

# Do I Need a Trust?

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“Do I need a trust?” This is a question asked by many individuals as they consider their estate planning needs. The honest answer is “It depends.” Many factors, including a person’s tax and non-tax goals, their assets, and their family situation, will determine if a trust is necessary.

Some argue that everyone needs a trust in their estate plan as if a trust is the ultimate estate planning arrangement. However, such arguments do not consider that each individual’s goals and circumstances are different. For example, consider the following scenario: husband and wife with two grown children and assets consisting of their home, a large IRA with named beneficiaries and smaller non-IRA checking and brokerage accounts. The couple wants to leave their assets to each other and then to their children. The couple wants to name their children as executors of the survivor’s estate.

In this case, the two largest assets, the home and the IRA, can be handled without an executor. The smaller non-IRA checking and brokerage accounts, if under \$50,000, can be handled without an executor under the Virginia Small Estates Act. Finally, if the children do need to serve as executors at the survivor’s death, they can use an abbreviated administration procedure since they are the only beneficiaries. For this couple, well-prepared wills may very well suffice.

The point of this example is that the advice of a competent advisor is needed to determine the appropriate estate planning techniques for your specific situation. Such advice will ultimately save you money and save your family from future headaches. With that being said, there are many situations where a trust is a very valuable and necessary estate planning tool. Here are some examples:

## Probate Avoidance

Virginia imposes a probate tax equal to a tenth of a percent of the value of the probate assets. The local jurisdictions impose a probate tax equal to one-third of the state tax. The probate tax applies to estates of \$15,000 or greater in value.

Depending upon the size of the estate and identities of the executors, Virginia requires the executor of the estate to prepare and file various documents when administering the estate. These documents take time and money to prepare and file. In addition, if you own real estate in another state, the executor may be required to go through the probate process in the other state.

The probate requirements can be avoided by using a revocable trust since assets held in the trust or directed to go to the trust by a beneficiary designation are not probate assets.

### Estate Tax Savings

Recent changes in estate tax laws have caused estate taxes to become less of a concern for most people other than those with very large estates. The United States government imposes an estate tax at the death of an individual equal to 40% of the taxable estate over \$5,340,000 if the individual dies in 2014. The exclusion amount is “portable,” meaning that it is transferable to the surviving spouse, and there is an unlimited marital deduction against the federal estate tax for assets transferred to a surviving U.S. citizen spouse. This means that if a portability election is made on a U.S. Estate Tax Return (Form 706) as a result of the first spouse’s death, then the surviving spouse will have his or her own exclusion amount (\$5,340,000) plus the deceased spouse’s exclusion amount (up to \$5,340,000) at his or her death.

You should keep in mind that these exclusion amounts can be reduced by gifts you or your spouse make during your lifetimes. You should also consider that your estate includes the value of all of your assets, including life insurance death benefits. Therefore, you should seek advice from a competent advisor before assuming that your estate or your spouse’s estate will not have an estate tax liability. If you do have estate tax liability, certain trust arrangements can help lower your estate tax exposure.

### Asset Protection

After the death of the first to die of a married couple, the surviving spouse may become subject to negative influences. There are many people who prey on the elderly. You may think “I would never fall for one of those e-mail scams,” but as we get older, our judgment may begin to fail. Furthermore, scams can be very elaborate, or can be perpetrated by those we trust. A revocable trust can provide a layer of protection for your assets should the surviving spouse become subject to negative influences.

### Beneficiary Protection

Finally, the use of a trust is very appropriate for dealing with various family situations. For example, it is not wise to leave assets to minor children or to beneficiaries who are not ready or able to manage the assets. Assets left directly to a minor child will be held by the child’s guardian who must report to the court system everything that he or she does with the assets until they are turned over to the child at age 18. In addition, even upon turning age 18, a child may still not be ready to manage the assets. These situations can be addressed by using a trust.

When using a trust, you appoint a trustee to manage the assets and distribute them based on the terms of the trust agreement. The trustee is not required to report to the court system. In addition, the trust agreement, rather than Virginia law, states when the assets are to be turned over to the child. Thus, assets can be held in trust for the child’s benefit until he or she reaches the age you prescribe in the trust agreement.

Given these various uses for trusts in an estate plan, the best way to determine if a trust is appropriate for your situation is to seek the advice of a competent advisor.