



MORGAN AND DiSALVO, P.C.
attorneys at law

RICHARD M. MORGAN, Esq.
rmm@morgandisalvo.com

LORAIN M. DiSALVO, Esq.
ldisalvo@morgandisalvo.com

OF COUNSEL
DIANE B. WEINBERG, Esq.
dweinberg@morgandisalvo.com

What is a Trust?

By Richard M. Morgan & Loraine M. DiSalvo

For this month's newsletter, we will go back to the basics to ensure that our readers can answer the basic question: What is a Trust? As estate planners, we use Trusts for many different purposes; in fact it is something we often think of as the "Swiss Army Knife" of estate planning. Because it is such an essential tool, we wanted to make sure you have a basic understanding of what we are talking about since Trusts may end up playing a significant part of your estate plan as well as the estate plans of others you know.

We normally define a Trust in two different ways:

First, it can be described as a 3-party contract. The first party is the person that owns property and will be the one creating the Trust. This person is known by different names, such as Trustor, Grantor or Settlor. The second party in this contract is a fiduciary, called a "Trustee." The third party in the contract is the person or persons that benefit, known as the beneficiaries. In this contract, the Trustor transfers assets to the Trustee, whose job it is to take care of and use the assets for the benefit of the beneficiaries.

The second way we describe a Trust is that it is simply a fiduciary relationship where a Trustee (a fiduciary) takes care of and deals with property for the benefit of the beneficiaries, in accordance with the terms of the trust.

The simplest form of this fiduciary relationship is a custodianship. You may have placed cash or checks received by a minor child as birthday presents in a custodial account for future educational needs since a minor child cannot legally own property until the age of 18. In this case, the account is set up with you, the parent, as the custodian. The property can only be used for your child's benefit but you, as the custodian, remain in control to ensure it is taken care of and used appropriately while your child is a minor. Any remaining custodial account assets are turned over to the child once your child becomes age 21 (under GA law, but this age can differ from state to state).

Depending upon the purposes of the Trust, these three parties (Trustor, Trustee and Beneficiaries) can all be the same person or they can be different people.

For example, a [Revocable Living Trust](#) ("RLT") is normally structured to allow the same person (you), to hold all three positions until the earlier of your incapacity or death, at which point your successor Trustee takes over control of the Trust for you. The RLT benefits you during your life and acts like a Will (but outside the probate process) at your death. During your life, the RLT is easily changed or revoked and it has no income tax effect.

Another example is a Trust used to make lifetime gifts. These types of Trusts are irrevocable, may have significant tax effects, and are not easily changed. With these Trusts, the Trustor cannot normally be either a



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RICHARD M. MORGAN, Esq.
rmm@morgandisalvo.com

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dweinberg@morgandisalvo.com

Trustee or beneficiary, so this type of trust is often set up with you as the Trustor, your spouse as the Trustee, and your spouse and children as the beneficiaries.

For more information on this topic, see the Wikipedia discussion at http://en.wikipedia.org/wiki/Trust_law.