

# LIVING TRUSTS SUMMARY

**Disclaimer:** *This document is an overview only; it is not a complete list of the legal terms and principles concerning trusts. The terms and concepts discussed below are based upon Texas law and do not apply to the laws of any other jurisdiction. The author of this document does not intend to provide legal advice for any individual's specific situation. You, the reader, are advised to seek the counsel of a licensed attorney before taking any action based upon the information contained herein.*

**Limitations:** Living trusts set up for the benefit of the settlor and funded with the settlor's assets generally (1) *do not protect the trust assets from the settlor's creditors* and (2) *do not remove the assets from the settlor's estate for federal estate tax purposes.*

## TERMS

**Living Trust:** A trust that is established by an individual or married couple during their lifetime, as opposed to a testamentary trust, which is established after the settlor's death through terms included in the settlor's will.

**Settlor:** The person that establishes the trust and who transfers money and property to the trust. Other terms that mean the same thing are "grantor" and "trustor." The term "settlor" is the term used in the Texas Trust Code.

**Trustee:** The individual or corporate trustee that agrees to take possession of the trust property, manage it, and distribute it according to the trust document.

**Corporate Trustee:** A trust company or trust department within a financial institution that serves as trustee as a professional service to settlors and beneficiaries.

**Co-Trustee:** A trustee that serves together with another trustee. A trust may have two or more co-trustees serving together, and the trust document may provide rules for how decisions are made, including allowing each trustee to act independently of the other, by majority vote, or when they unanimously agree.

**Beneficiary:** The individual or charity for whom the trust was established and who receives distributions from the trustee.

*(Note: A person may serve in multiple roles at the same time, such as a settlor serving as the trustee for a trust for his own benefit.)*

## ADVANTAGES OF A LIVING TRUST

**Privacy Protection:** Unlike wills, living trusts offer privacy in asset distribution, as they do not go through public probate proceedings. (However, the settlor should have a will to distribute any property not in the trust.)

**Incapacity Planning:** The trust can include provisions for managing assets if the settlor becomes incapacitated.

**Avoidance of Probate:** A revocable living trust can help avoid the probate process, which can be time-consuming and costly.

**Flexibility:** The settlor can make changes or revoke the trust as needed during their lifetime.

**Handling out-of-state property:** For those who own land outside of Texas, a trust provides for the disposition of the land to beneficiaries without the need for ancillary probate proceedings in other states.

**Blended Family Issues:** A trust, as a unified document reflecting a married couple's agreed upon plan, can help the children in a blended family feel more at ease about the estate plan.

## **REVOCABILITY**

**Revocable Trust:** This type of trust can be modified or terminated by the settlor at any time during their lifetime. It offers flexibility to adapt to changing circumstances and allows the settlor to maintain control over the assets.

**Irrevocable Trust:** This type of trust may offer enhanced asset protection, but once established, it cannot be easily changed or revoked. However, irrevocable trusts can be drafted to allow for certain changes, such as adding or removing beneficiaries, addressing changes in tax laws, and distributing the trust assets to a different trust.

## **POWER TO AMEND**

The trust document may include specific provisions allowing the settlor to make changes to the trust terms, beneficiaries, or trustees. Amendments are typically done through a written instrument that specifies the changes. The trust document can also give another person or a group of people the power to amend.

## **DISTRIBUTIONS**

The trust can specify various distribution methods, such as:

- Outright distributions to beneficiaries of as much of the trust assets as they direct or request;
- Distributions of all trust income;
- Periodic distributions of a fixed percentage of the overall value of the trust assets (called "unitrust" distributions), such as total annual distributions of 4, 5, or 6 percent of the trust's value as of December 31<sup>st</sup> of the prior year;
- Distributions to address beneficiary needs, such as health, education, maintenance, and support (often called the "HEMS standard");
- Discretionary distributions based on the trustee's judgment;

- Staggered distributions based on age or milestones; and
- Special needs provisions for disabled beneficiaries.

*Distributions standards can also be a combination of these methods. For example, the trust document could authorize a unitrust distribution to the beneficiary with possible additional distributions if the trustee determines such to be in the best interest of the beneficiary.*

## **APPOINTMENT OF TRUSTEES**

**Initial Trustee:** The settlor can name themselves as the initial trustee, maintaining control over the trust assets during their lifetime or until they become incapacitated. The initial trustee could also be a third party or corporate trustee serving alone or as a co-trustee with the settlor or other co-trustees.

**Successor Trustee:** The trust should designate a successor trustee to manage the trust upon the initial trustee's resignation, incapacity, or death. The settlor may retain the right to name the successor trustee. The trust document may also provide that a beneficiary or current trustee has the power to name the successor.

**Power to Remove:** The settlor, beneficiary, or a trusted third party may have the power to remove and replace a trustee with a successor. The trust document can be drafted to describe the extent of this power and whether or not the person removing the trustee has the power to name themselves as the successor.

## **DISTRIBUTION OF ASSETS AT TERMINATION**

**Termination Date:** Trusts terminate at a point in time specified in the trust document, such as the death of the settlor or a specified age of a beneficiary. Texas law does not permit a trust to last in perpetuity. A trust cannot hold land for more than 100 years or any other asset for more than 300 years.

**Specific Gifts:** The trust can provide for specific assets to be distributed to named beneficiaries upon the trust termination.

**Percentage Distributions:** Assets can be divided among beneficiaries based on specified percentages.

**Charitable Giving:** The trust can include provisions for donations to charitable organizations.

**Continuing Trusts:** Instead of terminating, the trust can create ongoing subtrusts for beneficiaries, such as for minor children or those with special needs.