

Trusts Demystified

Power Play Blog 2.5

In previous blogs we've discussed the use of various trusts for estate planning. In this edition we'll elaborate further on the use of a trust to complement a will, explain the basics of a trust, and provide samples of common trusts we use in the planning process. We'll also address a component that has become an item of interest for our clients – a Letter of Wishes (also called Letters of Intent).

Both wills and trusts are tools that help you distribute your property upon death. A will is a legal document that allows you to identify and name the people (called beneficiaries) you wish to inherit property you define in the document and allows you to select a guardian for your minor children. The probate process that wills go through requires court supervision, so you can feel secure knowing your assets will be distributed according to your wishes. Wills alone, however, cannot manage the distribution of assets completely and are not especially effective in dealing with cases of disability or incapacity.

Creating a trust to complement a will, allows you to appoint a trustee to hold and direct assets on behalf of a beneficiary. They are extremely helpful in providing protection for minor and disabled beneficiaries and afford the person making the trust (the settlor) more control over the inheritance they are leaving. A major advantage of establishing a trust is that they avoid the cost and delay of probate, which has a side benefit of ensuring privacy as they do not become part of the public record. There is, however, a complicated set of laws that apply specifically to trusts (Trust Law) which can make their use a bit trickier and also more expensive.

What are the deciding factors in choosing to use a trust? Typical considerations are matters such as a) the size of the estate, b) the maturity of your beneficiaries (if a large inheritance will be transferred to minor children) and c) family dynamics. Trusts sometimes handle situations like blended families or with members residing in several jurisdictions with greater efficiency.

What exactly is a trust? A trust is a relationship involving three separate parties. It is created when one person (the settlor) transfers property (assets) to another person (the trustee) with the intention that the trustee holds it for the benefit of someone else (the beneficiary). The trustee then owes certain responsibilities to the person for whom they are looking after that property. A trust is a written document that provides the trustee with instructions on how to manage and distribute the transferred property. The trustee can hold the property for the benefit of the person who transferred that property to the trustee in the first place, or for the benefit of one or more individuals who may or may not be that original transferring person.

In order for a trust to be valid, three conditions (known as certainties), must be present; 1) the person transferring the property must consciously “intend” to do so, 2) there must be something to give (property) and 3) there must be someone or a group of persons, on the other end of the giving set to receive the benefits of the trust.

Inter Vivos and Testamentary Trusts

There are two types of trusts: *Inter Vivos* and *Testamentary*. The Latin term *Inter Vivos* means “between the living” and indicates a trust created during the lifetime of the settlor. A *Testamentary trust* is created at death by the settlor’s will. One big difference between the two trusts, is that with the *Inter Vivos* trust, assets do not form part of the settlor’s estate, thereby saving probate fees, and pass directly into the hands of the beneficiary(s). With a *Testamentary trust*, in most instances, the assets pass through the probate courts, causing potential probate fees, and also a potential loss of privacy, since assets passing through the probate courts become a matter of public record.

Revocable or Irrevocable?

Trusts are either *revocable* or *irrevocable*. As their names suggest, a *revocable* trust can be withdrawn or cancelled by the settlor. These *revocable* trusts also have the benefit of allowing the settlor to retain control of the trust assets, and to alter the terms of the trust at any time. With an *irrevocable* trust, the assets no longer belong to the settlor as they belong to the trust. Typically, these trusts cannot be revoked or altered without consent of the beneficiaries and the trustee. These are the trusts we generally create at death through the will and are used to reduce taxes, protect property, and allow for the creation of certain arrangements after death.

So why would we consider the use of a trust for our clients during the estate planning process? Well, consider the following most common applications of a trust:

- Protecting a family legacy into the future, including protecting assets and claims by future ex-spouses and creditors
- Minimizing estate taxes and avoiding probate
- Addressing the special inheritance concerns that may arise in a blended family
- Providing management of the inheritance for minor children
- Taking care of a child or adult with special needs

Letter of Wishes (or Intent)

We have been introducing the concept of including *Letters of Wishes* (or “Intent”) within the creation of the estate plan. The will is the formal document created by you and a lawyer to provide your executor(s) step-by-step instructions with respect to the disposition of your assets. However, a complete estate plan should be more than just formal papers, and this is where the Letter of Wishes comes in. It provides you with a chance to tell your story; a real way of expressing your legacy and sharing the “why” behind the decisions you have made and written formally in your will. We have encouraged our clients to give some thought to putting down on paper, informally, the intent and ideas that helped formulate the final decisions documented in the will. These notes help to provide clarity into some of the decisions, avoid confusion, and ultimately give a window into the “why” of some of your decisions, long after you are no longer around to provide such clarification.

A Letter of Wishes is an opportunity to share what matters most to you and share beliefs and values. Some ideas you might consider when drafting a letter of wishes:

- **Express gratitude for the important people in your life.** A letter of wishes provides the means to share exactly how you feel about those closest to you – to say the things you couldn’t or didn’t get the chance to express while you were still alive
- **Explain decisions.** A letter of wishes allows you to explain your decisions, especially those that may be fair, but not equal
- **Describe intentions regarding legacy assets.** Some of the assets you are dispersing may have equal or even more sentimental value than monetary worth. A letter of wishes allows you to convey your intent with these “priceless” types of assets and clearly lay out who you want to receive certain assets and why
- **Convey funeral and memorial wishes.** Some recent wills have included this feature. Detailing them in a letter of wishes allows you to clearly describe how you feel about these end-of-life decisions, and why. They can take the decision-making burden off of your loved ones left behind, particularly at a time of stress and grieving.

As always, ONE Sports is here to assist you in this planning. We’ll do our best to respect your wishes and intentions, and ensure you articulate them in a way that is clear, concise, and respectful of any and all who are close to you.