneficiaries are minor children. An experienced estate planning attorney will explain the process to you in great details and complete all transfers into the trust in accordance with applicable state law.

## Why should I create a trust? Can I just transfer my real estate to my children?

It is never a good idea to just transfer a deed from one name to another. By transferring your assets outright you are not only making a gift which is a taxable event, but you are also incurring real estate transfer taxes and other fees that can be easily avoided with proper estate planning from an experienced trusts and estates lawyer in New York. Moreover, the person who receives a gift outright will automatically inherit donor's tax basis on the property which could have appreciated in value significantly over the years. This will in turn cause capital gain taxes to be much higher than if the property were to pass to the same person through [a Will or a Trust](#).

## Do I Need A Will?

There is currently no law that requires individuals to have a will. Since there is not yet a clinically proven way to avoid death, however, it's usually a good idea to have one so you can have control over how your assets will be distributed after you pass and who will be in charge of distributing them; making sure the right person is chosen for this task is pivotal to ensure a smooth distribution process. If you have minor children, a will allows you to plan for their care in the tragic event that they survive you while they are still minors. A will is also not permanent and allows for modifications to be made while you're alive.

# Hire An Attorney

**Law Office of Inna Fershteyn and Associates, P.C.** understands that trust planning is a personal matter tailored to an individual's specific needs. As a highly qualified estate planning attorney office in New York, we will work endlessly to ensure that your individual concerns are carefully addressed and goals are met. With our extensive knowledge of trust and will administration, we will work with you to develop a comprehensive plan and offer knowledgeable guidance that will give you peace of mind as well as secure your family's future. For trust and will help, contact us today! Call (718) 333-2394 to set up a consultation or contact us online. Call (718) 333-2394 to set up a consultation or [contact us online.](#)



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