

NEW YORK TRUST BASICS WHAT YOU NEED TO KNOW

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Your Last Will and Testament will undoubtedly provide the foundation for your comprehensive estate plan; however, a foundation is meant to be built upon. A well-thought out estate plan can achieve numerous goals and fulfill a wide variety of objectives. To accomplish this, however, you will need to incorporate additional documents and strategies into your plan. One of the most common additions to an estate plan is a trust.

A century ago trusts were primarily used by wealthy families as a way to pass down the family wealth without paying a hefty tax bill. They were also used as a way to control how the family wealth was spent. Trusts are still used to control family wealth; however, they are also used by the average estate planner for a wide variety of other purposes as well.

WHY INCLUDE A TRUST IN YOUR ESTATE PLAN?



One of the reasons why trusts are such a popular addition to an estate plan in the 21st century is the numerous and varied benefits a trust offers, including:

- **Asset protection** – a trust can be used to shelter assets for Medicaid planning purposes to ensure that you will qualify for benefits when the need arises. Trusts are also used to protect assets from creditors or from irresponsible beneficiaries.
- **Tax avoidance** – once an asset is transferred into an irrevocable trust it becomes trust property and is no longer owned by you. Therefore, it is not considered when calculating your estate's value for the purpose of gift and estate taxes.

- **Probate avoidance** – probate can be a long, drawn out process that ties up assets for months, even years. Assets held in the right type of trust, however, bypass probate altogether.
- **Incapacity planning** – a revocable trust can be used to plan for incapacity. By naming yourself as the trustee and a spouse/parent/child as successor trustee, assets held by the trust are immediately transferred to the control of the successor trustee upon your incapacity.
- **Charitable gifting** – both the charitable remainder and charitable lead trust can be used to gift to both a charity and a non-charitable beneficiary.
- **Special needs planning** – a special needs trust allows you to provide supplemental financial support to a special needs loved one without jeopardizing the beneficiary's eligibility for assistance program such as Medicaid and SSI.
- **Pet planning** – a pet trust ensures that your beloved family pet will be well-cared for long after your own death or incapacity.

TRUST CREATION – THE ELEMENTS

Although a trust can become extremely complicated when necessary, the basic elements necessary for the formation of a trust are simple enough to understand. Every trust requires the following five elements:

1. **Trustor** – the person who creates the trust and transfers assets into the trust.
2. **Trustee** – the person, or entity, that manages the trust and oversees the trust assets.
3. **Beneficiary** – at least one beneficiary must be named to receive the benefits of the trust. A beneficiary can be an individual, a charity, or even an institution.
4. **Assets** – assets can be cash, property, stocks, or anything else of value.
5. **Terms** – as the trustor you can create trust terms that dictate how the trust assets will be managed and distributed. As long as the terms are not illegal, unconscionable or impractical they will likely withstand judicial scrutiny.

TESTAMENTARY VS. INTERVIVOS

All trusts fall into one of two categories – testamentary or intervivos (commonly referred to as a living trust). A testamentary trust is one that does not take effect until your death. A testamentary trust is often used by parents with minor children as a way to protect assets until the children reach the age of majority. A living trust becomes effective as soon as all of the elements of creation are met and sufficient assets are transferred in to fund the trust.

REVOCABLE VS. IRREVOCABLE



A trust must also be either revocable or irrevocable. As the names imply, a revocable trust is one that can be changed or revoked by the trustor at any time and for any reason. An irrevocable trust, on the other hand, cannot be changed or revoked by the trustor once created.

In some cases, a court can modify or even terminate an irrevocable trust; however, if you create an irrevocable trust it is best to consider it to be impossible to change. Many of the tax and asset protection benefits that trusts offer are only available if the trust is an irrevocable trust.

CHOOSING THE RIGHT TRUSTEE

For a trust to be successful and beneficial to all involved it must first be created properly which requires the assistance of an experience estate planning attorney. Another important factor in the success or failure of a trust is the trustee. As the trustor of a trust you have the ability to appoint just about anyone you want as the trustee. In some cases you can even appoint yourself as the trustee. Just because you *can* appoint anyone doesn't mean you *should* appoint just anyone though.



Many people appoint a spouse or family member as the trustee of their trust. In some cases, such as for incapacity planning purposes, this is truly the best option.

Often, however, appointing a family member is a mistake for several reasons, including:

- **Skill and experience** – the trustee of your trust is charged with guarding, and growing, the trust assets. This takes a certain degree of financial skill and experience. In addition, the trustee must understand, and abide by, the various local, state, and federal laws that govern trust administration. If your family member lacks the skills or experience for the position it may be better to appoint a professional trustee.
- **Conflict** – if the beneficiaries of the trust are family members as well it often creates conflict within the family to appoint a family member as the trustee. Beneficiaries may feel that the trustee has too much power or the trustee may have a hard time saying no to beneficiaries if they are also family members.
- **Availability** – the job of trustee can be a time consuming job, depending on the size and complexity of the trust. If your potential trustee has a full-time job or is a full-time parent you could be asking too much by appointing him or her as your trustee. A professional trustee, on the other hand, performs as a trustee for a living every day.

Now that you have a better understanding of how a trust is created and the numerous benefits a trust can offer it may be time to sit down with your estate planning attorney and decide how best to incorporate a trust (or two) into your overall estate plan.

American Bar Association, [Trusts](#)

U.S. Trust, [Trust Basics](#)

Living Trust Network, [Types of Trusts](#)

About the Attorneys



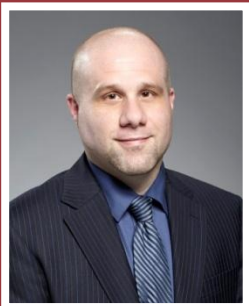
Saul Kobrick

Saul Kobrick is an attorney licensed to practice law in the State of New York and the owner, senior partner and founder of The Law Offices of Kobrick & Moccia. Mr. Kobrick is licensed to practice law in all courts of New York State, as well as in the Federal District Courts for the Southern and Eastern Districts of New York. He is a member of the New York State Bar Association as well as a member of the American

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Experience

Prior to founding his Garden City Law Firm in 1992, Mr. Kobrick has for many years, practiced law both as a Sole Practitioner, and in partnership in New York City. His practice focuses on elder law, wills, trusts and estate planning. Mr. Kobrick provides quality Estate Planning and Elder Law services to residents of Nassau County, Westchester County and Suffolk County.



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Experience

Mr. Moccia joined the Law Firm in 2006. As a law clerk and became partner in January of 2015. Mr. Moccia speaks regularly to residents of Nassau County, Suffolk County, and Westchester County about estate planning, wills, trusts, and Medicaid planning.

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