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Estate Planning Insights

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Trust Fundamentals & 2026 Updates

Understanding Trusts – Part One

Frequently, we receive questions from various people (e.g., clients, attorneys in other fields, people in the financial services industry) that indicate misunderstandings and confusion regarding trusts. In this newsletter, and our next several newsletters, we are going to discuss and explain various aspects of trusts.

How is a Trust Created?

We want to start with *how* a trust is created. First, one or more individuals decide they wish to create a trust, often for multiple reasons. An individual who creates a trust can be called the "grantor" or "settlor" or "trustor" of the trust. Each of these terms refers to the "creator" of the trust. (**NOTE**: The term "grantor" can also be used when discussing the income tax aspects of certain types of trusts, but that is a discussion for a later newsletter.) We will use the term "grantor" to refer to the *creator* of the trust.

To be a valid trust, the trust must own something. Technically, what the trust must own is the "res" (which means "thing" in Latin) or "principal" or "corpus" of the trust. We will use the term *principal* to refer to the asset(s) that belong to the trust. The initial principal needed to create a valid trust can be very small—even just $1.00. When we discuss putting assets into a trust, we will usually say that the trust is being "funded." There are multiple methods for funding a trust and those methods depend on the type of asset and the type of trust. (How to fund a trust is a discussion for a later newsletter.)

When assets are put into a trust, those assets need to be titled in the name of the trust. Technically, pursuant to Texas law, *which differs from the law in certain other states*, assets that belong to a trust should be titled in the name of the trust *and the name of the trust should include the name of the trustee* (e.g., "John Doe Family Trust, John Doe, Trustee"). That is because, in Texas, a trust is considered to be a "relationship" and not an "entity." Financial institutions that do business in Texas ought to be aware of this rule, but the vast majority are not. In fact, financial institutions cite their own policies as overriding Texas law and as the reason they will not allow our clients to name a trustee (rather than a trust) as the owner or beneficiary of the assets they administer. (It should be possible to name both the trust and the trustee, but, again, many financial institutions will not accept that type of wording, even though that is what Texas law requires.)

A trust can either be "revocable" or "irrevocable." Those terms indicate whether the trust can be modified or amended (i.e., changed) or even revoked (i.e., terminated) after it has been created. In Texas, if the document creating the trust does not specifically indicate whether the trust is

revocable or irrevocable, the "default rule" is that the trust is *revocable*. That is not true in all other states. Thus, if a Texas grantor intends to create an *irrevocable* trust, the document creating that trust needs to say that clearly (or it needs to be obvious that the trust cannot be revoked by the grantor, as is the case with a testamentary trust—*see* below).

In addition to a trust having a *grantor* and some sort of *principal*, a trust must also have a “trustee.” The trustee can be thought of as the “manager” of the trust. Technically, the *trustee* is the legal owner of the assets that belong to the trust. As legal owner, the trustee “administers” (i.e., manages) the trust assets. Usually, the trustee’s powers are “spelled out” in the document that created the trust, although that document can simply say that the trustee has all of the powers granted to trustees under the Texas Trust Code (or under the trust code of some other applicable jurisdiction).

A trust has at least two beneficiaries: (1) one current beneficiary and (2) one "future" beneficiary. The future beneficiary is called the "remainder beneficiary." The remainder beneficiary becomes the beneficiary of the remaining trust assets in the future, based on a designated "event," such as the death of the current beneficiary. In some cases, the remainder beneficiary never receives any of the trust assets. That is often the case with irrevocable trusts that terminate when the current beneficiary attains the designated trust termination age. If the current beneficiary reaches that age, the trust terminates and the trustee will distribute all the trust assets to that beneficiary. Of course, many trusts have multiple current beneficiaries and multiple remainder beneficiaries.

Three different types of documents can create a valid trust: (1) a trust declaration, (2) a trust agreement, and (3) a Will. Most people think that every trust must be created pursuant to a "trust agreement," but that is not true. A trust agreement is just one type of document that can create a trust.

In a trust *declaration*, the grantor declares himself/herself to be the trustee of certain trust assets. This is technically not a trust "agreement" because the individual who is the grantor is also the trustee. That is why this type of document is legally called a trust "declaration." In addition, two grantors (such as a married couple) can declare themselves to be the co-trustees of certain trust assets. Again, that type of document is a trust *declaration* and not a trust *agreement* because the grantors and the trustees are the same people. In Texas, a trust declaration is often used to create a revocable trust (sometimes also known as a "living trust").

In a trust *agreement*, the grantor(s) and the trustee(s) of the trust are not identical. In a legal context, the term "agreement" is frequently used to indicate a contract. Thus, a trust agreement is basically a type of contract between the grantor(s) and the trustee(s). As is the case involving other types of contracts, a trust agreement is entered into by a grantor or grantors and a trustee or trustees who are alive at the time when the agreement is executed. A trust agreement can create either a revocable trust or an irrevocable trust.

A trust declaration and a trust agreement both *initially* create what can be referred to as an "inter vivos" trust. Inter vivos is a Latin term that means "between living people." However, an inter vivos trust can also provide for the creation of new trusts in the future that are not effective initially. In the next two paragraphs, we will discuss how an individual who has died can create a trust.

A Will is the third type of document that can create a valid trust. This is something that most people, including people in the financial services industry who we deal with on behalf of our clients, do not understand. Long before anyone created revocable (living) trusts, people created trusts in their Will. (Wills have been around for more than 4,500 years, but most U.S. jurisdictions

trace their Will statutes to the 1540 Statute of Wills and the 1677 Statute of Frauds in England.) A trust that is created in a Will is referred to as a "testamentary" trust. The reason for that is because, historically, a Will was referred to as a "Last Will and Testament." Although there are some technical differences, the term *testament* is basically the French word for a Will. Thus, it is now considered redundant to refer to a Will as a "Last Will and Testament."

A trust created in a Will does not become effective until the death of the "Testator" or "Testatrix" (i.e., the individual who made the Will). So, that is an important difference between a *testamentary* trust and an *inter vivos* trust. Obviously, a testamentary trust is *irrevocable* because it only becomes effective upon the death of the Testator/Testatrix (i.e., the grantor of a testamentary trust will not be able to revoke that trust after he/she has died).

Finally (for purposes of the particular trust matters discussed in this newsletter), a single document that creates a trust can create multiple trusts, including multiple trusts that all become effective upon inception and/or multiple future trusts that become effective at a later time (such as upon the death of an individual who is the primary beneficiary of a trust that becomes effective when the initial trust created pursuant to the applicable trust document becomes effective).

New FinCEN Rule Effective March 1, 2026

In 2024, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") announced a new rule relating to residential real estate transactions (the "Residential Real Estate Rule" or the "Rule"). Although originally set to take effect on December 1, 2025, FinCEN postponed the reporting obligations of the Residential Real Estate Rule to March 1, 2026. The purpose of the Rule is to increase transparency and to combat money laundering that is done through real estate transactions.

Not all real estate transactions are required to be reported to FinCEN. A real estate transfer is only reportable under the Rule when the following 4 conditions are met: (1) the real property is residential; (2) the transfer is non-financed (defined below); (3) the property is transferred to a certain type of entity or trust; and (4) no exception applies.

In the context of the Rule, "residential" real property means (1) real property containing a structure designed principally for occupancy by 1 to 4 families; (2) land in which the transferee intends to build a structure designed principally for occupancy by 1 to 4 families; (3) a unit designed principally for occupancy by 1 to 4 families within a structure on land; or (4) shares in a cooperative housing corporation.

"Non-financed" means there is no extension of credit to transferees from a financial institution with anti-money laundering (AML) program requirements and Suspicious Activity Report (SAR) obligations that is secured by the transferred property. All cash transactions or transactions with private lenders that do not have AML program requirements and SAR obligations are considered "non-financed" for purposes of the Rule.

The types of entities and trusts subject to these reporting requirements are called "transferee entities" and "transferee trusts." A transferee entity includes a corporation, partnership, limited liability company, estate, association, and other similar entities. Transferee trusts similarly include a very wide range of trusts. Despite appearing broad and all-encompassing, there are many types of entities and trusts that are exempt from the Rule.

There are also other types of exemptions from the Rule. For example, residential real property transfers resulting from the death of an individual (i.e., by Will or trust) are exempt from the reporting requirements of the Rule. Similarly, transfers supervised by a court (e.g., a probate court) are also exempt from the reporting requirements of the Rule. Additionally, transfers of residential real property for no consideration made by an individual, either alone or with their spouse, to a trust of which that individual, that individual's spouse, or both, are the grantors (such as a revocable trust) are also exempt from the reporting requirements of the Rule. There are many other examples, but these are the most relevant to estate planning.

This summary is intended to provide a short introduction to the reporting requirements and to "put you on notice" of new obligations to be aware of prior to participating in a residential real estate transaction. There are many more exemptions not discussed in this newsletter, and there is additional information relating to the Rule that we have not covered. Whoever the "Reporting Person" is can provide additional information to you about what is required by the Rule. The Reporting Person will likely be the real estate professional assisting on the closing of the residential real estate transaction; however, in some cases, it may be a title insurance professional or attorney. There is a "reporting cascade" dictating who will be the Reporting Person, and this person will be the best source of information for what is required to comply with the Rule. The Reporting Person will also be responsible for providing any required information to FinCEN. Additional information can be found on FinCEN's website, which also includes an FAQ section.

Important 2026 Tax Numbers

Various exemption amounts that relate to estate planning and decedents' estates have been updated due to the One Big Beautiful Bill and due to inflation adjustments. Here are some of those amounts for 2026:

Item	2026 Amount	Comment
Estate, Gift and GST Exemption	$15,000,000	This is the $15 million basic exclusion amount per the One Big Beautiful Bill enacted in July 2025
Annual Gift Tax Exclusion Amount	$19,000 per donor (gift giver) per donee (gift recipient)	This is the $10,000 gift tax annual exclusion amount, adjusted for inflation
Annual Exclusion for Gifts made During Life to a Non Citizen Spouse	$194,000	Only gifts to a spouse who is a US citizen can qualify for the *unlimited* marital deduction for gift tax purposes and, thus, an annual limit applies to gifts made to a spouse who is not US citizen (even if they are a US resident)
Threshold for Reporting Aggregate Amount of Gifts Received from "Non US Persons"	$20,573	A "Non US Person" is basically any person other than a US citizen or resident or a US partnership or corporation
Qualified Charitable Distribution (QCD) Limit from IRAs	$111,000	Individuals age 70½ and older at the time of the gift can make QCDs directly from their IRA to one or more "public charities"

Here is some information regarding the ordinary income tax brackets for 2026:

Taxpayer	Top bracket (37%) reached when taxable income is over:
Married Filing Jointly/Surviving Spouses	$768,700
Head of Household/Single Individual	$640,600
Estates and Non Grantor Trusts	$16,000

Comment: The difference in the threshold for reaching the top tax bracket between individuals (whether married or single) and non grantor trusts is significant. This is an important factor that should be taken into account whenever individuals participating in qualified plans (such as 401(k) plans) and individuals who own pre-tax IRAs are considering leaving those assets to non grantor trusts for their spouse, their children or other individuals.

Contact us:

If you have any questions about the material in this publication, or if we can be of assistance to you or someone you know regarding estate planning or probate matters, feel free to contact us by phone (713-520-5205), fax (713-520-5235) or email sent to:

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