



Mountain Post Legal Brief

A preventative law service of the Office of the Staff Judge Advocate
Headquarters, Fort Carson

Keeping you informed on personal legal affairs

Consider these questions and answers to help you decide whether it is in your interests to establish testamentary trust.

Q: WHAT IS A TESTAMENTARY TRUST?

A: A testamentary trust is a flexible estate-planning tool. It is a written legal agreement between the individual creating it and the person or institution who is named to manage the trust's assets. The individual who creates a trust is called the trustor, grantor, or creator. The trustee, or person who manages the assets, holds legal title to the assets for the benefit of one or more trust beneficiaries, who the grantor names.

Q: WHERE CAN I ESTABLISH A TESTAMENTARY TRUST?

A: In your will. This trust lies dormant until you die and your will is probated.

Q: WHY SHOULD I USE A TESTAMENTARY TRUST IN MY ESTATE PLAN?

A: Trusts are used for many purposes, including:

- a. Managing assets. The responsibility of making investment decisions can be transferred to an individual or institution with investment experience.
- b. Providing privacy. The assets, terms, and conditions of a trust are generally not subject to public inspection.
- c. Providing for multiple beneficiaries. A trust can benefit more than one beneficiary and permit the trustee discretion in making distributions of the assets.

Q: WHAT IS A TESTAMENTARY TRUST'S GOVERNING DOCUMENT?

A: The written instructions listing the terms of the trust are contained in the will.

Q: WHO ARE THE TRUST BENEFICIARIES?

A: The beneficiaries are those you intend to enjoy the income and principal of trust property. If you name alternate or contingent beneficiaries, the governing document establishes the conditions under which the beneficiaries must receive trust proceeds. When the beneficiaries are young (minors), the trust may also provide for the continued management of the trust assets until the beneficiaries reach a certain specified age.

Q: WHAT IS THE NORMAL DURATION OF A TESTAMENTARY TRUST?

A: Testamentary trusts have definite beginning and ending dates. Testamentary trusts begin on the date of death of the trust creator. In many trusts, the ending date is when the youngest beneficiary reaches and age

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specified in the governing document.

Q: WHO SHOULD I CONSIDER NAMING AS A TRUSTEE?

A: Because trustees have certain fiduciary duties, consider someone who, understandably, you “trust.” Consider that person’s age, expertise, ability to serve, and knowledge for the beneficiary’s needs. Sometimes people wish to appoint a corporate trustee such as a bank or other financial institution to manage a trust. However, a corporate trustee will frequently require an estate to have over \$500,000 in investable assets before agreeing to serve as trustee and often their fees can be quite high with a minimum fee of \$3,000/year to administer the trust. It is best to check with the trust department of the bank/financial institution you wish to manage the trust as to their policies before naming them as your trustee in your will.

Q: WHO SHOULD I CONTACT IF I WANT MORE INFORMATION OR WANT TO ESTABLISH A TESTAMENTARY TRUST?

A: Contact the Fort Carson Legal Assistance Office to arrange a consultation with a legal assistance attorney. The legal assistance office provides a wide range of estate planning services.

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