



Alaska Court System

Self-Help Services: Probate

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Trusts

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What is a trust?

A trust is an agreement by the person who owns property (the "[settlor](#)") to give ownership of and control over the property to another person (the "[Trustee](#)"). The Trustee agrees to manage the property for the benefit of one or more persons chosen by the settlor (the "[beneficiaries](#)"). The terms of the agreement between the settlor and Trustee are set out in a trust document. The settlor, Trustee and beneficiary can be the same person acting in different roles or they can be different persons.

There are many different types of trusts. Two of the most common types used to manage property after a person's death are a [revocable trust](#) and a [testamentary trust](#). A revocable trust (also called a "living trust") is created by a person during his or her lifetime. A testamentary trust is created by a person in his or her [Will](#) and is not effective until the person dies. Both trusts can be changed or cancelled (revoked) at any time before a person dies. Property placed into a revocable trust, however, does not have to pass through [probate](#).

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Why should I make a trust?

A [trust](#) allows you to name a [Trustee](#) to manage your property after you die for your [beneficiaries](#) in the way you choose. If you do not create a trust, your [Personal Representative](#) must give your property right away to each person you choose to receive it. A Trustee, however, can hold the property in trust for as long as you wish. A trust is helpful if you want your property used for certain purposes, such as education or medical care, if you want to wait until your beneficiaries reach a certain age or maturity to give them property, if you are not comfortable with the ability of a beneficiary to manage money, or if you want your property held for future generations.

It is especially important to consider creating a trust if you want to leave property to [minor](#) children. If you do not create a trust, the child's Guardian can use the inheritance only for the child's support until the child reaches 18. When the child turns 18, the Guardian must give all remaining property to the child to use however the child wants.

If you create a [revocable trust](#) and fund it properly, you can also avoid the entire probate process for your [estate](#). You may want to avoid probate to keep your estate matters private, to save your

beneficiaries or [heirs](#) the hassle of a court process or because it usually costs less for a lawyer to create a revocable trust than it does for a lawyer to handle a probate at your death. On the other hand, the probate process is relatively simple in Alaska, you may end up with both a trust and a probate if you overlook transferring all property into your revocable trust and you must pay a lawyer to create the trust while you are alive rather than paying for a lawyer out of estate funds at your death.

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How do I create a trust?

It is a good idea to [see an estate planning lawyer](#) if you want to make a [trust](#). Trusts are usually more complicated than [Wills](#). It is important to make sure that the trust accurately describes your wishes, plans for tax matters if necessary and is the right kind of trust for your situation. If you create a [revocable trust](#), you will need to choose a [Trustee](#) and decide how the property will be managed after you die. If you want to avoid probate, you will also need to transfer ownership of all of your property to the revocable trust or name the revocable trust as a beneficiary of your property. If you create a [testamentary trust](#) in a Will, you will only need to choose a Trustee and decide how the property will be managed after you die.

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Who should I choose as my Trustee?

Choosing a [Trustee](#) is important because that person may be managing your property for a long time. You can name a family member, a friend, a professional advisor or even an organization, such as a bank or trust company, as your Trustee. An organization can usually serve longer than an individual Trustee and can sometimes seem more neutral if you think that the beneficiaries and Trustee may not get along. On the other hand, an organization will charge higher fees to serve as Trustee and an individual Trustee who knows your [beneficiaries](#) personally may be better able to fulfill your goals.

Ideally, your Trustee should be someone who is trustworthy, is good with finances, is fair-minded, cares about your beneficiaries and who shares or respects your ideas about the purposes of your trust. Depending on your goals, a Trustee may serve for a few years or for generations. You should make sure to name one or more [successor Trustees](#) in case the original Trustee dies, resigns, or is no longer able to be the Trustee. It is a good idea to name an organization as a final back-up Trustee in case all individual Trustees are no longer able to serve. Another solution is to allow the beneficiary or a neutral third person to replace, add or remove Trustees. You should discuss these options with your [estate planning lawyer](#).

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How does a revocable trust avoid probate?

The person who creates a [revocable trust](#) (the [settlor](#)) transfers ownership of his or her property to a [Trustee](#) to manage under whatever conditions the settlor chooses. Because the Trustee is the legal owner of the trust property and not the settlor, it does not need to pass through [probate](#) when the settlor dies. If the settlor and the Trustee is the same person, another Trustee, called a [successor Trustee](#), takes control over the trust property when the settlor dies.

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How do I transfer ownership of property to the Trustee of a revocable trust while I am alive?

The process to transfer property during your life to someone else, including a [Trustee](#) of a [revocable trust](#), is generally the same as the process to transfer property at death. However, you should be careful when transferring property to a [trust](#). If you have a loan on the property, some loan terms do not allow a transfer of any kind without the lender's consent. Other property, such as retirement benefits, cannot be owned by a trust and you must name the trust as the [beneficiary](#) of your plan instead. But how the trust is written can affect how the taxes must be paid on your benefits after you die. Before you transfer any property to a trust or name the trust as a beneficiary of any property, you should [ask your estate planning lawyer](#) for advice.

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What is a pourover Will?

A pourover Will transfers property through a [probate](#) and into an existing [trust](#) (usually a [revocable trust](#)) when you die. You should have a [Will](#) even if you create a revocable trust for several reasons. First, it is possible that you might need a [Personal Representative](#) to handle unexpected matters such as a dispute over your [estate](#) or a lawsuit if you died in an accident. Second, only a Will can name a [Guardian](#) for a [minor](#) child or incapacitated adult. And finally, it is common to overlook transferring property or changing the [beneficiary](#) to your revocable trust. Having a Will makes sure that any property that you overlooked will pass into your trust by directing your Personal Representative to transfer all of your [probate property](#) to your [Trustee](#). This is called "pouring" your estate "over" into your trust.

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How do I create a testamentary trust?

A [testamentary trust](#) is created as a part of your [Will](#). The Will sets out the [beneficiaries](#) of the trust and instructions for your [Trustee](#) to follow in managing the property. You do not need to transfer any property to the testamentary trust while you are alive because the trust does not exist until you die. At your death, your [Personal Representative](#) will take control of your [probate property](#), handle the [probate](#) and then transfer the property directly to the Trustee who you named in your Will.

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What should I consider when creating a trust to hold my property after my death?

Below are some of the things you should think about when you create a [trust](#):

- Decide who to name as a [Trustee](#) and [successor Trustees](#).
- Decide whether to name an individual or a company as Trustee.
- Decide whether the [beneficiary](#) can act as Trustee when he or she reaches a certain age.
- Decide who will be the beneficiaries of your trust and what percentages or amounts they will receive.

- Decide whether to create a separate trust for each beneficiary or whether to hold property in a single trust that the Trustee can use for all beneficiaries.
- Decide whether to allow the Trustee to use the trust property not just for the beneficiary, but also for the beneficiary's spouse and children.
- Decide whether the Trustee can use trust property as he or she thinks is best or whether you want to tell the Trustee how to use it. Examples of trust uses are:
 - Higher education
 - Studying the arts, theater or music
 - Medical expenses
 - Down payment on a first home
 - Wedding expenses
 - Business start-up costs
- Decide when the Trustee should give trust property to the beneficiary. For example, the Trustee could give certain amounts when the beneficiary reaches certain ages or when certain events happen, such as the beneficiary's graduation from college.
- Decide whether to keep property in trust if a beneficiary dies (for example, for the children of the beneficiary).
- Plan for estate taxes and income taxes.
- Plan for [creditor](#) protection so that the trust property is safe from creditors of your beneficiaries.

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What else can I do with a trust?

There are many different types of [trusts](#) and many things you can do with a trust. Some trusts can reduce or eliminate estate taxes, reduce income taxes, protect your own property from [creditors](#) while you are alive or protect your property from your [beneficiaries'](#) creditors after you die. Some of these trusts must be irrevocable which means that they cannot be changed once you make them. Trusts are useful but can also be very complicated. You should [talk to an experienced estate planning lawyer](#) if you would like to learn more about trusts.

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