TRUSTS



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FK&M FELDMAN, KRAMER & MONACO, P.C. ATTORNEYS & COUNSELLORS Presents...

Trusts



Compare your current Estate Plan to what it ought to be. The problem is that you do not know what you do not know. Feldman, Kramer & Monaco, P.C. can help!

This booklet includes:

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What is a trust?

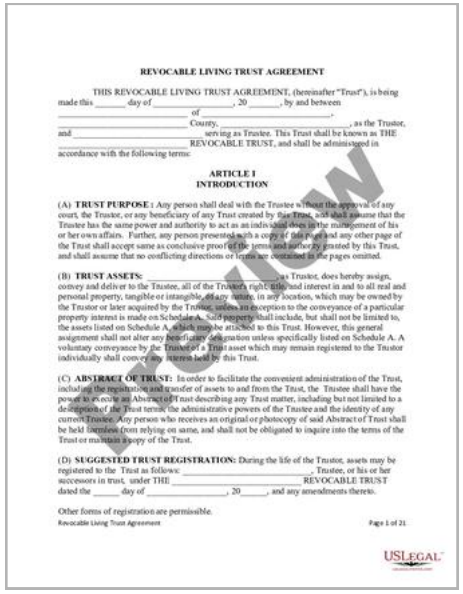
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- **Trusts:** A trust is a legal agreement wherein the legal title to property is entrusted to a person, the trustee, who has a fiduciary duty to hold and use that property for another's benefit. A trust should be the cornerstone of your estate plan. Typically, planning for long-term care requires thoughtful timing and prioritization, and long-term care planning is often put off until it is too late to implement strategies effectively.

- A trust is a flexible estate plan tool that can serve many purposes. The trust is governed by the terms under which it was created and by State and Federal laws. The Grantor establishes specific rules and instructions to guide the trustee on how to manage and distribute the assets within the trust for the benefit of the trust's beneficiaries.

- Establishing a trust can be a strategic component of an estate plan, offering various benefits tailored to your personal and financial goals. The trust allows for precise control over how and when assets are distributed, both during the grantor's lifetime and after the grantor's death.





REVOCABLE LIVING TRUST AGREEMENT

THIS REVOCABLE LIVING TRUST AGREEMENT, (hereinafter "Trust"), is being made this _____ day of _____, 20 _____, by and between _____ of _____ County, _____, as the Trustor, and _____ serving as Trustee. This Trust shall be known as THE _____ REVOCABLE TRUST, and shall be administered in accordance with the following terms:

ARTICLE I
INTRODUCTION

(A) **TRUST PURPOSE:** Any person shall deal with the Trustee without the approval of any court, the Trustor, or any beneficiary of any Trust created by this Trust, and shall assume that the Trustee has the same power and authority to act as an individual does in the management of his or her own affairs. Further, any person presented with a copy of this page and any other page of the Trust shall accept same as conclusive proof of the terms and authority granted by this Trust, and shall assume that no conflicting directions or terms are contained in the pages omitted.

(B) **TRUST ASSETS:** _____, as Trustor, does hereby assign, convey and deliver to the Trustee, all of the Trustor's right, title and interest in and to all real and personal property, tangible or intangible, of any nature, in any location, which may be owned by the Trustor or later acquired by the Trustor, unless an exception to the conveyance of a particular property interest is made on Schedule A. Said property shall include, but shall not be limited to, the assets listed on Schedule A, which may be attached to this Trust. However, this general assignment shall not alter any beneficiary designation unless specifically listed on Schedule A. A voluntary conveyance by the Trustor of a Trust asset which may remain registered to the Trustor individually shall convey any interest held by this Trust.

(C) **ABSTRACT OF TRUST:** In order to facilitate the convenient administration of the Trust, including the registration and transfer of assets to and from the Trust, the Trustee shall have the power to execute an Abstract of Trust describing any Trust matter, including but not limited to a description of the Trust terms, the administrative powers of the Trustee and the identity of any current Trustee. Any person who receives an original or photocopy of said Abstract of Trust shall be held harmless from relying on same, and shall not be obligated to inquire into the terms of the Trust or maintain a copy of the Trust.

(D) **SUGGESTED TRUST REGISTRATION:** During the life of the Trustor, assets may be registered to the Trust as follows: _____, Trustee, or his or her successors in trust, under THE _____ REVOCABLE TRUST dated the _____ day of _____, 20 _____, and any amendments thereto.

Other forms of registration are permissible.

USLEGAL

Believe it or not, trusts have existed since Roman times and have become one of the most important innovations in property law.

What Can You Put in a Trust?

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- You can include a wide range of assets in a trust, including real estate, bank accounts, investments, and firearms. This streamlines estate administration and ensure assets are protected and distributed according to your estate plan.

- Assets that are often included in a trust:

Real Estate	Your house, condominium, or land.
Financial Accounts	Bank accounts (checking, savings, money market), brokerage accounts, and investments such as stocks, bonds, and mutual funds.
Business Interests	Closely held business interests such as LLC units or corporate stock shares.
Life Insurance	Certain life insurance policies (where appropriate).
Annuities	Non-qualified annuities.
Miscellaneous	Royalties, copyrights, trademarks, patents, oil, gas and mineral rights, cryptocurrency, etc.

What Can You Put in a trust?

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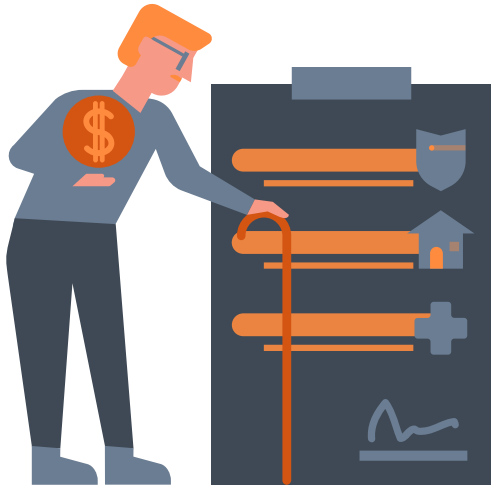
- Sometimes it's easer to tell what assets are not typically placed in a trust:

  - Qualified Retirement Accounts such as a 403(b), 401(k), IRA, 457, and other retirement accounts should not go in the trust. These accounts are creditor proof, the growth tax deferred, and the accounts are exempt for Medicaid eligibility in New York if the account is in payout status

  - Health Savings Accounts (HSAs), Medical Savings Accounts (MSAs) and 529 accounts should also not go into the trust.

- ***Funding a trust*** means transferring ownership of your assets into the trust so that they can be managed and distributed as outlined in your estate plan. A trust starts off empty and requires the grantor to transfer assets into the trust.

When transferring assets into a trust, you will need to retitle them in the name of the trust.



Key Roles in the Formation of a Trust

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Who plays a key role within the process of creating the trust? These are the terms that you should be familiar with:

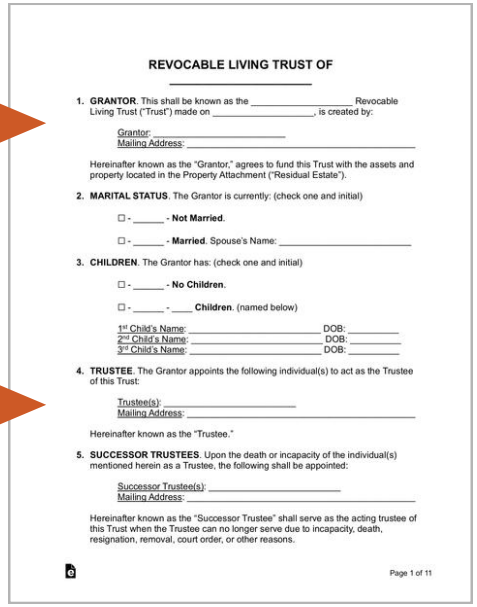
1. The Grantor, Settlor, or Creator – This is the person who is creating the trust.

2. The Trustee – This is the person or entity that administers the trust.

3. The Beneficiary -This is the person, pet or entity designated to receive the trust's benefits or assets. These benefits can include income generated by the trust or the trust assets themselves. The trust can also provide for the Health, Education, Maintenance, Support and more for the beneficiary of your trust.

Grantor

Trustee



REVOCABLE LIVING TRUST OF

1. **GRANTOR**. This shall be known as the _____ Revocable Living Trust ("Trust") made on _____, is created by:

   Grantor: _____
   Mailing Address: _____

   Hereinafter known as the "Grantor," agrees to fund this Trust with the assets and property located in the Property Attachment ("Residual Estate").

2. **MARITAL STATUS**. The Grantor is currently: (check one and initial)

   ☐ - _____ - **Not Married**.

   ☐ - _____ - **Married**. Spouse's Name: _____

3. **CHILDREN**. The Grantor has: (check one and initial)

   ☐ - _____ - **No Children**.

   ☐ - _____ - _____ **Children**. (named below)

   1st Child's Name: _____ DOB: _____
   2nd Child's Name: _____ DOB: _____
   3rd Child's Name: _____ DOB: _____

4. **TRUSTEE**. The Grantor appoints the following individual(s) to act as the Trustee of this Trust:

   Trustee(s): _____
   Mailing Address: _____

   Hereinafter known as the "Trustee."

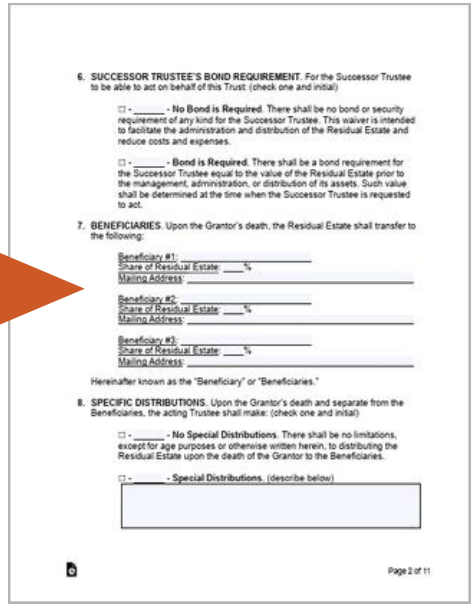
5. **SUCCESSOR TRUSTEES**. Upon the death or incapacity of the individual(s) mentioned herein as a Trustee, the following shall be appointed:

   Successor Trustee(s): _____
   Mailing Address: _____

   Hereinafter known as the "Successor Trustee" shall serve as the acting trustee of this Trust when the Trustee can no longer serve due to incapacity, death, resignation, removal, court order, or other reasons.

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Beneficiary



6. **SUCCESSOR TRUSTEE'S BOND REQUIREMENT**. For the Successor Trustee to be able to act on behalf of this Trust: (check one and initial)

   ☐ - _____ - **No Bond is Required**. There shall be no bond or security requirement of any kind for the Successor Trustee. This waiver is intended to facilitate the administration and distribution of the Residual Estate and reduce costs and expenses.

   ☐ - _____ - **Bond is Required**. There shall be a bond requirement for the Successor Trustee equal to the value of the Residual Estate prior to the management, administration, or distribution of its assets. Such value shall be determined at the time when the Successor Trustee is requested to act.

7. **BENEFICIARIES**. Upon the Grantor's death, the Residual Estate shall transfer to the following:

   Beneficiary #1: _____
   Share of Residual Estate: ____%
   Mailing Address: _____

   Beneficiary #2: _____
   Share of Residual Estate: ____%
   Mailing Address: _____

   Beneficiary #3: _____
   Share of Residual Estate: ____%
   Mailing Address: _____

   Hereinafter known as the "Beneficiary" or "Beneficiaries."

8. **SPECIFIC DISTRIBUTIONS**. Upon the Grantor's death and separate from the Beneficiaries, the acting Trustee shall make: (check one and initial)

   ☐ - _____ - **No Special Distributions**. There shall be no limitations, except for age purposes or otherwise written herein, to distributing the Residual Estate upon the death of the Grantor to the Beneficiaries.

   ☐ - _____ - **Special Distributions**. (describe below)

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What is the right age to set up a trust?

The answer is, “it depends” on why you need the trust and what type of trust you are creating. There isn't a single "right" age to set up a trust, as it depends on the individuals’ circumstances and the financial situation. Since none of us have a crystal ball, establishing a plan isn’t easy, but we will review the totality of your family dynamics, consider your medical history, analyze your financial circumstances and work through your goals to develop a plan that works for you.



You should plan for the worst, while hoping for the best. When we plan for the worst and hope for the best, we ensure that the worst-case scenario won't be as devastating. If you plan properly, you will then be more prepared for the success of the best-case scenario.

Right Age for a Trust

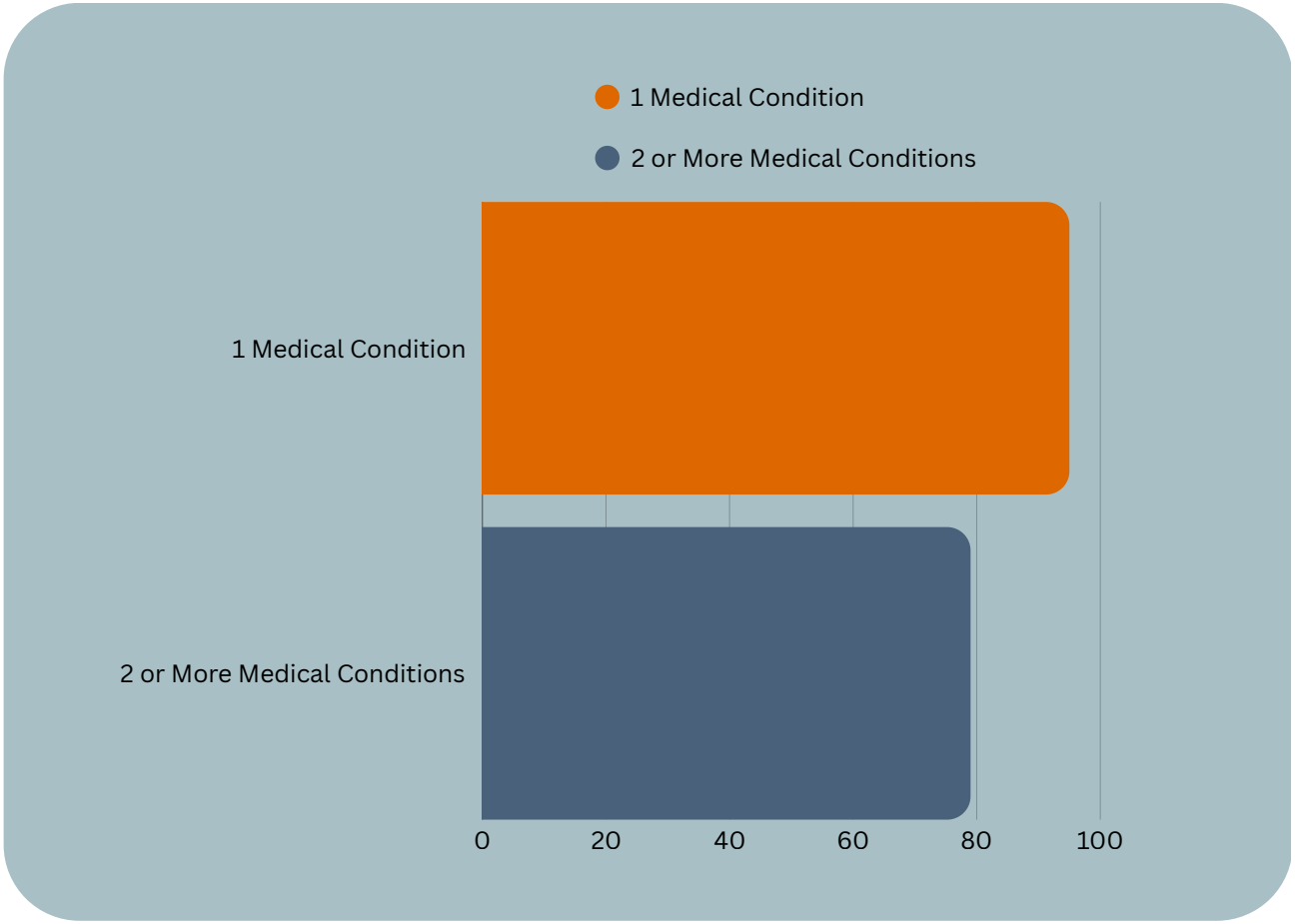
- There isn't a specific age that dictates when a house should be placed in an irrevocable trust. However, it should be done five years before you need long-term care. Approximately 70% of people turning 65 today will require long-term care services at some point in their lives. It's always best to be proactive versus reactive. If you are proactive, you are more likely to be able to save 100% of your assets. Preventative estate planning is much more successful than crisis estate planning.

- Ultimately, the best time to set up a trust is before you need it. We all know someone who had a catastrophic healthcare event in their mid-60s. Therefore, if you think five years ahead, that suggests the right age to put a home into a trust, is in your early 60s.



"Chance favors the prepared mind", means that people who are knowledgeable and well-prepared are more likely to recognize and capitalize on opportunities when they arise. This quote, attributed to Louis Pasteur, highlights the importance of preparation. It suggests that while luck plays a role, planning is crucial to success.

- 94.9% of adults aged 60 and older have at least one chronic medical condition, while 78.7% have two (2) or more. The biggest risk factors for these chronic conditions are things you often can't control, including age, family history, and genetics.



Why Set Up a Trust?

The most common reasons for setting up a trust include:

- Asset protection
- Avoiding probate
- Minimizing exposure to taxes
  - (Ex: Estate taxes, gift taxes, income taxes, and capital gains taxes)
- Concerns about privacy
- Avoiding a contested estate
- Second marriage estate planning
- Providing for minor children or special needs beneficiaries
- Planning for incapacity



The Grantor's goals must be balanced against the Grantor's desire to maintain control of the assets in the trust and the fear of the potential costs associated with the setup of the trust.

Is a Trust Right for You?

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A trust may be right for you if...

1. You are concerned about the costs of long-term care in the future.
2. You want to provide for a loved one with special needs.
3. You want to reduce or eliminate potential estate taxes.
4. You own property in more than one state.
5. You are concerned someone may contest your estate plan.
6. You are not leaving your assets equally to your heirs.

Is a Trust Right for You?

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Ask yourself, can I give away my assets without any reservations whatsoever, without any “if, ands, or buts” coming to mind? Or do you find yourself putting some stipulations or restrictions attached to your gifts, such as:

- To my spouse, then to my children, but not to the children from his first marriage.
- To my spouse, then my kids, but not if it means more estate taxes.
- To my children, but not to their creditors or their spouses.
- To my grandchildren with special needs, but not if it disqualifies them from receiving financial support or government benefits related to their disability.
- To my alma mater, but only if it is used to support the arts.
- To my children, in equal shares, but only after they graduate from college or reach 30 years old.
- To my heirs, but not to my nursing home.



Revocable Trusts

A trust that can be altered, terminated or revoked by the grantor during the grantor's lifetime. This trust offers the most flexibility as the Grantor and the Grantor's spouse can serve as trustees. The revocable trust avoids probate, but it does not provide any protection from creditors, the nursing home, Medicaid or estate taxes.

A Revocable trust is often used when the grantor has considerable long-term care insurance and owns property in multiple states and when the grantor's main goal is to avoid probate.





Irrevocable Trusts



Irrevocable trusts, commonly referred to as asset protection trusts, help to ensure that as you age, you can receive the care you need, while preserving your income, your assets, and ultimately protecting your legacy for your heirs. In this type of trust, the grantor retains the power to change the beneficiaries and retains the power to replace the trustee.

An irrevocable trust also offers the grantor asset protection and potential tax benefits. Because of this, though, it is important to note that the grantor and the grantor's spouse are unable to serve as trustees. This trust can also protect your estate from lawsuits, creditors, divorces, government liens, taxes, nursing home costs, Medicaid, home-care expenses, and plain bad luck.

Remember that long-term care is expensive, whether it is provided at home, in an assisted living facility, or in a nursing home. Ask yourself:

- If you insure your home in case of a fire, your car in case of an accident, and your health in case of an unexpected medical issue, why not insure your estate for your loved ones?

What is the Primary Purpose?



- Revocable trusts: Primarily used to bypass the probate process.
- Irrevocable trusts: Preferred method for protecting assets from Medicaid.

Is it Flexible?

- Revocable trusts: Yes!
  - The grantor can add or remove assets, such as real estate, investments, or bank accounts.
  - The grantor can modify the trust's terms and beneficiaries as circumstances change and can terminate the trust and regain full ownership of their assets at any point during the grantors lifetime.
  - The grantor can name themselves and their spouse as trustee.

- Irrevocable trusts: Less flexible than revocable trusts.
  - This trust is usually drafted to preserve the grantor's ability to occupy the residence for his or her lifetime.
  - Gives the grantor the ability to change the beneficiaries who will receive the trust property upon the grantor's death.

Can it Protect Your Assets from Creditors or Medicaid?

- Revocable trusts: No.
  - Creditors include a nursing home, Medicaid, lenders, plaintiff from an accident, ex-spouses, state and local governments and anyone else who could secure a judgment against your home in a lawsuit.
- Irrevocable trusts: Yes!
  - This trust can protect your assets from creditors and allows a person to qualify for long term care benefits from Medicaid, while protecting assets from being depleted when long-term care is needed.
  - If the grantor is on Medicaid benefits and their house is in this type of trust but is sold after five (5) years, the proceeds of the sale of the house are exempt for Medicaid eligibility purposes. These assets do not have to be used to pay nursing home bills or pay back Medicaid.

Does it Offer Estate Tax Benefits?



- Revocable trusts: No.
  - The trust assets will remain part of your estate and may be subject to estate taxes after you die. You don't need to be wealthy family to benefit from establishing a revocable trust. Many people have assets they want to keep out of probate.
- Irrevocable trusts: Yes!
  - Long term care is expensive and most people would like to have a choice as to where they receive care. This trust's job is to protect the primary residence, so that the grantor can continue to live in their home just they did before the trust was established.

Testamentary Trusts

A trust that is created through your will and becomes effective or funded upon your death. It's often used to manage assets for beneficiaries that are minors or require additional oversight. This trust is used to ensure the assets are distributed according to the grantor's specified terms, giving them control beyond their death.



Beneficiary Protection Trusts

A specialized estate planning tool designed to provide beneficiaries with limited control over their inheritance. This type of trust helps the grantor safeguard their assets from potential external threats such as creditors, lawsuits, excess spending, accidents, addiction, or divorce.

- It is important to remember that even the best kids can make mistakes! Thus, it is the parent's (grantor's) responsibility to protect their children from mistakes that they may make after the parents are gone.

- This type of trust can be tailored to include provisions that reflect the specific needs and circumstances of the beneficiary. The beneficiary's inheritance can be dispersed over time in measured amounts, as opposed to all at once.



Minor's Trusts

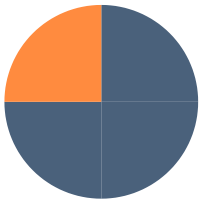
A flexible trust that is often created through a will. It is designed to protect and manage assets for a young person until they reach a certain age and are ready to control their entire inheritance.

Since minors generally lack legal capacity and younger adults often lack the financial sophistication needed to manage significant funds, a trust ensures that the assets will be preserved and managed responsibly until the beneficiary matures. In this type of trust, an adult is appointed as the trustee to manage the trust assets in the best interests of the young person. The trust can be customized to meet specific needs, such as funding education, healthcare, or other expenses.

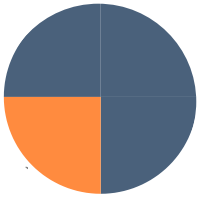
- A key feature of this trust is its ability to set up the disbursement of trust money in installments rather than having a flat payment.
  - The age at which the young person gets the assets can be staggered over several years. For example, they can get 25% when they reach the age of 25 and 25% at age of 30, and the remainder at the age of 35.

Example:

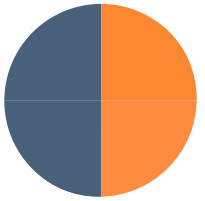
25% given at 25 years old



25% given at 30 years old



50% given at 35 years old



- Multiple trust funds can be established and can separate shares for each child. This equitable approach takes into consideration that each child has different needs.

- The trustee also has the discretion to disburse assets early in case of an emergency.

- When assets are held within this type of trust, the young persons are typically protected from creditors.

    - If the trust beneficiary later encounters financial challenges, gets divorced, has an accident, or makes a bad investment, it is important to note that not all the assets in the trust will be jeopardized.

    - It is also important to consider college planning, as the inheritance may impact your child's eligibility for student loans, grants, or scholarships.





- This trust can prevent misuse of the funds and reduce the risk of the assets being squandered or misappropriated by third parties.
  - Many unsupervised young adults will waste their trust funds to support a lifestyle they cannot afford. Establishing this type of trust will ensure that you protect your children's assets.
  - When establishing this trust fund for your children, be sure to pick the right trustee. Keep in mind that some family members may not always be the right choice or that you may need to appoint multiple trustees.



- Ensure you have your paperwork in order and that the correct beneficiaries are named on your accounts, including the name of the trust, when appropriate.
  - You should also review the trust periodically to ensure that you still feel comfortable with the trustee, the distribution age, and other aspects of the trust.



Spendthrift Trusts

This type of trust is designed to protect a beneficiary's inheritance from both their potential financial mismanagement and from external creditors. A spendthrift trust protects the trust assets from being claimed by creditors of the beneficiary and restricts the beneficiary's access to the principal.

In this trust, the trustee has discretion over when and how to distribute assets out of the trust to the beneficiary, preventing large lump-sum distributions from the trust to the beneficiaries. It also protects trust assets that might otherwise be squandered, and also restricts the beneficiary from transferring or pledging their interest in the trust.





Spendthrift trusts are particularly useful when a beneficiary may not be financially responsible!

- Spendthrift trusts will ensure that the beneficiary's inheritance is used for its intended purpose, such as education, healthcare, or living expenses.
- Assets within the trust are generally shielded from the beneficiary's creditors until they are distributed. Once the assets are in the beneficiary's possession, they may become accessible to creditors.
- This trust also safeguards assets from claims by lawsuits or divorce settlements that involve the beneficiary, protecting those that may lack financial discipline and ensuring long-term financial support.

Pet Trusts

A pet trust is a thoughtful way to ensure your beloved companion continues to receive the care they deserve if you are no longer able to provide it due to illness, incapacity, or death. This legally enforceable arrangement that designates funds and instructions for the care of your pet.

As an owner, it is important to remember that you have a responsibility to provide your dependent "furry" loved ones with continuing care. This type of trust allows you to specify a caregiver, outline care routines, require regular inspections of your pet(s) by the trustee and allocate resources for expenses such as food, veterinary visits, grooming, and provide instructions for the final disposition of your pet.

A pet trust will ensure that your pet is cared for, according to your specific instructions, providing peace of mind that they won't end up in a shelter or receive substandard care. It does not have to go through probate and can be structured to take effect immediately if you become incapacitated or pass away, ensuring uninterrupted care for your pet. You can also designate a remainder beneficiary if the funds in the pet trust are not exhausted during the remainder of your pet's life.



Special Needs Trusts

A special needs trust is a trust designed to hold and manage assets for an individual with disabilities without jeopardizing their eligibility for means-tested government benefits such as Medicaid and Supplemental Security Income. In this type of trust, assets are intended to supplement, not replace, government aid or benefits.

The primary purpose of a supplemental needs trust is to allow a person with disabilities to receive additional financial support from trust assets without disqualifying them from receiving Medicaid.

A supplemental needs trust helps provide enhanced quality of life and contributes to the overall well-being of the beneficiary. The supplemental needs trust can pay for adaptive equipment, specialized therapies, and other non-essential but important services that are not covered by Medicaid.

The supplemental needs trust is not just about providing immediate care; it's about ensuring long-term financial security.

- This trust is designed to provide the beneficiary with ongoing support throughout their lifetime.
- It is a vital estate planning tool for families with a special needs beneficiary, as it preserves eligibility for essential public benefits, while ensuring that additional funds are available to enhance the beneficiary's quality of life.

There are generally two (2) categories:

- A First-Party supplemental needs trust is funded with assets belonging to the beneficiary, and often used when the beneficiary receives a large settlement or inheritance. Federal law requires that any remaining funds will be used to reimburse the state for Medicaid expenses upon the beneficiary's death.

- A Third-Party supplemental needs trust is funded with external assets like a family member or friend. The third-party supplemental needs trust does not require Medicaid reimbursement upon the beneficiary's death and the grantor can decide where remaining trust assets go.

It is also important to note that a supplemental needs trust is not a set-and-forget solution.



Because the government often changes already-complex rules, reviewing the trust is vital, as it may need to be revised.

Pooled Trusts

A type of supplemental needs trust that is managed by a nonprofit organization. These trusts are designed to help seniors or individuals with disabilities preserve their eligibility for means-tested government benefits, such as Medicaid and Supplemental Security Income (SSI) benefits, by protecting non-exempt income that can then be used for personal expenses that are not covered by these programs.

- Pooled trusts are commonly used by individuals with disabilities and seniors to qualify for Community Medicaid, which provides home care services in New York.

- By transferring your loved one's excess income into a pooled trust, individuals can qualify for or maintain Medicaid and SSI benefits without having to “spend down” their income. Upon the beneficiary’s death, any remaining funds in the pooled trust may be retained by the trust.



Can Trusts Minimize Estate Tax Liability?

Certain types of trusts can be used to help reduce your tax liability. The key is in how the trust is structured. In general, only trusts that remove assets from your taxable estate have this effect. A properly drafted trust can indeed reduce estate taxes by keeping certain assets out of your taxable estate.



However, because the rules are complex and the benefits depend on factors such as current tax law, the type of assets, and your family's financial situation, it's essential to work with experienced estate planning attorneys. This strategy isn't a one-size-fits-all. Determining the best path to reducing taxes requires careful analysis and planning.

The current 2025 Federal estate tax exemption threshold is $13,990,000 for individuals and $27,980,000 for married couples.

- This means that a married couple would need to have an estate in excess of $27,980,000 before worrying about the federal estate tax.

The current 2025 New York State estate tax exemption amount is $7,160,000.

- This means that an individual must have an excess of $7,160,000 before they would need to worry about New York State estate tax.

If your estate is over the exemption, even by a small amount and exceeds that threshold, nearly the entire estate can become subject to steep tax rates.

- The New York estate tax rate can climb as high as about 16%.
    - Estates that are valued just above this limit lose the benefit of being entirely shielded from state estate tax. Once the threshold is breached, almost all of the estate's value above it is taxed at high rates, rather than being taxed gradually on only the excess.

The bottom line is:

If your New York estate is close to $7,000,000, you may have a serious estate tax situation and should call Feldman, Kramer and Monaco, P.C. to meet with an estate planning attorney !



When setting up a trust, does it matter if you have a house, condominium, or co-op?

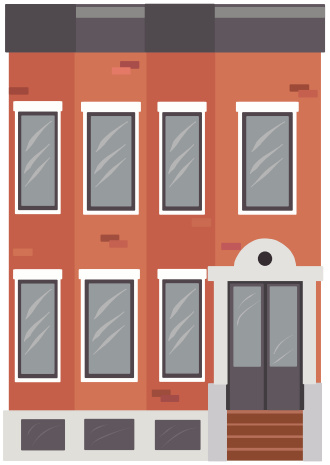
Yes!

It does matter what type of home you own when setting up a trust. When setting up a trust, you can include various types of property within the trust to protect that asset.

Whether you own a house, a condominium, or a cooperative unit, there are some practical and legal differences that you should consider.







Houses & Condominiums

A house and a condominium are similar in that these properties are typically owned in fee simple, meaning you hold an outright title and you have a deed.



Transferring a house deed into a trust usually involves executing a new deed that names the trust as the owner. This process is relatively straightforward, inexpensive and doesn't take long to complete and start the protection process.

Transferring a condominium into a trust should be just as easy and a condominium board generally cannot block the transfer of a unit into a trust.

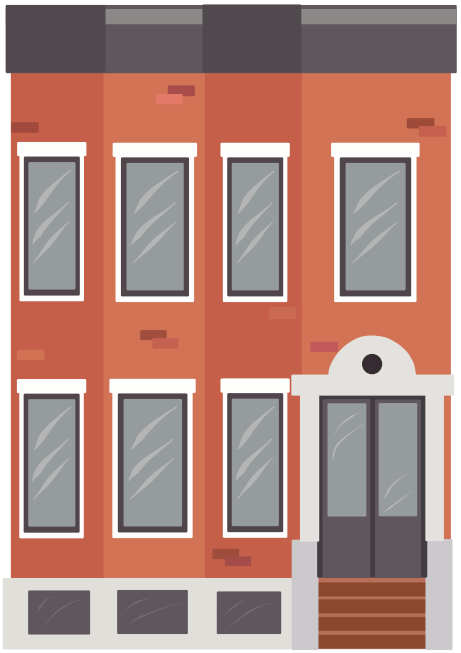
- Although the condominium board may have some concerns and require additional documentation or agreements, they typically can't outright refuse. The condominium board may place conditions on the transfer or make the transfer more complex, thus causing a delay.

Co-operative Apartments



Placing a co-operative apartment into a trust can sometimes be difficult or even denied. This is because with a co-operative apartment, you do not actually own real property. Instead, you own shares in a corporation that holds title to the entire building and have a proprietary lease for your unit.

- Transferring a co-op unit into a trust requires transferring the shares into the trust and needs approval from the co-op board and the managing agent.
- Many co-op boards have their own rules and restrictions regarding transfers of shares into a trust. You may need to obtain board approval before you can transfer your co-op shares into a trust and have the trust reviewed and approved by the co-op board's attorney.
- There are typically fees associated with this process in addition to the legal fees to set up the trust. It's important to review the co-op's proprietary lease and bylaws to determine whether such a transfer is permitted and what conditions you must meet.



Should You Put Your Home in a Trust?

Presented by FK&M FELDMAN, KRAMER & MONACO, P.C. ATTORNEYS & COUNSELLORS

Your home is your most valuable asset from an economic standpoint and from an emotional standpoint. In addition, long-term care is very expensive and can exceed $200,000 per year. Thus, it is important to consider the following:

- You have probably insured your home in the event of a fire. However, have you insured your home in the event that you or your spouse need long-term care?
- Which event is more likely to occur, a fire in your home or that, at some point, you or your spouse will require long-term care?
- Think about how long it would take for your kids to save an amount equal to the value of your house.
  - After taxes and expenses it would probably take them decades to save that much.
  - The loss of some control makes an irrevocable trust unsuitable for some people. However, this type of trust delivers substantial benefits. An irrevocable trust offers clear benefits in terms of asset protection and potential tax advantages. The right decision depends on your unique situation, and long-term objectives.



- Medicaid allows you to protect your house, but you must do it in advance. A trust to protect your home must be created and funded the month before you need to apply for benefits to pay for your care.
    - In New York, you must put your home in a trust one (1) month before you need home care or five (5) years before you go into a nursing home. This protection is especially beneficial if your home represents a significant portion of your net worth.

- For many, especially those with a home in New York, placing the home in a trust offers significant advantages in avoiding probate, preserving privacy, protecting the asset and ensuring that the property is managed according to your wishes should you become incapacitated.



The loss of control when setting up the trust is outweighed by the benefits of setting up the trust. Some of the benefits include:

- Retaining the ability to change beneficiary
- Retaining the ability to change trustee
- Asset protection
- Keeping your tax property exemptions (star, enhanced star, senior citizen, veteran etc.)
- Avoiding probate
- Avoiding a will contest
- Minimizing estate taxes
- Keeping capital gains exemption
- Retaining the ability to sell the home
- Protection disabled beneficiary benefits
- Providing for care of pets
- Stagger distributions to heirs
- Starting the Medicaid clock

Do you need a trust if you own property in multiple states?

- When you own property in multiple states, a trust can streamline the estate settlement process and help avoid the complications of multiple probate proceedings known as ancillary probate in different states.

- The first step is probating the will in the state in which the decedent was domiciled. Then the executor would have to do an ancillary probate in each state that contains an out of state property.

- If they are in a trust it typically removes them from your probate estate without ancillary probate.

    - A trust provides centralized estate management in a single vessel that can manage all your estate assets, regardless of where they are located. This simplifies the estate administration, reduces confusion, speeds up the estate administration process and saves the estate a considerable amount of money.



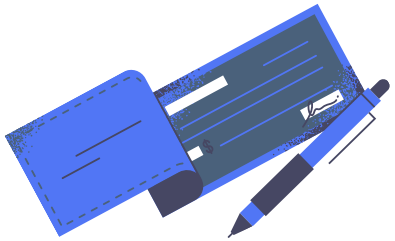
Probate



- The word “probate” is derived from Latin word “probare,” which means “to prove.” It refers to the process of proving the validity of a will, thereby “testing” it for authenticity before the court approves its execution and before assets can distributed.
    - Probate is a protracted court process after death wherein a court examines the assets included in the estate and then the court confirms the executor's appointment. That means that just because you are named or nominated executor in the will, you are not officially the executor until the court confirms your appointment. This causes confusion and delays access to estate assets.
    - The probate process also includes attorneys’ fees, court fees, appraisal fees, realtor fees and other costs, thus reducing what is passed on to your beneficiaries.
    - It often includes a lengthy delay during which the beneficiaries have limited or no access to any of the funds in the estate. During this delay, the estate expenses must still be paid (by executor/beneficiaries to preserve interest in the asset), and they may not have access to estate assets. Lack of access to assets can exasperate one of the most challenging times in someone’s life.

NOTE:

Improper planning can leave heirs and a surviving spouse with no funds for an extended time. Probate can be time-consuming and costly, and because it is a matter of public record, it can also compromise the privacy of the estate's details.







For many, avoiding probate is a key goal in estate planning, which is why some people opt to use trusts to streamline the estate process and maintain confidentiality.

- Trusts are private instruments, unlike the public probate process. This allows you greater confidentiality concerning the details of your estate.
- With a probate the assets and the beneficiary's names and addresses are part of the public record.
- In a trust administration process the assets and the names and address of the beneficiary's remain private.
- To obtain these benefits, it's important that all property titles are correctly transferred into the trust's name. Failing to re-title all the deeds will result in these assets still having to go through probate in the state where they're titled.
- You retain flexibility over how and when assets are distributed making the process difficult to contest.

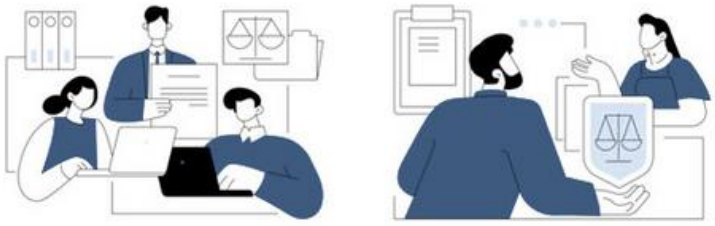


Are trusts more difficult to contest than a will?

Generally speaking, trusts tend to be more difficult to successfully contest than a will. Although nothing is entirely immune from a legal challenge, trusts offer a stronger level of protection. Trusts are often established with the help of experienced estate planning attorneys and tend to be more carefully structured than wills. This level of detail and customization can make a trust more resilient to legal challenges compared to a standard will. In contrast, a will might be simpler and thus more vulnerable to claims of ambiguity or coercion.

Since assets in a trust typically avoid probate, there is less court involvement where disputes can be raised, reducing the window for contesting the arrangement. When a will is offered for probate, it is easy for a beneficiary to object and there is a finical incentive to object.

A trust is not offered for probate; therefore, the beneficiary would have to initiate a trust contest and bear the cost of that challenge, therefore shifting the cost burden to the contestant. This is a significant deterrent to a trust challenge. Unfortunately, a will is generally considered easier to successfully contest then a trust.



We would all like to believe that our friends and family will come together after we pass and that our will would not be contested but that may not always be the case. Unfortunately, family issues, financial dynamics, or feeling slighted during an emotional time may lead to unexpected challenges.

Therefore, it is important to beware of distant or estranged relatives, same-sex couples' complexities, difficult or troubled family members, unequal beneficiary distributions, the capacity of distributes, and jealous siblings.



Trusts

- Trusts have the grantor's continued participation, making it more challenging to establish that they lacked testamentary capacity or that the Grantor did not intend for the trust to be administered in a specific way.

- Trusts allow trustees to be named, which means that even if a grantor at some point lacks capacity, another person can make trust-related decisions on the grantor's behalf.

Wills

- Wills are frequently contested on grounds of undue influence, lack of testamentary capacity, or fraud. Since the creator of a trust may relinquish control over some of the assets while still providing for beneficiaries in a controlled manner, it is harder to prove that the trust was created under improper circumstances.

- Wills, on the other hand become public records during probate process, wherein trusts are private documents. Because the details of your assets, beneficiaries, and instructions remain confidential, there is less public scrutiny and fewer opportunities for disgruntled parties to learn about and challenge the document. This naturally can reduce incidences of challenges.

How often should you review your trust?

- You should also review your trust and estate planning documents at least every couple of years. Consider that your life is constantly changing, and so should your estate plan. Think about how much your life has changed in the last decade. It's imperative to ensure your estate plan adapts to the changes in your life.

- A trust is an essential estate planning tool that must be kept up to date to reflect your current wishes. Updating your trust will ensure your hard-earned assets are protected and that your wishes are carried out properly long after you've departed.

- Like all tools, a trust needs to be maintained to function at its optimum ability. We can help you review and update your existing trust to reflect any significant life changes in your world.



FKM can help you review and update your existing trust to reflect any significant life changes in your world.

What factors warrant updating your trust?

Updating your trust is especially important after any major life-changing events such as:

- The death of one of your heirs
- The birth of a potential new heir
- A significant shift in your financial situation
- Major fluctuations in your investment portfolio
- After a real estate purchase or sale
- After a move to a different state
- Divorce
- Retirement (before)
- The start of a new pandemic
- After an inheritance
- After any changes to the tax code
- and more...








Even if you have a trust, yes, you still need a will!

- A will and trust are like peanut butter and jelly, they complement each other. They will serve as a backup for assets that are not included in the trust, or in case the trust fails. A will also allows you to address specific needs like naming guardians for minor children and can be used to amend the trust at a later date.

- While a will outlines your wishes for asset distribution upon death, a trust can manage and protect assets both during your lifetime and after. Trusts can also help avoid probate, whereas a will does not. The trust only controls assets that are titled in the trust. A will controls the assets that you forget to transfer into the trust and assets that are acquired after the trust is established and then ensures that they still go to your intended beneficiaries.

- Remember, not all assets will be in the trust. A will allows you to address specific needs, like forgiving debts owed to you or making last minute charitable donations. A will sets forth your wishes regarding the distribution of your tangible personal property like your jewelry, your baseball card collection, your toaster, tools, car and guitars.





Choosing the right trustee is one of the most critical decisions when setting up a trust !

- The trustee will wear many hats including managing your assets and carrying out your wishes for the benefit of the beneficiaries.

- The trustee must be both trustworthy and competent, possess skills to navigate not only day-to-day financial decisions but also complex legal and tax matters that may arise.

- The trustee could be a family member, friend, CPA, attorney, or a professional institution.



When Choosing a Trustee:



- Ensure that the trustee truly understands the responsibility of the job and is willing to serve and commit to the role.
- Make sure your trustee possesses good judgment and has the beneficiaries' best interests in mind.
- The trustee must also have some level of Financial and Legal Competence. The trustee should have a solid understanding of asset management, financial planning, and ideally some familiarity with the tax and legal issues related to trusts. This doesn't mean they must be an expert attorney or accountant, but they should be capable of managing investments and be willing to consult with professionals.
- The trustee should be objective and act with neutrality. This is particularly important if family dynamics are complicated.
- Consider the health, age and location of the trustee. Longevity and the ability to serve the duration of the trust is very important.
- The trustee should also be capable of communicating with beneficiaries, keeping accurate records, and providing regular accountings.

Can you change your trustee during your lifetime?

- Yes, generally, but it depends if the trust document can allow for changes and you can typically change both the trustee and the beneficiaries of a trust during your lifetime .



- The trustee has a pivotal role within the trust and is tasked with managing the trust's assets and ensuring the fulfillment of its terms. The decision to change a trustee is significant, and may be necessitated by grantors desire to ensure their trust is in capable hands.



- Sometimes for a variety of reasons trustees need to be removed and replaced. The grantor can retain the power to remove and replace a trustee. If the trustee has died or has become incapacitated, they'll obviously need to be replaced. Other reasons include changing relationships or the trustees evolving preferences. The trustee may no longer wish to be the trustee, could commit fraud, violated their fiduciary duty, or neglect responsibilities.

How to change your trustee during your lifetime?



- The trust document should outline how to change the trustee, including specific procedures for naming a successor trustee or allowing the settlor to remove and replace the trustee.

    - The trust document usually outlines the method to appoint a new trustee without court intervention. Nevertheless, you may need to execute a formal amendment to the trust and advise the beneficiaries and financial institutions. The beneficiaries may also have the right to petition the court to remove a trustee if they believe the trustee is not acting in their best interests. The specific process for changing the trustee depends on the terms of your trust and a the jurisdiction of the trust.

- It is important to review your trust documents carefully in order to understand the specific terms and conditions regarding modifications. A successor should embody and understand the trust's goals and safeguard the beneficiaries' interests, always aiming to resolve issues with minimal stress and maximal fairness.

Can you change your beneficiary during your lifetime?

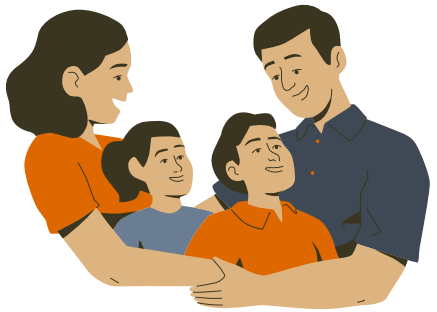
Yes, generally, but it depends if the trust document can allow for changes.

- The grantor can typically change both the trustee and the beneficiaries of a trust during their lifetime. However, it depends on the type of trust you have and the language contained in the trust.



- As trust law has developed, many states have adopted laws that allow trusts to be changed. These laws include judicial modifications (when a court changes a trust), non-judicial settlements (when the beneficiaries and trustees agree to change the terms of a trust), and decanting (when the trustee exercises a power in its discretion to distribute the trust to another trust). Most importantly, the grantor can retain the ability to change the terms of the trust by using a limited power of appointment.

Limited Power of Appointment



- A “limited power of appointment” is a useful tool in estate planning. We often suggest that clients include this power in their trusts because it allows the grantor or the holder of this power adjust an estate plan.

- Life plans change year to year and, therefore, grantors need the ability to change the trust beneficiaries when the of changing circumstances warrant it.

    - Through the years, the dynamics of your family will evolve. Your family may grow, children and grandchildren may be born, some may mature into wise adults and some may not. Loved ones may suffer through illness, and at some point, every member of the family will die could or even predeceases the grantor. State and Federal Tax and property laws can change from one Congress to the next. Unforeseen events occur in the world economy or in the stock markets. Your family businesses may exceed your expectations or your pension may fail.

Can you change your beneficiary during your lifetime?

- Estate and trust plans often deal with concerns about their children's solvency, marriages, ability to manage assets, health problems, as well as wealth disparities between children. These issues may not have been present at the trusts inception or may have evolved over time and developed into a significant issues and require the grantor to amend the beneficiaries and change the plan.

- Why should the grantor be required to leave assets to a child that has no relationship with the family? What if a child has become disabled, accrued significant debts, married the wrong person, is incarcerated, or has an dangerous substance abuse problem. A beneficiary may win the lottery, become the CEO of a mega technology company, marry into a wealthy family, become a partner in a large law firm or inherit substantial assets.



Unfortunately growing old and having a fruitful life is not an option for every beneficiary. Fortunately, there are many ways to build flexibility into the trust plan and creating a plan while using a limited power of appointment gives you options. It makes your plan flexible by allowing the grantor to adapt to later circumstances and customized the trust plan to fit your and your family's particular circumstances.

This power can either be exercised by a will or by a notarized document delivered to the trustee during the lifetime of the grantor. Powers of appointment are powerful, customizable and can have a large impact on taxation. You should consult with Feldman Kramer and Monaco, P.C. when considering adding powers of appointment to a new plan or modifying an old plan to include them.







Can you have a trust within a trust?

- Yes, you can set up a trust within a trust. This structure often referred to as a “sub-trust” arrangement. This is common with advanced estate planning and asset protection strategies.



- Typically, an asset protection trust can include provisions that, upon certain triggering events, like the death of the grantor, the trust will automatically create one or more subsidiary trusts. These sub-trusts are governed by the same overall trust instrument but are designed to manage or allocate assets separately according to the grantor’s detailed instructions.
    - For example, if I set up an asset protection trust and upon my death I can then direct that 50% go to a minor trust for my daughter and 50% goes into a supplemental needs trust for my son.

Sub-trusts

Interconnected, yet separate distinct trusts.

Although they operate under the umbrella of the master trust, each can have its own independent terms regarding trustee powers, distribution conditions, and even the duration of the trust. This complex approach can help protect assets, reduce tax liability, and avoid probate.



- The sub-trusts may have separate distribution schedules and different trustees.
- The sub-trusts can be created for different groups of beneficiaries such as one for a surviving spouse and one for children of a prior relationship.
- The sub-trusts may also have different purposes such as a special needs trust and a spendthrift trust.
    - This setup allows you to tailor asset management, distribution schedules, and tax planning strategies specifically for each beneficiary group or goal.

- Irrevocable trust represents the most effective strategy for shielding your assets from creditors and legal judgments. If you're a trust beneficiary who conveyed your home to a trust but continued to live in the home, you keep the STAR tax benefit, Senior citizens exemption, all three different veterans property tax exemptions, the exemption for persons with disabilities and limited incomes.

- If you put your home in a trust you don't lose a valuable tax benefit for homeowners who sell their primary residence. It allows them to exclude a significant amount of capital gain from the sale, which can result in substantial tax savings.

- Section 121 of the Internal Revenue Code (IRC) allows taxpayers to exclude up to $250,000 ($500,000 for married taxpayers filing jointly) of capital gain from the sale of a primary residence if certain conditions are met. The exclusion can be used once every two years. A house in a trust will qualify for the Section 121 exclusion, the following conditions must be met:

    - The home must have been owned and used as a primary residence for at least two out of the five years prior to the sale.

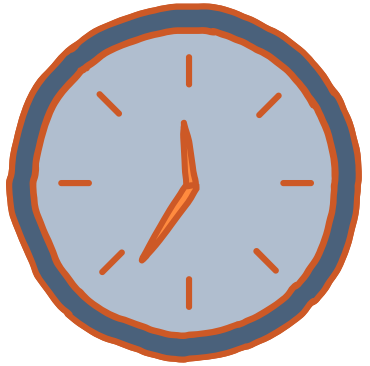
    - The taxpayer must not have claimed the exclusion for the sale of another home within the two-year period ending on the date of the sale.

- The Section 121 exclusion is a valuable tax benefit for homeowners who sell their primary residence. It allows them to exclude a significant amount of capital gain from the sale, which can result in substantial tax savings.



How long does it take to establish and fund a trust:

- It only takes a few weeks to draft, sign and fund a trust. Establishing a trust involves careful consideration of your financial situation and goals. Consulting with an attorney at Feldman, Kramer and Monaco, P.C. and your financial professional can help determine the most appropriate estate planning tools needed to achieve your goals.



- If protecting your estate is important to you, then you must be proactive. The timing of when you set up a trust is paramount to the benefits that the trust provides. A trust offers a way for families to protect their assets for their loved ones long after they pass on.



- Planning for a long-term care event can be a complicated exercise, but you cannot overlook the possibility that a parent or spouse will require long-term care. For most people, the place to start is a trust. It is possible to secure your wealth for future generations and provide for an uncertain future, no matter what life throws at you, by building flexibility into your estate plan. We can help you analyze your situation and consider additional options that you may not have considered.

How Long to Form a Trust?

Trusts are not just for very wealthy families. Trusts can be helpful for many “middle-class" families, who wish to protect assets for their children, grandchildren or loved ones, while maintaining control over how that money is used. However, trusts are not for everyone. You do have the option of spending your estate on long-term care, a nursing home, government entities or creditors. Benjamin Franklin said, “failure to plan, is planning to fail”.

A trust can avoid probate court, minimize your exposure to tax and protect your assets from the cost of long-term care while allowing you to maintain control over your assets—not just today, but potentially for generations to come. This provides far greater flexibility and asset protection than just using a will alone.

“You don't know, what you don't know."

-W. Edward Deming



At Feldman Kramer and Monaco, P.C., our estate planning attorneys can guide you and help you achieve your estate planning goals. You have worked hard for your money and only you can make sure your family is provided for!

How should you organize/store your important documents?

- Secure Storage: Keep your estate planning documents in a safe, accessible location. We recommend a fireproof and waterproof box kept in your home or a safe. Inform a trusted family member or advisor of their whereabouts.

- Digital Records: Consider maintaining digital copies of essential documents and account information, ensuring they are encrypted and securely stored.

- Everyone should have an "Emergency Checklist" that is kept with your important documents. This is a place to ensure in an emergency they will be able to know where your finances are held and how to continue paying and providing for the household. Include things like names of banking institutions, investment account info, life insurance policies, mortgage and utility info, plus the usernames and passwords for each. FKM can provide a checklist for you to fill out.







Questions?

Presented by FK&M FELDMAN, KRAMER & MONACO, P.C. ATTORNEYS & COUNSELLORS

For more information or if you have any questions contact Feldman, Kramer & Monaco, P.C. today!

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