

News Story

Don't Trust Your Heirs? Create a Trust

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By [Rachel Podnos, JD, CFP](#)

Learn more about Rachel on NerdWallet's [Ask an Advisor](#)

High-net-worth individuals frequently create trusts to hold assets after they pass away. There are many good reasons for this, including preferential tax treatment and the fact that trusts allow heirs to avoid probate.

Less wealthy families often believe that they have no use for trusts when [estate planning](#). I recently met a middle-aged couple with a moderate net worth, but \$2 million in life insurance coverage. If both of them died tomorrow, their 18-year-old son would inherit that \$2 million, along with the rest of the estate, outright — certainly not what they want as parents. That's where trusts come in.

Many people, **not just the rich**, worry about what their heirs will do with inherited assets. You can use a trust to control these from the grave — as they say — and have a little peace of mind now.

The protection of trustees

Here's how trusts work: The person creating the trust, also known as the grantor, identifies a trustee who is responsible for distributing the assets to one or more beneficiaries upon the grantor's death. This trustee is often one of the beneficiaries, such as the eldest adult child. But if the beneficiaries are minors, or the grantor decides it's best not to give them full control of the assets, a third-party or "non-beneficiary" trustee can be named.

A third-party trustee provides an added layer of protection by controlling when and how assets are distributed, in accordance with the grantor's stated wishes. A grantor might ask that assets are distributed to the beneficiary at certain ages, or only upon the beneficiary getting a job, getting married, having kids or reaching other milestones.

Some grantors go so far as to require drug testing for beneficiaries before distributions, although you'll probably be hard-pressed to find a third-party trustee who wants to take on that kind of a gatekeeper role.

Additional layers of protection

Trusts can be set up with additional layers of protection. For example, "ascertainable standards" clauses instruct the trustee to only distribute assets for the beneficiary's "health, education, maintenance and support." Trustees generally have a certain amount of discretion to make distributions according to ascertainable standards, but a beneficiary can bring an action to enforce a distribution if he or she disagrees with a trustee's decision.

But not all trusts are controlled by non-beneficiary trustees. If a beneficiary is the only trustee, grantors can use also use protective clauses to provide another layer of protection.

Spendthrift clauses, for example, typically prevent the beneficiary from promising or assigning trust assets or income to a third party. This can provide protection against creditors, since it prohibits anyone from receiving the assets before the beneficiary does. State laws vary and it's best to get legal guidance for specific situations.

Keep in mind that asset protections or protective clauses aren't necessarily ironclad. In some situations, courts can access trusts to make child support, alimony and tax payments, for example.

And asset protection can only occur before assets are distributed, not after. Once the beneficiary receives assets, the trust can no longer control how they're used.

The bottom line is this: If you're in a situation where your imminent death would result in your heirs receiving somewhat significant assets, a trust is something you should at least consider, and perhaps discuss with an attorney.

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