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We Asked Our Experts: Do You Need a Trust?

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Wills may not make sense for all estate planning needs. Find out when you might want to consider a trust.



Basic estate planning usually starts with a will, which deals not only with your property but also with important decisions like who will care for minor children if both parents are deceased. But wills aren't necessarily the best, final option for every estate, especially given the legal proceedings that must occur before any assets are distributed.

That's where a trust can help.

What is a trust?

A trust is a fiduciary arrangement that specifies how your assets are to be distributed, usually without the involvement of a probate court. They can be structured to take effect before death, after death, or in case of incapacitation. In contrast, wills take effect only upon death and typically need to be authenticated by a probate court, which can take time and involve additional costs.

Trusts can be arranged to accomplish a variety of different goals. For example, you can use a trust to transfer property, help minimize estate taxes, preserve assets for minors until they are adults, or benefit a charity.

And while trusts have a reputation for being expensive, some attorneys offer a basic trust package for a flat fee. That said, the bill can add up quickly if you and your attorney need to spend a lot of time discussing your goals before the trust agreement is drafted. The kind of assets included in the trust and the complexity of the distribution strategy can also affect pricing. So, it makes sense to do some planning beforehand.

To learn more about the benefits and drawbacks of trusts, as well as the ways in which Schwab can help clients work through their estate-planning needs, we talked with three Schwab professionals: Brad Reeves, an assistant branch manager in Austin, Texas; Lauray Kennedy, a sr. wealth consultant with Schwab Private Wealth Services in Westlake, Texas; and George Pennock, director of tax, trust, and estates for Schwab Wealth Advisory in Henderson, Nevada.

Q: Why would someone consider a trust?

Brad: In a word: specificity. A trust allows you to be very specific about how, when and to whom your assets are distributed. On top of that, there are dozens of special-use trusts that could be established to meet various estate planning goals, such as charitable giving, tax reduction, and more. Taxes may be especially top of mind these days, as Congress considers lowering the gift and estate tax exemption. (For more on that, see [Will Taxes Rise for the Wealthy?](#))

George: A trust not only identifies who may benefit from trust resources but also defines how and when, including in cases of incapacity. Anyone concerned about facing a stroke, dementia, or Alzheimer's may want to consider using a trust to ensure their resources are preserved, managed, and spent in line with their wishes while they're under the care of a loved one or health professional.

They're also extremely flexible in terms of how you deploy them. For example, you can appoint a trustee to help assist beneficiaries who may struggle to manage their bequest. You can also structure trusts to protect the beneficiaries from creditors, manage their state income taxes and/or preserve the generation-skipping tax exemption.

Q: Why not just create a will instead?

George: A major limitation of wills? You have to die first. If you're incapacitated, a will has no legal effect, so any health care or durable powers of attorney you might have in place will guide any decisions made on your behalf. This could create problems if you need to complete financial transactions with outside parties who have trouble accepting or even refuse to accept the power of attorney.

Lauray: The probate process can be lengthy and potentially costly. Keep in mind that each state where assets are held in title of the decedent will need to be probated, resulting in additional costs.

Also, a will is a public document that could be scrutinized or contested, as well as give the public access to information that you might wish to keep private. Any assets held in a trust can typically be managed by the successor trustee in a more private manner than a typical probate proceeding.

Brad: Many people draft wills with trust provisions, otherwise known as "testamentary trusts." These work in much the same way as other trusts, except that by their very nature they may have to go through the probate process. This means the probate court could choose to distribute the deceased's assets in a way that differs from her or his original intentions.

A living or "inter-vivos" trust, on the other hand, allows the owner to plan during his or her lifetime, thereby bypassing the probate process and controlling decisions related to the distribution of assets.

Q: Do certain types of trusts make sense for most people?

George: A revocable living trust is the most common tool used by estate planners and represents a fundamental building block for most estate plans.

Lauray: A living trust is a lot like a "regular" account in that you still have control over your assets. You can buy, sell, and trade assets as you normally would. You're able to move assets into and out of the trust at your discretion. The key difference is that you can put additional controls and designees in place to help protect your assets should you pass away or become incapacitated.

What is a revocable trust?

A **revocable trust** is a trust that can be changed at any time and in any way during the owner's lifetime, up to and including total revocation.

What is an irrevocable trust?

An **irrevocable trust** is one that cannot be changed or revoked after the agreement has been signed. A revocable trust becomes irrevocable upon the death of the original trust owner.

The benefit of an irrevocable trust is that, when certain conditions are met, the assets can be removed from the trustee's estate, thereby potentially reducing the estate's value and its associated estate tax liability. Assets held in a revocable trust, on the other hand, are considered part of the original owner's estate.

Q: Are there any disadvantages to trusts?

Brad: I'd call them trade-offs. For example, a trust can be more expensive and complicated to draft than a will. Sitting down with an estate-planning attorney can be very expensive, particularly if you don't know what you want or need from the trust.

You could end up paying thousands of dollars just to talk through your situation, not including the additional fees to actually draft the documents. However, incurring additional costs on the front end could save your heirs a significant amount of money on the back end by avoiding the probate process.

Lauray: There are ways to bypass some of the costs associated with trusts, particularly through the planning process. Understanding these trade-offs and determining your needs and goals will serve you well once you're ready to engage an estate-planning attorney.

George: It's not a disadvantage so much as a misconception that can keep people from setting up a trust, but people often mistakenly assume you need to have a lot of money to justify creating a trust. That's not true. A trust is a tool in the estate planner's toolbox—nothing more, nothing less. If a client is concerned about incapacity or wants their assets to transfer to beneficiaries in a particular manner, a trust is a useful tool to make that happen.

Another thing to keep in mind is that as useful as trusts are, there are certain things the trust's creator can do to help the process. Letting people know the trust exists as well as the thinking behind its creation are important to cultivating stewardship around the bequest.

Q: How can Schwab help clients with their estate planning and trust needs?

Brad: Schwab doesn't provide tax or legal advice. However, we can educate clients about the estate-planning process and provide insights and considerations to help them have a successful meeting with their estate-planning attorney.

Working through the details ahead of time could potentially save significant time and money in the long run. Schwab can also set up trust accounts for clients and help coordinate between other accounts—depending on the client's overall investment goals and preferences.

Lauray: As a senior wealth consultant, I leverage my 25+ years of experience serving affluent families to help solve some of their unique wealth management needs and family dynamics, help connect clients to the best of Schwab, and be a thought partner to help grow and protect client's wealth at any stage of life.

George: Our team of wealth strategists and trust services consultants can help you optimize your plans. We serve as subject matter experts that clients and their financial consultants can turn to when assessing their plans. We also work with clients and their attorneys regarding the appointment of Schwab as a current or successor trustee.

Naming trustees