

What is a Trust?

A trust is a relationship among three parties:

The Settlor – the person who establishes the terms and conditions governing the operation of the trust and then transfers legal ownership of the assets to the named trustee.

The Trustee – the individual or corporation that is named as the legal owner of the assets and accepts the responsibility to hold and manage the assets solely for the named beneficiaries.

The Beneficiaries – the individuals or organizations entitled to receive the benefit of the trust during its operation and/or upon its termination.

Why a Trust?

The reasons for establishing a trust can be many and varied. The settlor may be concerned about caring for a spouse, a dependant child, safeguarding assets for future generations or providing on-going funding to a favorite charity or educational institution. A well-constructed trust is a useful and powerful estate-planning tool.

Testamentary Trusts

The terms and conditions governing a testamentary trust are normally contained in the settlor's Will. As no assets are legally transferred to the trustee until the settlor dies, testamentary trusts do not come into effect until that date.

Therefore, at any time prior to death, the settlor can modify or revoke the terms of the testamentary trust. Once a testamentary trust comes into being it can only be modified by the courts or, in some provinces, through the mutual agreement of all parties to the trust.

Living Trusts

A living (inter vivos) trust is established during the settlor's lifetime and comes into being when the trust agreement is signed. The trust property is legally transferred to the trustee at that time. Living trusts can be revocable or irrevocable:

- A *revocable trust* can be changed or collapsed by the settlor at any time;
- An *irrevocable trust* cannot be changed or collapsed and must continue to operate as set out in the trust indenture.

Professional Assistance

Settlors need to ensure that the trust arrangement is properly established to meet their objectives and the needs of the beneficiaries. Trustees must have the knowledge and skill to operate within the terms of the trust agreement; they are responsible to the beneficiaries for what occurs during the course of the administration. Virtually every decision related to the set up and operation of a trust will have tax implications. Trusts are a complex legal area and the need for professional assistance cannot be over-emphasized.

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