

A Guide to New Jersey Trusts

Rosenblum Law

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About Rosenblum Law

Rosenblum Law is a law firm serving estate planning clients throughout New York and New Jersey. Our experienced attorneys are dedicated to simplifying the estate planning process for clients and helping them create comprehensive plans that meet their unique needs and goals. Visit us online at www.rosenblumlaw.com.

Disclaimer

This publication is intended as a general education guide to trusts in New Jersey. This publication does not constitute legal advice. Each estate is unique and must be considered based on its own specific details. This publication is for informational purposes only and is based upon New Jersey law at the time it was published. For specific legal advice regarding creating a trust, it is advisable to consult an experienced New Jersey trusts lawyer who will be able to review your situation and the specific details of your estate and provide custom-tailored legal advice.

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Chapter 1: Introduction to New Jersey Trusts

Many people believe trusts are only for ultra-wealthy families who wish to pass on millions of dollars from generation to generation. However, trusts aren't just for those with large estates. In fact, trusts are a powerful estate planning tool that can be used by *anyone* who wants to protect their legacy and exercise greater control over how their assets are distributed.

For example, you may wish to control when or under which conditions your assets are passed on to your heirs. You may also have other estate planning goals, such as ensuring loved ones are cared for well into the future or protecting assets from creditors. Given their flexibility, trusts can be used to achieve each of these [goals](#), as well as many others.

This guide provides general information about trusts in New Jersey, including:

- the main types of trusts,
- how trusts can help you achieve your estate planning goals, and
- the process for creating a trust.

While this information is a helpful starting point, if you're considering creating a trust, you should consult a New Jersey estate planning attorney.

An estate planning attorney can evaluate your estate, help you define your goals, and explain your trust options. They can also lead you through the trust creation process from start to finish. This guidance is critical in ensuring your trust is properly designed to meet your objectives and adheres to all legal requirements.

What is a trust?

A trust is a legal arrangement in which a **grantor** transfers certain assets to a **trustee** to hold for the benefit of one or more specified individuals or entities, called **beneficiaries**. More information about each of these three trust parties is below.

- **Grantor.** The grantor, also known as the "trustor," "trust maker," or "settlor," creates the trust pursuant to a [trust document](#). Trusts can be created to hold just about any type of asset, such as cash, investments, real estate, or even personal property like jewelry, automobiles, or art.

There may be more than one grantor of a trust, such as two spouses or domestic partners. If there's more than one grantor, each would transfer their separately owned property into the common trust. In the case of jointly owned property, each owner could also transfer his or her own interest in the property into the trust.

- **Trustee.** The trustee is an individual or entity chosen by the grantor to administer the trust according to the terms of the trust document. The trustee's duties include, among other things, managing the assets and making distributions to beneficiaries.

The trustee has a fiduciary relationship with the beneficiaries. This means that the trustee is in a position of trust and must act in the best interest of the beneficiaries. See [Chapter 4: Creating a Trust in New Jersey — Step 2: Choose a trustee](#) for more information about the role of a trustee and how to choose a trustee.

- **Beneficiaries.** A beneficiary is the person or entity for whom the trust was created. The beneficiary is entitled to receive property (whether income or other assets) from the trust as specified in the trust document. Anyone can be a beneficiary, including charities or other organizations, or even pets. A trust can also have more than one beneficiary.

How to create a trust in New Jersey

A trust is created pursuant to a legal document called a **trust document** or **trust agreement**. In the case of a [testamentary trust](#), the grantor's will includes the terms of the trust and serves as the trust document.

When creating a trust, you can generally write your trust terms in any way you wish, provided that the terms aren't illegal or against public policy. This means you have the flexibility to decide exactly who gets your assets, when, and any conditions to such distributions. The trust can be as simple or as complex as necessary to achieve your goals.

For more information about creating a trust, see [Chapter 4: Creating a Trust in New Jersey](#).

Benefits of New Jersey trusts

Trusts can offer many benefits. However, the specific benefits of a trust will depend on how the trust is structured. Some common trust benefits are described below.

Controlling the manner and timing of distribution of assets

One of the major benefits of trusts is that they allow you to exercise a great deal of control over the manner and timing of distributions of assets. This can be helpful in achieving many estate planning goals, such as:

- Leaving assets to minors or financially irresponsible beneficiaries in a way that protects against squandering or poor decision making
- Ensuring children from previous marriages receive their intended inheritances

- Transferring assets to beneficiaries who receive public benefits without threatening their eligibility for such benefits
- Ensuring the proper management of complex financial matters and investments while still providing inheritances to loved ones
- Conditioning inheritances on certain milestones, such as birthdays, graduation from college or marriage

There are many other situations in which controlling the timing and manner of distributions may be important to you. By carefully designing one or more trusts as part of your estate plan, you can better ensure your wishes are fulfilled.

Minimizing the probate process

When a person dies in New Jersey, their estate will generally have to go through probate. “**Probate**” refers to the court-supervised process of winding up a deceased person’s estate.

If you leave a will, the person you name in your will to administer your estate (called the “**executor**”) will generally start the process by taking your original will to the Surrogate Court in the county in which you lived at the time of your death. The court will then confirm that your will is valid and officially appoint the executor. Once appointed, the executor can start administering your estate. This includes, among other things:

- gathering and inventorying assets,
- paying debts and taxes, and
- distributing your remaining estate to your heirs according to the terms of your will.

If you don’t have a will or the executor you named in your will isn’t available to serve, the court will appoint an “**administrator**.” The administrator has the same responsibilities as an executor. However, if you don’t have a will, the administrator will distribute your assets according to New Jersey’s intestacy laws set forth under [New Jersey Statutes Annotated \(N.J.S.A.\) § 3B:5-1 et. seq.](#)

The probate process can take a long time to complete — months, or sometimes even years. In general, larger estates tend to be lengthier and more expensive. However, even smaller estates can take longer than expected, especially if there are complications or legal challenges. In the meantime, your heirs will have to wait to receive their inheritances. Your will and the probate process will also become public record.

While probate cannot be avoided completely, trusts can greatly minimize many of the concerns associated with the probate process. This is because trusts can be structured to take assets out of your estate. Once assets are removed from your estate, they’re no longer subject to probate upon your death. This has many benefits, such as:

- minimizing time and money spent on probate court proceedings
- avoiding having to go through probate in each of the states in which you hold property
- maintaining privacy for you and your loved ones
- allowing heirs to receive their inheritances as quickly as possible

Other benefits of trusts

Depending on your priorities, trusts can also offer other benefits, such as:

- **Minimizing taxes.** For high net worth individuals, trusts can be used to help minimize federal and New Jersey taxes, both while you're still living and upon your death.
- **Incapacitation planning.** If you ever become unable to manage your affairs on your own, a trust can be a useful way to provide continued care for you, your spouse, and any other beneficiaries while you are incapacitated.
- **Asset protection.** If potential lawsuits or creditors are a concern, trusts may also be used to shield your property against claims.

Note that not every trust offers all of these benefits. A trust will need to be properly designed and funded according to your specific goals. To ensure that your trust fulfills its intended purpose, it's important to work with an experienced New Jersey trusts attorney.

Trusts as part of a comprehensive estate plan

While trusts have many benefits, they are not the only estate planning tool you'll need. Rather than replacing a will, trusts should work *with* your will to make sure your estate is administered in accordance with your wishes.

Even if you create a trust, it's likely that at least some assets will be left outside of the trust upon your death. This is true even if you intend to put all of your assets into one or more trusts. For example, you may obtain assets after creating your trust that you don't want to immediately transfer into the trust. You may also simply forget to formally transfer certain assets into a trust.

If you have assets outside of a trust at the time of your death, you'll need a will to state how you want to distribute those assets. Otherwise, such assets will be distributed according to [New Jersey's intestacy laws](#), which may not be what you would have preferred.

At a minimum, you should have a “**pour-over will**.” A pour-over will is drafted to pick up any assets remaining in your estate at the time of your death and transfer them into the trust. The assets will then be distributed according to the trust's terms.

If you have any minor children or others in your care, your will should also appoint a guardian. If you don't appoint a guardian, the court will choose one. This court-appointed guardian may not be who you would have chosen.

A [comprehensive estate plan](#) includes other estate planning documents as well, such as:

- a **durable financial power of attorney** to appoint someone to handle certain financial and business decisions on your behalf in the event of your incapacitation
- an **advance healthcare directive** to clarify your wishes regarding medical decisions in the event you become incapacitated

If you're thinking about creating a trust, it's a good idea to review your estate plan as a whole. A New Jersey estate planning attorney can help confirm you have all necessary pieces in place and that every part of your plan works together.

Chapter 2: Finding a New Jersey Trusts Lawyer

Estate planning, including creating one or more trusts, can feel like a daunting process. However, with the help of an experienced lawyer, the process is rarely as difficult as many imagine. In particular, an estate planning attorney can help:

- clarify your estate planning goals
- explain the different types of trusts and estate planning options
- evaluate your specific circumstances and identify important considerations
- advise on how to structure your trust or trusts
- confirm every part of your estate plan works together
- advise on choosing the right trustee
- draft legally compliant documents to create your trust
- properly fund your trust and take all other steps necessary for your trust to meet its intended goals

In other words, an experienced estate planning attorney can help make the process as smooth, efficient, and stress-free as possible.

How to choose a New Jersey trusts lawyer

When engaging an estate planning lawyer, it's important to keep in mind that the lawyer you choose can greatly affect your experience and results.

First, the lawyer you engage should have specific experience forming trusts in New Jersey. Each state has its own trusts & estates law. An attorney who has handled many types of trusts in New Jersey can better identify your options, flag important considerations, spot potential problems, and provide sound advice on which type of trust would best suit your goals. Such lawyers are also more likely to be up to date on the most recent developments in New Jersey trusts & estates law.

Second, it's best to engage a lawyer who you feel personally comfortable with as well. Estate planning and creating trusts is a deeply personal process. You'll need to share private information about you and your family with your lawyer and openly communicate about your goals and concerns. This will be much easier if you feel your attorney is understanding, attentive, and compassionate.

If you're ready to start the process of creating a trust, your first step should be to schedule a consultation with a New Jersey trusts attorney. Many attorneys provide free initial consultations so that they can get a better idea of your circumstances and whether they can help you. You should also use this meeting as an opportunity to ask questions about the attorney, their experience, and what it's like working with them.

The consultation is also a chance for you to ask questions about the costs of working with a particular attorney. Fee arrangements vary widely from lawyer to lawyer. A lawyer's costs for creating a trust will also usually vary depending on the complexity and size of the estate involved and whether the trust is part of a more comprehensive estate plan.

To avoid unpleasant surprises, you shouldn't hesitate to ask about a lawyer's fee structure at the first meeting. Before you formally engage an attorney, you should also get this information in writing.

Discuss your goals with New Jersey trusts attorney today

At Rosenblum Law, our estate planning team has experience with many types of trusts and other estate planning tools available in New Jersey. We understand that estate planning and creating a trust can seem difficult and intimidating, but we're committed to making the process as simple and stress-free as possible.

If you're interested in using a trust, our New Jersey estate planning attorneys can evaluate your situation and advise on how to best move forward. If we can take on your estate planning matter, we'll also walk you through each step from start to finish — from surveying your assets, to drafting and executing the necessary documents, to funding the trust.

For a free consultation, call us today at 888-235-9021 or [click here to send us a message](#).

Chapter 3: Choosing the Right Type of New Jersey Trust

Trusts can be structured in many different ways according to your estate planning goals. You may even create more than one trust. The type you choose will depend on priorities such as:

- Keeping the ability to change or revoke the trust
- Minimizing income, estate, or gift taxes
- Shielding assets from creditors or lawsuits
- Safeguarding against poor decision making by beneficiaries
- Avoiding the expense, time, and public nature of the [probate process](#)

Below is general information about the main types of trusts available in New Jersey and several examples of how trusts can be used in your estate plan. However, to choose the right type of trust, you should get the help of an experienced New Jersey trusts lawyer.

An attorney can evaluate your circumstances, such as the size of your estate, any special considerations regarding your beneficiaries, and your own financial needs, including retirement. They can then guide you through your options and help you create and execute a trust that meets your goals.

Main types of trusts in New Jersey

Trusts generally fall into two broad categories: living trusts and testamentary trusts.

A **“living trust”** (also called an **“inter vivos trust”**) is a trust that is created while the grantor is still living. There are two main types of living trusts:

- revocable living trusts
- irrevocable living trusts

Living trusts are created through a trust agreement. The provisions of this document dictate how the trust assets are held, managed, and distributed.

A **“testamentary trust”** is a trust formed only upon your death through the provisions of your will. This means the will includes all the terms of the testamentary trust and functions as the trust document. Since the trust is part of the will, it will have to go through the [probate process](#).

More details about each of these main types of trusts are included below.

Revocable living trusts

A revocable living trust is a type of trust created during the grantor's lifetime that the grantor can change or revoke up until the grantor's death. When you create a revocable living trust, you'll generally be the grantor, the initial trustee, and a beneficiary. You'll also name a successor trustee and the beneficiaries who will receive the trust property upon your death.

While you're alive, you'll generally retain control over the assets in the revocable living trust. You can manage and use the assets as you see fit, including taking assets out of the trust. You're also free to amend or even cancel the trust if there's a change in your circumstances, it's not meeting your estate planning goals, or you're otherwise not satisfied with how the trust is operating.

This flexibility makes revocable living trusts an effective way to plan for incapacity, control what happens to your assets upon your death, and minimize the probate process, while still being able to use your property as you wish during your lifetime. However, assets in a revocable trust will remain part of your estate. This means such assets may still be within the reach of creditors and subject to taxes.

Upon your death, a revocable trust also becomes irrevocable. At this point, the trust can no longer be changed or canceled. The successor trustee will take over administering the trust, including distributing assets to beneficiaries as directed in the trust document. If you become incapacitated, the successor trustee will also step in to manage the trust.

Irrevocable living trusts

An irrevocable living trust is a type of trust created during the grantor's lifetime that generally cannot be changed or canceled after its creation. Once assets are transferred into the trust, the grantor cannot take them back. The grantor also doesn't have the power to change the trust terms or dissolve the trust except under very limited circumstances, such as through court order.

Like revocable living trusts, irrevocable living trusts are useful for controlling how, when, and to whom assets are distributed upon the grantor's death. They also help minimize time and expense spent on the probate process, as all trust assets will be distributed directly to beneficiaries.

However, irrevocable assets can also be useful for tax planning or asset protection purposes. This is because assets placed into an irrevocable living trust are no longer part of the grantor's estate. Even so, irrevocable living trusts can be set up in a way that still benefits the grantor during his or her lifetime as well. A few examples include:

- **A grantor retained annuity trust, or "GRAT."** This is a type of irrevocable trust that pays the grantor a fixed sum for a certain number of years. After the last payment is made, the trust assets pass on to the beneficiaries.

- **A grantor retained interest trust, or “GRIT.”** This type of trust works similarly to a GRAT, but instead of paying a fixed sum to the grantor, the grantor receives all annual income from the trust for a certain number of years. Thereafter, the beneficiaries receive the remaining trust assets.
- **A qualified personal residence trust, or “QPRT.”** This type of trust is used to transfer the grantor’s home out of the grantor’s taxable estate and into the trust. However, the grantor retains an interest that allows them to continue living in the home rent-free for a certain period. Once this period ends, if the grantor wishes to stay in the home, they must begin paying fair market rent.

These three types of trusts and other irrevocable trusts are often used for tax planning purposes. Note, however, that even when creating an irrevocable trust, a grantor or their estate may still be responsible for taxes in certain situations. Tax laws are complex and change frequently. If minimizing taxes is a priority, it’s important to discuss your goals with an experienced New Jersey estate planning attorney.

Testamentary trusts

Unlike living trusts, a testamentary trust is created upon a grantor’s death through the grantor’s will. All of the trust terms are included in the will, such as the assets to be placed in the trust, the beneficiaries, and the trustee. As a result, the will functions as the trust document.

Since a testamentary trust is part of your will, it must go through the [probate process](#). The Surrogate Court will also oversee administration of the trust. This means that unlike living trusts, testamentary trusts don’t enjoy the benefits of avoiding probate, such as saving time and court expenses, passing on assets to beneficiaries more quickly, and maintaining privacy. In addition, testamentary trust assets remain part of your estate, which means they’re vulnerable to creditors and may be subject to estate tax.

Even so, testamentary trusts can provide a lot of flexibility and help achieve other estate planning goals. You’ll retain control over your assets throughout your life, and upon your death, the trust can be used to specify exactly when, how, and to whom your property is distributed.

Since a testamentary trust isn’t created until your death, you can change or revoke the trust by amending or revoking your will at any time. However, upon your death, the testamentary trust becomes irrevocable.

Common types of trust by purpose

When working with a trusts lawyer, you’ll start by discussing and defining your goals. Your attorney can then identify the type of trust (irrevocable living trust, revocable living trust, or

testamentary trust) that best suits your needs. Below are just some of the ways trusts can be used to achieve your goals.

Spendthrift trusts

A spendthrift trust is set up to pass on assets to a beneficiary while safeguarding such assets from squandering or misuse. This may be necessary if the beneficiary has issues with gambling, alcohol or substance abuse, or financial responsibility.

By creating a spendthrift trust, a grantor can transfer assets to the beneficiary on whatever schedule or terms the grantor believes is appropriate. For example, a beneficiary can receive disbursements weekly, monthly, yearly, or even upon certain milestones, such as graduation from college, reaching a certain age, or marriage. The trust can also be set up to pay expenses on behalf of the beneficiary directly.

By transferring assets over time, you can prevent a beneficiary from spending a large inheritance all at once. The assets that remain in the trust are managed by the trustee, who is legally required to follow your instructions in the trust document.

Special needs trusts

A special needs trust is set up for a disabled beneficiary who receives Medicaid, Supplemental Security Income, or other public benefits. To qualify for such benefits, the recipient's income and assets must be below a certain threshold. If a recipient receives a large inheritance all at once, it may exceed the limits and disqualify them from receiving much-needed assistance.

Fortunately, a beneficiary can generally receive disbursements from a special needs trust so long as the beneficiary does not serve as the trustee or otherwise exercise control over the amount they receive. In other words, a properly structured trust can be used to hold assets on behalf of a beneficiary without such assets "counting" for public benefit eligibility purposes. Often, the trust will include a special provision that will stop disbursements if they will affect the eligibility of the beneficiary to receive benefits.

There are special rules that apply to special needs trusts, including those outlined in [N.J.A.C. § 10:71-4.11\(g\)\(1\)](#). Like other types of trust, a special needs trust must be carefully drafted to ensure it meets its intended purpose. As a result, it's important to work with an estate planning attorney who's familiar with this type of trust and the relevant rules.

Trusts for married couples

While each spouse should have their own estate plan, when creating each estate plan it's important to holistically evaluate the entire family's circumstances. Spouses can have joint or

separate trusts. These trusts can be set up in many different ways, depending on the goals of each spouse and the couple as a whole. A few examples of trusts for married couples include:

A Trusts

“A Trusts” are also called “marital trusts.” An A Trust is a type of irrevocable trust designed to take advantage of the unlimited marital deduction for tax purposes. The unlimited marital deduction allows spouses to transfer an unlimited amount of property to each other during their lifetimes and at death without incurring estate, gift, or other tax consequences.

When setting up an A Trust, at the time of the grantor’s death, assets are transferred to a trust for the benefit of the surviving spouse. Such assets are exempt from tax under the unlimited marital deduction. However, the surviving spouse must be the only beneficiary of the trust during his or her lifetime. When the surviving spouse dies, the trust can then pass to other beneficiaries, such as children. At this time, the assets may be subject to an estate tax.

An A Trust can be set up to give the surviving spouse broad access to the funds during their lifetime. They may even allow the spouse to take out all trust property. However, “A Trusts” are often also qualified terminable interest property trusts, or “**QTIP Trusts**.”

When a QTIP Trust is created, the trust is required to pay all income generated by the trust, such as dividends or interest, to the surviving spouse at least on an annual basis. Although the surviving spouse essentially gets all the income from a QTIP trust, their right to the principal is limited. The grantor can restrict how the funds are used or how much can be withdrawn. They can also determine how the trusts are distributed at the second spouse’s death.

This arrangement can be helpful in a blended family situation, where the grantor wants to ensure children from a previous marriage get inheritances while still providing for a surviving spouse. It can also be useful for preventing assets from going to the surviving spouse’s new spouse if they remarry.

B Trusts

“B Trusts” are also called “bypass trusts,” “family trusts,” or “credit shelter trusts.” Like an “A Trust,” the spouse who dies first transfers their property into the B Trust. The value of the assets can be any amount up to the estate tax exemption amount (on the federal level, \$12.92 million for individuals as of 2023).

Unlike an A Trust or QTIP Trust, B Trusts keep the trust assets out of the surviving spouse’s estate. The income from a B Trust can be available to the surviving spouse, or the principal can be used for certain expenses of the surviving spouse.

However, the trust-generated income doesn't need to be paid out to the surviving spouse. In fact, anyone can be a beneficiary while the surviving spouse is living. The surviving spouse may not even receive anything under a B Trust.

Upon the surviving spouse's death, a B Trust's assets will pass to the designated beneficiaries, such as the first spouse's children or family.

Other spousal trust arrangements

A and B Trusts can also be used together. In this arrangement, at the first spouse's death, a certain amount that can be sheltered from estate tax is poured into the B Trust. The remainder is poured into the A Trust. During the surviving spouse's lifetime, the assets in both trusts are protected from creditors and any subsequent marriages by the surviving spouse. However, the A Trust is part of the surviving spouse's estate.

A spousal lifetime access trust ("SLAT") is another type of irrevocable trust for married couples. In this arrangement, the grantor spouse makes an irrevocable gift to the trust, and the beneficiary spouse (and sometimes other beneficiaries, such as children and grandchildren) have access to the gifted funds immediately. SLAT functions as a type of separate account that only the grantor's spouse (and other named beneficiaries) can access. Unlike an AB Trust, it's funded while both spouses are still alive.

Given the many options available to spouses, you should work closely with an estate planning attorney before creating any such trusts. Your attorney can help you identify all important considerations and structure your estate plan in a way that best suits your needs and goals.

Life insurance trusts

Life insurance policy proceeds are often included in an estate's total value. Depending on the size of the policy and the remaining estate, this can have estate tax implications. An irrevocable life insurance trust, or "ILIT," can be helpful for minimizing these tax consequences.

An ILIT is a trust created to hold one or more life insurance policies on the life of the grantor. Upon the grantor's death, the policy proceeds are paid to the ILIT's trustee. The trustee will then distribute the proceeds to the trust beneficiaries named in the trust document.

Note that an ILIT can be implemented by either:

- having the trustee buy a life insurance policy on the insured individual, or
- transferring an existing life insurance policy to the trust.

However, in the latter case, the insured individual must survive for at least three years after the policy's transfer to the trust. Otherwise, under the [Internal Revenue Code's § 2035](#), the insurance proceeds will still be included in the estate for estate tax purposes.

Charitable trusts

Sometimes, gifts are given outright to charities. However, you can also make charitable gifts through a trust. Two general types of charitable trusts include:

- a charitable remainder trust, or “**CRT**,” and
- a charitable lead trust, or “**CLT**.”

A CRT provides annual payments to non-charitable beneficiaries (such as your spouse or children) for a certain number of years. After that term ends, the remainder is transferred to a charity. A CLT is the opposite. That is, it pays an annual amount to a charity for a certain time period, with the remainder paid to the grantor or the grantor's beneficiaries after the term ends.

The tax treatment of a charitable trust depends on its specific terms. A qualified New Jersey estate planning lawyer can help design your trust in a way that aligns with your tax planning goals.

Totten trusts

A Totten trust, also sometimes called a “poor man's trust” or a “payable-on-death account,” isn't a trust in the traditional sense. However, when planning your estate, you may come across this option.

A Totten trust is only used for bank accounts or certificates of deposit. To create one, you'll just need to fill out some paperwork from your bank designating your beneficiary. You won't need to draft a trust document or take the other steps described in [Chapter 4: Creating a Trust in New Jersey](#).

Establishing a Totten trust doesn't affect your account during your lifetime. You'll keep full control and ownership of the account, including the ability to withdraw funds, change the beneficiary, or even close the account. The beneficiary will not have any rights to the account during your lifetime, nor will they be considered an owner of the account.

Because you retain full ownership of the account, it is still considered part of your estate and is not protected from your creditors. However, upon your death, the account assets will not have to go through [probate](#). Instead, the beneficiary can contact the bank and take ownership of the assets directly. All that's typically required is a certified copy of the death certificate and proof of the beneficiary's identity.

Other types of trusts

The trusts described above are just a few of the many ways trusts can be used in an estate plan. For example, you can set up a generation-skipping trust for your grandchildren (or others at least 37.5 years younger than the grantor) to reduce estate taxes. Or you can set up a trust to provide for the care of your pets upon your death. You can also set up a trust to plan for your own care in the event of your potential incapacity.

The trust or trusts you create will be unique to your circumstances. To understand the full range of options available to you, you should consult a New Jersey estate planning lawyer. Your lawyer will be able to ask the right questions about your situation and goals and help you move forward with an estate plan that makes the most sense for you.

Chapter 4: Creating a Trust in New Jersey

Once you're ready to create a trust, below is an overview of what to expect. However, given the potential for missteps, this is not a process you should undertake on your own. Instead, it's important to get the help of a qualified New Jersey estate planning attorney as early as possible. Your attorney will be able to advise on all your options, guide you through every step, and answer any questions along the way.

Step 1. Get organized

The first step in creating a trust is evaluating your estate as a whole. Your trust will be just one part of your estate plan, so you'll need to confirm your trust complements your will and the other aspects of your estate plan.

You should also clearly identify what you want your trust to achieve. See [Chapter 3: Choosing the Right Type of New Jersey Trust](#) for more information about the types of trusts available in New Jersey. It's important to gain clarity on the purpose you wish your trust to serve, as this will determine the structure of the trust. This step will also involve identifying:

- the beneficiary or beneficiaries
- the property that will be transferred into your trust, and
- when and under what conditions you want to distribute the trust assets

Some grantors know exactly what property they want to put into the trust. Others will need to gather information about all of their assets and make decisions as part of their overall estate plan. Most types of property can be put into a trust, such as:

- cash and bank accounts
- securities
- real property such as personal residences or investment real estate
- closely-held businesses
- life insurance

Trusts can also be designated as a beneficiary or recipient of certain assets, such as IRAs and qualified retirement plans. A trusts attorney can help you get organized and gather the required information to make the rest of the process as smooth as possible.

Step 2: Choose a trustee

The next step is choosing a trustee. You should also choose a successor trustee who can step in if the initial trustee is unavailable in the future. If you're creating a revocable living trust, you will generally serve as the initial trustee.

The trustee is responsible for administering the trust in accordance with the trust document, including protecting the trust assets and making distributions to the beneficiaries. The trustee has a legal responsibility to the beneficiaries, referred to as a “**fiduciary duty**.” This means that at all times, the trustee must act in the best interests of the beneficiaries.

A trustee can be either an individual or corporate trustee. Depending on the type of trust and its purpose, individual trustees may be the grantor, close family members (such as a spouse or adult child), or other trusted friends or associates.

Corporate trustees include trust companies, banks, and other financial institutions that provide trustee services. Corporate trustees offer the comfort of knowing that the trustee has the right expertise and will likely always be able to serve. This may be especially useful for larger or complex estates. However, they do charge for their services based on the amount in trust.

Serving as a trustee carries a great deal of responsibility. So when making your choice, you should take into account the trustee's:

- Trustworthiness and ability to exercise good judgment
- Understanding of and willingness to adhere to your values
- Relationship with the beneficiaries
- Interpersonal skills and ability to navigate sensitive situations
- Availability and geographic location
- Financial and investment experience and other skills relevant to administering a trust

Before naming a trustee in a trust document, you should also confirm they're willing and able to serve. If you choose a professional trustee, you should formally engage them.

Given that serving as trustee can take time and effort, under [N.J.S.A. §§ 3B:18-24 and 3B:18-25](#), trustees are generally entitled to a commission equal to 6% of the trust's income *plus* an annual commission of:

- \$5.00 per thousand dollars of corpus on the first \$400,000; and
- \$3.00 per thousand dollars of corpus in excess of \$400,000.

Banks and corporate trustees can get a “reasonable” fee. This is often based on their fee schedules. You can also specify the trustee's compensation in the trust document.

Like other steps of the trust creation process, an attorney can serve as a valuable resource in weighing your trustee options and setting compensation. In the case of a [revocable living trust](#), you can change the trustee at any time. Changing the trustee of an [irrevocable living trust](#) is more complicated. It's usually only possible through court order in cases of breach of fiduciary

duty or other misconduct. Regardless of the type of trust, it's important to choose your trustee carefully.

Step 3: Choose a name for your trust

Next, you'll need to choose a name for your trust. This will be included in the trust document. The name will become important when transferring property to the trust or executing other legal documents, such as real estate titles or contracts to sell property to the trust. While you can generally name a trust anything you choose, it's best to use clear, relatively short names to avoid issues with such legal documents.

Most trusts are simply named after the grantor and the date of creation. So if the grantor's name is John Doe and the trust was created on January 1, 2023, a common choice would be "John Doe Revocable Trust dated 01/01/2023." However, including your name isn't required if you want to maintain privacy.

Step 4: Draft and execute your trust document

Under New Jersey law, trusts must be created through a written document. While having witnesses and notarizing the trust document technically aren't required, these measures can help safeguard against claims that the document isn't valid.

The grantor must also have legal capacity to create the trust. This means you must be of sound mind and of legal age when creating your trust. If a court finds that you lacked capacity at the time of creating the trust, the trust may be voidable.

The trust document will include all the necessary information about your trust, including:

- A description of the trust property
- The beneficiary or beneficiaries
- The trustee and successor trustee
- How the trust assets are to be managed
- When and under what conditions the assets will be distributed

To ensure your trust functions as you intend, a New Jersey trusts attorney should draft your trust document on your behalf. Note that if you're creating a [testamentary trust](#), your trust provisions will be incorporated into your last will and testament.

Step 5: Transfer assets into your trust

Simply executing a trust document is not enough. For the trust to work as intended, you must also transfer the intended assets into the trust. In doing so, you should be careful to follow all legal formalities.

For example, for cash or securities, the trustee will open an account in the trust's name, and you must instruct your bank or broker to transfer the funds into the trustee's account. For real property, a deed must be executed to transfer legal title to the trust. For a vehicle, you must complete a formal transfer of title with the NJ Department of Motor Vehicles.

If you fail to transfer assets into the trust, the assets will remain in your estate. If the assets are still in your estate at the time of your death, they will likely go through the probate process. A New Jersey trusts attorney can help avoid this situation by ensuring the assets are properly transferred to the trust.

Chapter 5: FAQs About New Jersey Trusts

Below are common questions and answers about New Jersey trusts. However, every trust should be custom-tailored to your goals and needs. If you're ready to create a trust as part of your estate plan, you should contact a New Jersey trusts attorney. Your attorney can answer any questions you may have about your options and the process.

1. How does a trust work in New Jersey?

A trust is a legal arrangement in which a **grantor** transfers certain assets to a **trustee** to hold for the benefit of one or more specified individuals or entities, called **beneficiaries**.

A trust is created pursuant to a [trust document](#) and can generally hold just about any type of asset, such as cash, investments, real estate, or even personal property. The trustee is responsible for administering the trust according to the trust document, including distributing trust property to the beneficiaries.

2. What types of trusts are available in New Jersey?

There are three main types of trusts:

- [Revocable living trusts](#)
- [Irrevocable living trusts](#)
- [Testamentary trusts](#)

The type you choose and the specific terms of the trust will depend on priorities such as:

- Keeping the ability to change or revoke the trust
- Minimizing income, estate, or gift taxes
- Shielding assets from creditors or lawsuits
- Safeguarding against poor decision making by beneficiaries
- Avoiding the expense, time, and public nature of the [probate process](#)

See [Chapter 3: Choosing the Right Type of New Jersey Trust](#) for more information about the types of trusts available in New Jersey. A trusts attorney can advise on the best choice for your goals.

3. How do I set up a trust in New Jersey?

If you're ready to create a trust, it's best to work with an experienced New Jersey trusts attorney. Your attorney will be able to guide you through the process from start to finish.

In general, however, setting up a trust involves identifying:

- The purpose of the trust
- The beneficiaries
- The trustee and successor trustee
- The terms of the trust, including instructions for the management and distribution of the assets

You'll then need to draft and execute the trust document and properly fund the trust with the intended assets.

See [Chapter 4: Creating a Trust in New Jersey](#) for more information about the process for creating a trust in New Jersey.

4. Is it better to have a will or trust in New Jersey?

A trust is not meant to replace your will. Rather, trusts should work *with* your will to make sure your estate is administered in accordance with your wishes.

Having at least a basic will is important because even if you intend to put all of your assets into one or more trusts, it's common for at least some assets to be left outside of a trust upon a person's death. You'll need a will to provide directions for how these remaining assets should be distributed.

If you're thinking about creating a trust, it's a good idea to review your estate plan as a whole. A New Jersey estate planning attorney can help ensure you have all necessary pieces in place and that every part of your plan works together.

See [Chapter 1: Introduction to New Jersey Trusts — Trusts as part of a comprehensive estate plan](#) for more information.

5. What are the disadvantages of using a trust for estate planning?

One downside of trusts is that they cost money to set up and maintain. Whether it makes sense for your estate depends on many factors. You'll have to weigh such costs against the [benefits](#) of using a trust. A New Jersey estate planning lawyer can help you through this decision.

6. Who can serve as a trustee in New Jersey?

In New Jersey, you can choose either an individual (such as a trusted family member, friend, or associate) or a corporate trustee to serve as the trustee of your trust. Serving as a trustee carries a great deal of responsibility. So when making your choice, you should take into account the trustee's:

- Trustworthiness and ability to exercise good judgment
- Understanding of and willingness to adhere to your values
- Relationship with the beneficiaries
- Interpersonal skills and ability to navigate sensitive situations
- Availability and geographic location
- Financial and investment experience and other skills relevant to administering a trust

The right choice depends on the type of trust and its complexity. A New Jersey trusts lawyer can help guide your decision. See [Chapter 4: Creating a Trust in New Jersey — Step 2: Choose a trustee](#) for more information about selecting a trustee.

7. What assets can be put into a trust?

Trusts can be set up to hold just about any type of property. This includes, among other things:

- Cash and cash equivalents
- Securities and other investments
- Real estate
- Personal property (jewelry, automobiles, art, and more)

Once the trust is created, it's critical to follow all legal formalities for transferring the intended assets into the trust. Otherwise, they'll remain in your estate. If assets remain in your estate at the time of your death, such assets will generally have to go through probate.

See [Chapter 4: Creating a Trust in New Jersey — Step 5: Transfer assets into your trust](#).

8. How much does it cost to make a trust in New Jersey?

The costs of creating a trust depend on the attorney you choose to form the trust. Fee arrangements vary widely from lawyer to lawyer. A lawyer's costs for creating a trust will also usually vary depending on the complexity and size of the estate involved and whether the trust is part of a more comprehensive estate plan.

To get a better idea of costs involved in creating a trust, it's important to ask about a lawyer's fee structure during an initial consultation. You should also get this information in writing.

Keep in mind that under [N.J.S.A. §§ 3B:18-24 and 3B:18-25](#), trustees are also generally entitled to a commission equal to 6% of the trust's income *plus* an annual commission of:

- \$5.00 per thousand dollars of corpus on the first \$400,000; and
- \$3.00 per thousand dollars of corpus in excess of \$400,000.

Banks and corporate trustees can get a "reasonable" fee. This is often based on their fee schedules.

9. How do you find a New Jersey trusts attorney?

Finding a New Jersey trusts attorney is often just a quick search away. However, when selecting an attorney, you should take care to choose one with the proper qualifications and experience.

At Rosenblum Law, our estate planning team has experience with many types of trusts and other estate planning tools available in New Jersey. We understand that estate planning and creating a trust can seem difficult and intimidating, but we're committed to making the process as simple and stress-free as possible.

If you're interested in using a trust, our New Jersey estate planning attorneys can evaluate your situation and advise on how to best move forward. If we can take on your estate planning matter, we'll also walk you through each step from start to finish — from surveying your assets, to drafting and executing the necessary documents, to funding the trust.

For a free consultation, call us today at 888-235-9021 or [click here to send us a message](#).