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The Prudent Investor

November 2026

Wills versus trusts

If you own property, you have the right to determine what will happen to your holdings after your death. The usual way to achieve that is with a properly executed will. You can identify beneficiaries, provide for alternate beneficiaries in case one dies before you, and you can name an executor (or personal representative) to supervise the disposition of your property and the settlement of your estate. You are providing the blueprint for the future management of your wealth.

You can also achieve these goals with a trust.

The trust advantage

What do you think of when you hear the words "trust fund"? Many people will associate those words with the Kennedys, the Rockefellers or the financial titans of the 19th century. But more and more affluent families these days are exploring the unique financial management and financial protection advantages of trusts.

You certainly don't need major levels of wealth to benefit from employing a trust in your planning. Most of our clients don't think of themselves as "rich." But they are affluent, and they do have a significant sum that needs management. Fortunately, modern technology has made trust planning accessible and affordable to a much wider segment of the population than was true in the past.

Trusts and taxes

In most cases, tax management is an important but secondary consideration in establishing and funding a trust. For example, a revocable living trust offers no tax benefits at all. On the other hand, a bypass trust could save a family millions in federal estate taxes. A charitable remainder trust can save on capital gains taxes even as it generates a charitable deduction.



Fundamentally, trusts provide a structure for long-lasting family financial protection. This can be especially valuable when the family includes beneficiaries from more than one generation. See "Five ways to use trusts" for examples of the situations in which a trust can be most useful and the types of trusts that may be considered.

There is no "best age" for setting up a trust. As a practical matter, a great many people first give serious consideration to establishing a trust as they approach retirement or when they do their estate planning.

Trusts versus ordinary investment accounts

A trust has an independent legal existence. That makes it more durable than an ordinary investment account, because the trustee continues to perform its duties upon the disability, or even the death, of the trust's creator.



In general, a trust cannot be used to shield assets from one's creditors. On the other hand, all states allow trusts to be used to protect a beneficiary who is not the trust creator from creditors' claims. Perhaps the most common example is to use a trust to protect a child's or grandchild's inheritance in the event of a future divorce.

Living trusts

Living trusts are so named to distinguish them from testamentary trusts, which are created with a will and take effect after death. A living trust goes into operation during life. Usually, such trusts are revocable and created for the benefit of the grantor. Living trusts are popular for four key reasons:

- *Sound asset management.* The trustee will provide professional supervision of the portfolio, consistent with the grantor's vision.
- *Protection in the event of incapacity.* Trust management continues, even if the grantor becomes unavailable for any reason.
- *Probate avoidance.* Estate settlement is necessarily a public process, and it can be a lengthy one. Living trusts normally avoid probate completely, creating a zone of financial privacy. They continue to function, providing financial resources to beneficiaries, while the estate settlement process continues.
- *Financial privacy.* The terms of a will become public during the probate process, while the terms of a trust normally are not publicized.

Trust advantages—A checklist

No single trust can do everything, but for almost any imaginable need, there is a matched trust solution. How many of these objectives do you share?

- ☐ Continuous financial management in the event of incapacity
- ☐ Professional investment management
- ☐ Financial privacy
- ☐ Probate avoidance
- ☐ Asset management for inheritances
- ☐ Creditor protection for heirs
- ☐ Lifetime financial protection for a surviving spouse
- ☐ Inheritance for children from an earlier marriage
- ☐ Protection from current and future estate taxes
- ☐ Lifetime protection for a disabled child
- ☐ Future legacy for charity
- ☐ Current income for charity, keeping assets in the family at lower cost

Trusteeship: Who is worthy of your trust?

So, you've decided on a trust plan. It may be a living trust for yourself, a marital trust for your spouse, testamentary trusts for your heirs, or one of the many other possible wealth

Five ways to use trusts

1. Trusts to grow on. Trusts can provide professional management for assets set aside for young beneficiaries. The management can continue, if desired, even after a beneficiary reaches age 18 or 21.

2. Continuing help for a disabled individual. With proper planning (qualified legal guidance is a must), a trust can provide extra support and some of life's comforts without disqualifying a disabled person from receiving government assistance.

3. Marital bequest to a noncitizen spouse. Anything that a married person leaves directly to his or her spouse will qualify for the estate-tax marital deduction—unless that spouse is not a U.S. citizen. In that event, a special marital trust is required to preserve the marital deduction.

4. Gaining the marital deduction without disinheriting children. Individuals with children from a prior marriage may qualify assets for the marital deduction by means of a trust that pays lifetime income to the surviving spouse, then passes its assets to the children.

5. True tax savings. There are many ways in which trusts can be crafted to reduce the tax burdens on family wealth, especially estate and gift taxes. With a federal estate tax exemption for 2026 of $15 million ($30 million for married couples if they each die this year), these taxes won't be a concern for most families. But those with larger fortunes may want to become familiar with the Grantor Retained Annuity Trust, the Crummey Trust, or the Dynasty Trust.

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management needs that are best addressed with a trust.

Next question: Who will be your trustee? The choice of trustee will be crucial to the success of your plan.

"Fiduciary duty—what's that?"

Trusts are not ordinary investment accounts, even though sound asset management is central to every trust. The trustee of every trust has specific legal duties to the trust and to its beneficiaries. (See "The fiduciary duty checklist" for an itemization.) Most important, a fiduciary must put the interests of trust beneficiaries ahead of his or her own.

Bank trust departments and trust companies are fiduciaries, and they always have been. You could say that we helped establish the foundation of fiduciary responsibility.

The management of a trust involves much more than day-to-day investment supervision, important though that may be. Trusts typically have several beneficiaries, and these beneficiaries often have interests that are adverse, to some extent. They may be of different generations, for example, and their interests in the trust may vest at different times, perhaps years apart. The trustee has fiduciary obligations to each of the beneficiaries, and satisfying these disparate objectives is one of the core responsibilities of trusteeship.

Some trusts permit invasion of principal, either subject to a standard or in the trustee's sole discretion. Some trusts "spray" their income to beneficiaries, in amounts determined appropriate by the trustee. Some trusts include accounting flexibility; that is, items that normally might be credited to principal (such as capital gains) may, should the trustee so decide, be applied instead to income. Decisions such as these are essential to the success of the trust plan.

One might expect the job to be time consuming, and one would be entirely correct. It's understandable, then, that any individual would hesitate to take on the burden of trusteeship when there is an alternative available.

The ability to say no

A trust is, essentially, a long-term wealth management plan created by a trust's grantor. The plan implements the grantor's values and vision. The trustee promises to implement that plan in a manner consistent with the trust's purposes and instructions.

Does it ever happen that events outstrip the grantor's vision, so that some modifications are needed? Of course. A wide range of developments, from the very good to the very bad, may make the exercise of prudent judgment by the trustee necessary to further the trust's purposes.

Does it ever happen that beneficiaries would like to have the plan modified, because they don't agree fully with the grantor's vision? Yes, that happens as well. It may happen that a beneficiary wants access to trust capital earlier than provided in the trust or for purposes outside the trust's limits. Very often, beneficiaries don't fully understand the benefits of a trust-based wealth management plan. The trust document should address this possibility. Its provisions must be followed to the letter.

Making your choice

Selecting your trustee will be among the most important decisions that you make, after you've decided that a trust is right for you. Here are some questions that you might put to the potential candidates:

- For how many trusts have you served as trustee?
- What size trusts have you managed?
- How is your trust division staffed?
- What happens if my regular trust officer is unavailable?
- How will conflicts among beneficiaries be handled?
- Can I have a family member serve as cotrustee?
- Where are your offices? Are they close to the beneficiaries?
- Tell me about your recordkeeping systems.
- How frequently will I meet with a trust officer?
- What do you charge for trusteeship?

May we tell you more?

We are well qualified for all the tasks of trusteeship. It is a job that we do every day, with our full attention. We are staffed for it, experienced and always ready to serve.

When you are ready to take the serious step of including a trust in your long-term financial and wealth management plans, please call upon us to learn more about how we may be of service to you. We look forward to answering all of your questions.

The fiduciary duty checklist

The American College of Trust and Estate Counsel, a professional organization of lawyers dedicated to improving probate and trust practices, created "What It Means to Be a Trustee" [https://www.actec.org/estate-planning-essentials/what-does-it-mean-to-be-a-trustee-publication/]. The following obligations are imposed upon the trustees of most trusts:

- ☐ Duty to administer the trust by its terms
- ☐ Duty of skill and care
- ☐ Duty to give notices
- ☐ Duty to furnish information and to communicate
- ☐ Duty to account
- ☐ Duty not to delegate
- ☐ Duty of loyalty
- ☐ Duty to avoid conflict of interest (applies when a trustee is also a beneficiary)
- ☐ Duty to segregate trust property
- ☐ Duty of impartiality
- ☐ Duty to invest
- ☐ Duty to enforce and defend claims
- ☐ Duty of confidentiality

Although one might have an intuitive understanding of what each of these duties might entail, they can be quite complex in specific cases. Entire legal treatises might be written about any one of these duties, as well as upon their interactions. Every trustee is charged with having this body of legal knowledge at his or her fingertips at all times.

Tax magic with GRATs

The Wall Street Journal recently reported that the IRS is "cracking down" on a strategy used by wealthy families to reduce their exposure to federal estate and gift taxes [September 21, 2026]. The mechanism is the Grantor-Retained Annuity Trust, or GRAT for short. A wealthy person irrevocably transfers an asset, such as shares of stock, to a trust that will pay him or her a fixed dollar amount for a set period of time. The transfer will be subject to federal gift tax. However, the taxable value of the gift will be reduced by the value of the payments coming back to the grantor, typically designed to reduce that value to zero. If the trust assets increase in value faster than the amount required to pay the annuity, the remaining assets will pass to the trust remainder beneficiaries free of gift tax. The assets are also removed from the grantor's future taxable estate.

If the trust assets fail to grow quickly, then the entire value of the trust ends up being returned to the grantor in the form of annuity payments. For the taxpayer, it's "heads I win, tails I break even" for the cost of having an estate planning attorney set up the arrangement. If the grantor dies before the trust terminates, the entire value of the trust will be in the taxable estate. For that reason, GRATs are often set for two-year terms, sometimes for a series of such periods.

According to the *Journal* article, if someone placed $1 million worth of Amazon stock in rolling two-year GRATs 10 years ago, some $4.5 million would have been transferred to beneficiaries free of gift tax. We know from SEC filings that many executives at public companies have successfully transferred major amounts of wealth with GRATs.

However, Patricia Elcan added a twist that caught the eye of the IRS. She had been forming more than one GRAT every year from 2010 to 2019. With respect to three of the GRATs, Patricia purchased the trust assets back, using her promissory notes of equal value as payment. The trustee offset the repayment requirement under the note by Patricia's right to the annuity payment in the trust. This was a bridge too far for the IRS.

Some $1.5 billion had been transferred to the three GRATs. The IRS position is that all the transfers were taxable gifts, resulting in a $614 million federal gift tax obligation and a $122 million penalty. The matter is now going to the Tax Court.

Ordinary GRATs remain a legal, useful approach for transferring wealth within the family with minimal transfer tax costs. See your estate planning advisor to learn more.

Their grandparents just set up asset-protecting trusts.



Have you taken steps to keep more money in the family?

Ask us for details.

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