

A Guide to New York 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 York. 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 York law at the time it was published. For specific legal advice regarding creating a trust, it is advisable to consult an experienced New York 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 York Trusts

Many wealthy families use trusts as part of their estate plans. However, that doesn't mean trusts aren't useful for those with more modest estates, too. In fact, no matter what the size of your estate is, if you're concerned with what will happen to your property upon your death, it's worth considering if a trust makes sense for you.

Trusts are an incredibly flexible estate planning tool that can help you achieve a wide variety of goals. For example, you may want to place conditions on a beneficiary's inheritance, such as graduation from college or getting married. Or you may be concerned about a beneficiary's ability to handle a large sum of money and would rather distribute the inheritance in installments over time.

This guide is designed to provide a broad overview of New York trusts and how you can use them to achieve these goals and many others. You'll learn about the main types of trusts in New York, their benefits, and the basic process for setting up your trust.

However, before you proceed with setting up a trust, it's important to consult a New York trusts attorney. Your attorney can help clarify your goals, survey your estate, and, if a trust is the right choice for you, create a valid trust that works seamlessly with the rest of your estate plan.

What is a trust?

A “**trust**” is a legal arrangement in which a **trustor** transfers assets to a **trustee** to hold and manage for the benefit of one or more third parties called **beneficiaries**. Below is further information about each of these parties.

- **Grantor.** The grantor, also known as the “**trustor**,” “**trust maker**,” or “**settlor**,” is the individual who creates the trust by creating and executing a [trust document](#). Many types of assets can be transferred into a trust, such as real property, cash, investments, and even personal or sentimental property. A trust can have more than one grantor, with each grantor transferring his or her own property into the trust.
- **Trustee.** The trustee is responsible for administering the trust according to the provisions of the trust document, including managing and distributing the trust property to beneficiaries. The grantor chooses the trustee, which can be either an individual or a corporate trustee.

Trustees have a legal duty to act in the best interest of the trust beneficiaries. See [Chapter 4: Setting Up a Trust in New York — Step 2: Choose a trustee](#) for more information about the duties of a trustee and how to choose one for your New York trust.

- **Beneficiaries.** A trust can have one or more beneficiaries. The beneficiaries are those entitled to receive distributions from the trust (whether income or other property) in accordance with the trust document's terms. Beneficiaries can be individuals or entities, such as charities, or even pets.

How to set up a trust in New York

To create a trust, you'll generally need to draft and execute a **legal document** called a **trust document**. This document includes who is entitled to receive the trust assets, when, and under what conditions. For a [testamentary trust](#), your last will & testament serves as the trust document and includes all of the trust's terms.

Trust documents can be simple or complex, depending on your goals. You also have a great deal of flexibility in deciding which terms to include in your trust document. You can generally structure your trust however you'd like, so long as the terms aren't illegal or against public policy.

For an overview of the steps involved in creating a trust in New York, see [Chapter 4: Creating a New York Trust](#).

Why create a New York trust

Trusts are a powerful estate planning tool that offer many different benefits. Below are just a few common reasons people choose to create trusts.

Ability to control when and how assets are distributed

One of the biggest benefits of creating a trust is that it allows you to decide exactly when and how your property is distributed after your death. This means you can create a plan for distributing your property that's tailored to your specific life circumstances and family. For example, you may want to:

- leave an inheritance to a minor or others who you believe may not be able to handle a large sum of money responsibly
- give an inheritance to children from a previous marriage while still providing for one's current spouse
- transfer property to loved ones without threatening their eligibility for public benefits
- ensure the proper management of investments or other complex financial matters while still providing for the care of loved ones
- delay distribution of inheritances until the beneficiaries have fulfilled certain conditions or reached certain milestones, such as reaching a certain age, graduation, or marriage

In other words, a carefully designed trust can help ensure your wishes are fulfilled in a way that's much more precise than a last will & testament.

Streamlined probate process

When someone who lives in New York passes away, their estate will most likely have to go through the probate process. “**Probate**” is the legal process of winding up an estate. This process is overseen by the Surrogate Court in the county in which the deceased person lived (called the “**decendent**”).

The probate process generally begins when the person named in the will to administer the estate, called the “**executor**,” brings the decedent's original will and death certificate to the Surrogate Court.

The court will then determine if the will is valid and evaluate any objections to the will. If the will is found valid, the court admits the will to probate and the executor can begin settling the estate. This includes:

- notifying beneficiaries and creditors
- surveying and securing assets
- filing and paying taxes
- distributing the assets to beneficiaries accordance to the will's terms or [intestacy laws](#)

Note that if you die without a will, or your named executor isn't able or willing to serve, the court will choose an “**administrator**.” The administrator has the same duties as an executor, except the process of winding up the estate is called an “**administration proceeding**.” The closest surviving relative, such as a spouse, is generally chosen as the administrator.

Many people wish to minimize the probate process because it can take a long time to conclude. In New York, it's not uncommon for this process to take a year or longer. The longer the process is, the more expensive it tends to be. In addition, while the probate process is ongoing, your beneficiaries will not have access to their inheritances. Probate proceedings are public record as well, which means it can be difficult to maintain privacy for your loved ones.

While the probate process for larger estates tends to take more time and money, even smaller estates can get caught up in the process if there are legal challenges or other difficulties. However, properly structured and funded, trusts can help significantly streamline the probate process. This is because only assets that are in your estate upon your death will be subject to probate, and trusts can be designed to remove assets from your estate.

Even with a trust, your will must go through probate, but the trust can still help:

- decrease the amount of time and money spend on probate

- protect the privacy of you and your loved ones
- distribute inheritances as quickly as possible
- avoid multi-state probate if you hold property in multiple states

Other advantages of a trust

Greater control over distributions and streamlining probate are two major benefits of using trusts that just about anyone should consider. However, there may be other reasons to consider using a trust, including those below.

- **Minimizing taxes.** Since relatively large tax exemptions are available, most people won't need a trust for tax planning purposes. However, for those with larger estates, trusts can be a helpful way to minimize taxes owed for themselves and their loved ones.
- **Plan for incapacitation.** If you become injured or ill, you may be unable to handle your own affairs (called "**incapacitation**"). In this situation, a trust can help ensure that you and your loved ones continue to receive support and proper care.
- **Protect assets.** When you set up an [irrevocable living trust](#), your assets are removed from your estate. This means those assets are no longer considered your property, and they generally can no longer be used to satisfy liabilities or judgments against you. Trusts can also be useful for providing for loved ones vulnerable to lawsuits or creditors.

To achieve these goals, your trust will need to be properly drafted and funded. Working with a New York trusts attorney will help ensure that your trust functions as you intended.

The role of trusts in a comprehensive estate plan

Trusts are a powerful and flexible estate planning tool, but even a basic estate plan will include other components. Most importantly, you'll at least need a basic will.

A will is essential because even if you *intend* to put all of your property into a trust, it's likely that at least some assets will remain outside of your trust upon your death. Many people obtain assets after creating a trust and never get around to [formally transferring those assets into the trust](#). You may also decide you simply don't want to transfer certain assets into your trust.

If any property is left outside of your trust at the time of your death, your will can help make sure they're still distributed in accordance with your wishes. If you don't have a will, those assets will be distributed according to [New York intestacy laws](#). These laws don't account for unique circumstances in your life and may not distribute your property how you'd prefer.

Even if you intend to diligently put all of your assets into a trust during your lifetime, you should at least create a "**pour-over will**." This type of will states that any property remaining in your

estate when you die will be transferred into your trust and distributed according to the trust's provisions.

Your will is also important for **appointing a guardian** for your minor children or others in case you are unable to do so. If you don't appoint a guardian for your minor children, the court will appoint one, who may not necessarily be the individual you prefer.

Other than a will, a basic estate plan should also include:

- a **durable financial power of attorney**, which grants certain powers to someone else to act on your behalf with respect to financial matters should you become incapacitated and unable to handle such matters yourself;
- a **health care proxy form**, which appoints someone to make medical decisions on your behalf if you're not able to do so yourself; and
- a **living will**, which includes instructions regarding the type of medical treatment you do or do not want to receive if you're unable to provide consent yourself.

Since a trust is just one part of your estate plan, when creating a trust it's a good idea to evaluate your estate as a whole and confirm all necessary pieces are in place. A New York trusts attorney can review your estate plan and help ensure its components are working properly together to achieve your estate planning goals.

Chapter 2: Engaging a New York Trusts Lawyer

The complexity of estate planning and creating a trust often deters people from moving forward. However, the process is often much easier than many people imagine, especially when working with an experienced attorney.

An estate planning attorney will be able to guide you through the entire process and ensure it's as smooth as possible, including:

- answering your questions and explaining your options
- identifying important considerations specific to your situation
- helping you define your goals
- advising on how to structure your trust in a way that's appropriate for your goals
- providing guidance on choosing a trustee
- evaluating your estate plan as a whole to confirm all relevant pieces are in place
- drafting your trust documents and ensuring your trust is otherwise valid

What to look for in a New York trusts lawyer

When hiring a lawyer to help create your trust, it's wise to put time and consideration into your choice. Lawyers vary in skill, experience, and approach, so you should find one that suits your goals and preferences.

One of the most important things to look for is experience. However, not just any type of experienced lawyer will do. Rather, your lawyer should have specific experience with New York trusts. Every state has its own laws regarding estate planning, and trusts are a special area of estate planning law that can be especially complex. An experienced trusts lawyer will be better able to answer your questions, recommend the right type of trust for your situation, and help you steer clear of common pitfalls. An attorney who regularly works on trusts will also be better informed regarding legal developments that may affect your plan.

An equally important consideration is whether you feel comfortable with a lawyer. Estate planning involves personal discussions about assets, family dynamics, and goals. To ensure your trust meets your needs and expectations, you'll have to be candid with your lawyer, which may involve sharing information you feel is private. By choosing a lawyer that treats you with respect and understanding, this process will be much easier.

To get a better sense of whether a lawyer is the right fit for you, you should first schedule a consultation. Lawyers commonly provide free initial consultations, either with themselves or a representative of their law firm, so that they can better understand your needs. The consultation is also a chance for you to find out whether you feel the lawyer is a good fit for you, too.

During your consultation with a lawyer, feel free to ask questions about their experience and process, as well as get clarity on potential costs. Legal fees are understandably a concern for many clients, but they vary from lawyer to lawyer and usually depend on the complexity of the matter. It's better to get this information upfront so there are no surprises. You should also be sure to get the fee information in writing before formally hiring your lawyer.

Consult with a New York trusts attorney today

At Rosenblum Law, we've handled New York trusts and comprehensive estate plans for clients from all walks of life. We understand how intimidating estate planning can be, which is why we focus on making the process as simple as possible.

If you're interested in creating a trust or discussing your estate plan in general, our New York estate planning attorneys can help answer your questions and understand your options. If we decide to work together on one or more aspects of your estate plan, we'll also guide you through each stage of the process and help ensure you have a plan in place that meets your needs and goals.

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

Chapter 3: Choosing a Structure for Your New York Trust

One of the most overwhelming parts of creating a trust is understanding all your options and deciding how to structure your trust. Depending on your goals, you may even need or want more than one trust. As part of this process, you'll need to consider your priorities, such as how important it is to you to:

- maintain control over trust assets during your lifetime
- minimize federal and state taxes
- keep property out of reach of creditors
- provide for loved ones who may be too young or otherwise unable to manage large sums on their own
- maintain privacy and reduce time and expenses spent on the [probate process](#)

To get started, below is an overview of the main types of New York trusts, as well as several examples of how you can use trusts to achieve your estate planning goals. While this summary can be helpful, it's not a substitute for speaking to a lawyer. Everyone's situation is different, and a New York estate planning lawyer can help you define your goals, under your options, and guide you through the entire process of creating a valid trust.

The main types of New York trusts

There are many types of trusts. However, at the most basic level, each trust can generally be categorized as either a **living trust** or **testamentary trust**.

"Living trusts" are also called **"inter vivos trusts."** This type of trust is created when the grantor is still alive, and can be further categorized as either a **revocable living trust** or **irrevocable living trust**. To create a living trust, you'll need to draft and execute a trust agreement. This document includes all the provisions relating to the management and distribution of the trust property.

"Testamentary trusts," on the other hand, are not formed until the death of the grantor. A testamentary trust is created through provisions included in the grantor's will, which serves as the trust document. Testamentary trusts don't avoid the probate process, which means the court will assess their validity, along with the rest of the will.

Below is more information about each of these three main types of trusts.

Revocable living trusts

Revocable living trusts are trusts created while the grantor is alive that can be changed or even revoked at any time before the grantor dies. If you create a revocable living trust, you'll usually serve as the initial trustee and often be a beneficiary. You'll also have to name a successor trustee and the beneficiary or beneficiaries who will receive distributions from the trust upon your death.

Revocable living trusts are a good option if you want to continue to control the trust property during your lifetime, while still planning for what will happen to your assets after your death and streamlining the probate process. These trusts can be structured to allow you to manage the assets however you'd like. You can withdraw assets and modify or even cancel the trust if you find the trust isn't meeting your needs.

However, keeping this level of control means the assets will still be considered part of your estate. As a result, they won't be protected from your creditors, nor will it help with minimizing taxes.

A revocable trust will become irrevocable upon your death, and the successor trustee will step in to administer the trust. If you're not able to serve as the trustee while still alive, such as due to incapacity, the successor trustee will also take over.

Irrevocable living trusts

Irrevocable living trusts are trusts created while the grantor is still living, but unlike revocable trusts, they generally can't be changed or canceled. In other words, once you, as the grantor, transfer property into trust, you give up control and ownership of that property. There are only very limited circumstances under which an irrevocable trust can be modified, and you'll need to obtain a court order to do so.

Irrevocable living trusts offer many of the same benefits as revocable trusts. For example, they offer the ability to control exactly what happens to your property when you die, including who will receive it and under which conditions. They also can help keep property out of the probate process, which can save time and money, protect privacy, and help ensure assets are distributed more quickly.

Irrevocable living trusts also often have the added benefits of keeping property out of the reach of creditors and potentially minimizing taxes. This is because once assets are put into an irrevocable trust, they're generally no longer considered part of the grantor's estate so long as:

- the grantor is not a trustee, and
- the grantor does not have the ability to direct a trustee.

In addition, even though you give up control over assets that are transferred into an irrevocable trust, there may still be ways to benefit from the trust during your lifetime. For example, you can set up a **grantor retained annuity trust, or “GRAT,”** which pays you a fixed sum each year for a certain term. After the term is up, the trust assets will pass on to your beneficiary or beneficiaries.

A similar option is a **grantor retained interest trust, or “GRIT,”** which, instead of paying you a fixed sum, pays all annual trust income for a certain term. After the term is over, like a GRAT, your beneficiaries will get the remaining trust assets.

Another special type of irrevocable trust that can benefit the grantor is a **qualified personal residence trust, or “QPRT.”** A QPRT is used specifically to remove your home from your estate, but you’ll keep an interest in the home so you can continue living there for a certain period of time, rent-free. Once the term is up, if you want to continue living in the home, you have to start paying fair market rent.

These types of trusts are often used for tax planning purposes. However, given the relatively high tax exemption amounts available (for 2023, the federal gift estate tax exemption is \$12.92 million for individuals and \$25.84 for married couples), most estates won’t need them.

If you have a larger estate, you should also keep in mind that even if you have an irrevocable living trust, it’s possible that you, your estate, or the beneficiary may be responsible for taxes in some cases. Given the complexity of trusts and tax law, if you’re concerned with tax efficiency you consult a qualified New York lawyer to confirm you’re taking the right steps.

Testamentary trusts

Testamentary trusts are created through the grantor’s will when the grantor dies. The will serves as the trust document, and therefore includes all of the trust provisions.

While creating a living trust can help minimize the probate process, the same is not true for testamentary trusts. As part of the will, testamentary trusts will go through probate, and the courts will oversee the administration of the trust. This can increase time and costs spent on probate, and the process will be public record. Testamentary trust property, as part of the grantor’s estate, will also still be subject to estate taxes and within the reach of creditors.

Still, testamentary trusts can be useful for achieving other goals. For example, during your lifetime you can continue to control and use the assets that will be put into the trust, while still determining exactly what happens to those assets after you die. You also have the freedom to change or remove the trust from your will at any time. However, upon your death, the testamentary trust can no longer be changed and revoked.

Common ways to use trusts

When working with an attorney, they will likely start by discussing your goals and then determining whether a revocable living trust, irrevocable living trust, or testamentary trust best suits your needs. Beyond that, you'll have a great deal of latitude in how to draft the terms of your trust. Below are a few common ways people use trusts in their estate plan.

Spendthrift trusts

Sometimes, you may want to pass on assets to a beneficiary who has trouble handling money responsibly, such as due to gambling, shopping, or other addictions.

Under such circumstances, you may fear that passing on a large sum of money will result in the beneficiary squandering it all at once. One way to protect against this is setting up a trust to pay out the assets over time, or only upon achievement of milestones, such as college graduation or marriage. You may also set up the trust to pay expenses for the beneficiary directly.

By setting up a trust in this way, the beneficiary won't have immediate access to the funds. Instead, the trustee will manage the property while it's in the trust, and they must follow the directions set forth in the trust document. This can significantly reduce the risk of squandering.

Special or supplemental needs trusts

When leaving an inheritance to someone receiving Medicaid, Supplemental Security Income, or other government benefits, you should be mindful that if the recipient exceeds certain income and asset levels, they may no longer qualify for such benefits. This means that if they receive a large inheritance all at once, it could cause them to become ineligible for much-needed assistance.

A special needs or supplemental needs trust is one way to pass on an inheritance to a recipient while protecting their eligibility for benefits. The idea is to supplement rather than replace public benefits, which can help improve the recipient's quality of life by paying for things that public benefits won't pay for.

Special needs trusts must be carefully structured to adhere to New York law and ensure eligibility for public benefits are not threatened. As with other types of trusts, it's important to work with an experienced attorney who understands the requirements for this specific type of trust.

Trust arrangements for spouses

Married couples often share property, finances, and estate planning goals. As a result, while every individual should have his or her own estate plan, spouses should also look at the family's assets as a whole. In some cases, depending on income levels and family dynamics, it may be beneficial to create one or more spousal trusts, such as those described below.

A Trusts

Under the federal unlimited marital deduction, spouses are allowed to transfer an unlimited amount of assets between themselves while still living and at death, tax-free. An “**A trust**” or “**marital trust**” is designed to take advantage of this deduction. When you set up an A trust, when the grantor spouse dies, his or her property is put into the trust and the surviving spouse is the beneficiary of that trust. These assets will be exempt from tax.

However, while the surviving spouse will be a beneficiary while alive, the property in the trust won't become part of his or her estate. Rather, upon the second spouse's death, other beneficiaries, such as children, will get the right to the trust property. At this point, it's possible the property may be subject to taxes.

An A Trust can be structured in a way that allows the surviving spouse to freely access the trust assets while living. In many cases, however, A Trusts are also qualified terminable interest property trusts (“**QTIP Trusts**”).

A QTIP Trust pays all trust income to the surviving spouse at least yearly while limiting the surviving spouse's right to the trust principal. The grantor can restrict how funds can be used or how much can be taken out of the trust at once. QTIP Trusts may also include provisions for how to distribute the trust property when the second spouse dies.

QTIP Trusts can be useful in a blended family situation where the grantor is concerned with providing for a surviving spouse while also protecting the inheritance of children from a previous marriage. If the surviving spouse remarries, a QTIP Trust can also be used to limit access to the trust property by the new spouse.

B Trusts

“**B Trusts**” are called by a few other names, including “**bypass trusts**,” “**family trusts**,” or “**credit shelter trusts**.” B Trusts are similar to A Trusts in that the first spouse to die will transfer their assets into the B Trust. The amount transferred into the trust at this time shouldn't be above the estate tax exemption amount (on the federal level, \$12.92 million for individuals as of 2023).

The trust can be set up to provide for the surviving spouse for the rest of their lives, but the remaining trust assets will ultimately pass to other beneficiaries, such as children, tax-free. The

grantor may also decide not to give the surviving spouse anything under a B Trust, or name someone other than the surviving spouse as a beneficiary.

Other trusts for spouses

AB Trusts refer to trusts that involve both an A Trust and B Trust. When you use these two trusts together, an amount no greater than the amount that can be sheltered from estate tax will be put into the B Trust upon the death of the first spouse. Then the rest of the amount will go into the A Trust. The amounts in these trusts can be protected from creditors as well as later marriages by the surviving spouse.

A spousal lifetime access trust (“**SLAT**”) is yet another type of irrevocable trust specifically for spouses. When you have a SLAT, you can make an irrevocable gift to the trust, with your spouse or other beneficiaries benefiting from the gifted property. Note that unlike an AB Trust, SLATs are funded while both spouses are living. The idea is that you can retain some indirect access to the trust funds, while also taking advantage of gift tax exclusions.

Married couples have several options when it comes to estate planning. To understand everything that’s available to you, you should consult with a New York estate planning lawyer about your personal circumstances and goals.

Irrevocable life insurance trusts

Generally, life insurance proceeds are included in the value of a decedent’s estate. Given that policies can have large values, grantors are sometimes concerned with reducing the impact of taxes. One way to do this is by creating an irrevocable life insurance trust, or “**ILIT**.”

An ILIT is designed to take a life insurance policy out of the grantor’s estate. The ILIT will often purchase and hold the policy, and the trust will also be the beneficiary.

Sometimes an existing policy can be later transferred into the ILIT, but this can create issues if the insured person dies within three years. In such a situation, under [Internal Revenue Code’s § 2035](#), the estate will still include the insurance proceeds for tax purposes.

Charitable trusts

If you desire to leave a gift to one or more charities, trust may be a useful way to do this. Charitable trusts may include, among others, charitable remainder trusts (“**CRT**”) and charitable lead trusts (“**CLT**”).

When you create a CRT, you can give certain non-charitable beneficiaries an annual amount for a certain term. This may include, for example, your spouse or children. When the term is over,

the designated charity will receive the remainder of the trust property. A CLT works similarly, but in reverse. In other words, the charity will receive an annual amount for a certain term, and when that term ends, the remainder goes to the grantor or the grantor's beneficiaries.

Charitable trusts are often, but not always, used to achieve certain tax planning goals. An experienced New York attorney can help properly structure your charitable trust in light of your objectives.

Totten trusts (payable-on-death accounts)

Totten trusts are also called “**payable-on-death accounts**” or “**poor man's trusts**.” A Totten trust isn't actually a trust like the others discussed above. Rather, a Totten trust is only for bank accounts or certificates of deposit and can be created simply by filling out paperwork with your financial institution and naming a beneficiary. You won't need to create a trust document or take the other steps outlined in [Chapter 4: Creating a New York Trust](#).

Even after filling out the paperwork with your financial institution, you'll retain control over the account and can otherwise continue to use it as usual. You can withdraw money, change your beneficiary, or even close the account. While you're still alive, your designated beneficiary won't have any rights to your account.

As the owner of the account during your lifetime, it will still be part of your estate. This means it won't be protected from creditors or taxes. However, one advantage is that upon your death, the account can bypass the [probate](#) process. Generally, your beneficiary will be able to take ownership of the account simply by contacting your financial institution and providing a death certificate and proof of identity.

Other uses for trusts

The options above are just a few of the ways you can use a trust as part of your estate plan. For example, some grantors also use trusts to care for pets upon their death, or to plan for their own care or the care of others in the event they become incapacitated.

The terms of your trust, or whether you should even create one at all, depends on your specific situation and goals. You should talk to a New York estate planning lawyer as early in the process as possible to better understand your choices. An attorney can also guide you through the steps for creating an estate plan that makes the most sense for you.

Chapter 4: Creating a New York Trust

Often, one of the most intimidating parts of estate planning, including creating a trust, is not knowing what to expect. Below is a summary of the basic steps involved in creating a trust. However, creating a New York trust should always be done with the guidance of a qualified New York estate planning attorney. A lawyer can help you avoid missteps by explaining your options and guiding you through each of the steps outlined below.

Step 1. Evaluate your estate and goals, and gather information

Creating a trust starts with getting organized. This involves evaluating your entire estate and reviewing your current estate plan, if you have one. If you don't have an estate plan, you should consider creating a will and other basic estate planning documents as well. A trust should just be one part of your estate plan, and each part of your plan should work together to achieve your estate planning objectives.

You'll also need to define your goals for creating a trust. This is important because your goals will affect how you structure your trust and draft your trust document. Defining your goals includes identifying:

- who you want the beneficiary or beneficiaries of your trust to be
- the property you want to put into your trust
- when you want to distribute the trust assets and any conditions that must be met before distribution

See [Chapter 3: Choosing a Structure for Your New York Trust](#) for an overview of the main types of trusts in New York and how they can be used for specific estate planning goals.

Note that you can transfer most types of assets into a trust, such as cash and cash equivalents, investments, real property, and closely-held businesses. A trust can also be named as a beneficiary for certain assets, such as IRAs and qualified retirement plans.

While you may already know what you want to put into your trust, it's a good idea to survey your estate and then make decisions about what assets you'll put into your trust. A New York trusts attorney can help with this process, including gathering information and evaluating what makes the most sense for your situation.

Step 2: Select a trustee

Another important decision you'll have to make is who you want to serve as the trustee. You should also identify a successor trustee, just in case the initial trustee is unable or unwilling to

serve in the future. If your trust is a revocable living trust, often you, as the grantor, will usually serve as the initial trustee.

The trustee oversees the administration of your trust as directed in the trust document. This includes managing the assets and making distributions. As a “**fiduciary**,” the trustee has a legal responsibility to act in the best interests of the beneficiaries at all times.

Trustees can be individuals or corporate trustees. Many grantors choose a close family member, such a spouse or adult child, to serve as the trustee. Trusted associates or friends are also common options.

However, depending on the trust, a corporate trustee may be a more suitable option. Corporate trustees can include trust companies or financial institutions that provide trust services. Especially for complex or larger estates, having a corporate trustee can ensure the trustee has adequate expertise to effectively manage the trust. Unlike individuals, corporate trustees are also more likely to be available to serve far into the future.

The downside to corporate trusts is that they often charge more than the commissions a trustee is entitled to by law. Under [Sec. 2309 of New York’s Court Procedure Act](#), a trustee can receive commissions of 1% of property paid out of the trust, plus an annual commission calculated as follows:

- \$10.50 per \$1,000 on the first \$400,000 of principal in the trust
- \$4.50 per \$1,000 on the next \$600,000 of principal in the trust
- \$3.00 per \$1,000 on all additional principal

Given the responsibilities that a trustee will assume, you should make your choice carefully, considering factors such as:

- your faith in their ability to exercise good judgment
- their understanding of your values
- family dynamics or their relationships with the other beneficiaries
- their interpersonal skills and ability to handle sensitive matters
- the likelihood that they will be available to serve
- whether they have sufficient financial or other expertise required for your trust

Understanding whether someone is a good choice will likely require one or more discussions. Before adding a trustee to your trust document, the trustee should agree to serve. Professional trustees will require a formal engagement. It’s also a good idea to discuss your options with your attorney, as in some cases once you name a trustee, it’s extremely difficult to change. An attorney can also help you determine compensation.

Step 3: Name your trust

In order to hold assets, your trust will need to be identified. This is where naming your trust comes in. The name of your trust will be included in your trust document. When assets are transferred to the trust or the trust executes legal documents, such as titles or contracts, you'll use the legal name included in the trust document.

You have a lot of flexibility in naming your trust. However, clear and relatively short names are best to avoid potential issues. Simply using your name and date of creation is a common option, but this isn't if privacy is a concern. While it is possible to rename a trust, doing so can be complicated and require updating titles and other documents. As a result, it's best to make your choice carefully in the first instance.

Step 4: Create and sign the trust document

The next step is drafting your trust document. Your trust will include information about:

- trust property
- the beneficiary or beneficiaries
- the trustee(s)
- management requirements
- when and how assets will be distributed

A New York trusts lawyer should draft your trust document to help ensure the terms align with your intentions. Note that testamentary trusts are created through the provisions of your will, so you won't need a separate trust document.

After you have a trust document drafted, you'll also need to properly execute it. In New York, a valid trust document must be signed by the grantor and any other trustees either in the presence of two witnesses or in front of a notary public.

Creating a valid trust also requires that you have legal capacity at the time of signing. This means that you're of legal age and have the mental capacity to understand the nature and consequences of creating the trust. If someone without legal capacity creates a trust, a court can later declare it void.

Step 5: Formally put assets into your trust

Having a validly executed trust document will create the trust, but that isn't the last step. For your trust to work properly, you will need to formally transfer the trust property into the trust after its creation. It's also important to be mindful of any legal requirements for valid transfers. For

example, you may need to execute a deed for real property, transfer a title, or open one or more accounts in the trust's name.

If you don't formally fund your trust, the assets will remain in your estate and upon your death, the benefits of creating a trust will be lost. As with other steps in the process, a New York trusts attorney can help ensure you avoid this situation.

Chapter 5: FAQs About Trusts in New York

If you're considering a trust for your New York estate plan, below are answers to some common questions. However, once you're ready to get started, it's important to contact a New York trusts lawyer. Your lawyer will be able to answer questions about whether a trust is right for your estate plan and guide you through the process of creating a trust customized to your specific needs.

1. How does a New York trust work?

A “**trust**” is a legal arrangement in which a **trustor** transfers assets to a **trustee** to hold and manage for the benefit of one or more third parties called **beneficiaries**.

To create a trust, you'll need to draft and validly execute a [trust document](#). After a trust is created, it can hold most types of property, from cash to investments to personal property.

The trustee you name in the trust document will be in charge of carrying out the terms of the trust document, including protecting and managing the trust property and making distributions to beneficiaries.

2. How do I structure my New York trust?

The types main categories of trusts include:

- [revocable living trusts](#)
- [irrevocable living trusts](#)
- [testamentary trusts](#)

The structure that is right for you depends on what you want your trust to achieve. You may have one or more goals that will affect the type of trust you should choose, such as:

- maintaining control over trust assets during your lifetime
- minimizing federal and state taxes
- keeping property out of reach of creditors
- providing for loved ones who may be too young or otherwise unable to manage large sums on their own
- maintaining privacy and reduce time and expenses spent on the [probate process](#)

See [Chapter 3: Choosing a Structure for Your New York Trust](#) for more information about the kinds of trusts you can create in New York. A lawyer can further explain these options and advise which type is best for your circumstances.

3. What makes a trust valid in New York?

Creating a trust doesn't have to be stressful, but it's important to work with a New York trusts attorney to ensure that the trust is valid and works as intended. Creating a valid trust starts with identifying:

- your goals for the trust
- the beneficiary or beneficiaries
- the trustee(s)
- how you want to manage and distribute the assets

Once you have this information, you can formalize the trust by drafting and executing the trust document in front of two witnesses or a notary. You'll then need to be sure to transfer the property into the trust.

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

4. Do I still need a will if I create a New York trust?

A trust can't fully replace a will. Rather, if you create a trust, it will work alongside your will to ensure the property you leave behind is managed and distributed according to your wishes.

Even if you want to put as much of your estate into a trust as possible, you'll still need a will. It's nearly impossible to put every single thing you own into a trust, which means some property will inevitably remain in your estate. For example, you may forget to transfer property into your trust before you pass away, or you just may not get around to it, especially if you acquire property long after you initially create your trust.

By having a will, you'll be able to leave instructions for how any assets remaining in your estate upon your death should be distributed. If you're considering a trust, it's likely a good time to revisit your estate plan as a whole and confirm you have all the essential pieces in place. A New York trusts lawyer can help with this review.

See [Chapter 1: Introduction to New York Trusts — The role of trusts in a comprehensive estate plan](#) for more information about the components of a basic estate plan.

5. How do I choose a trustee for my New York trust?

When choosing a trustee, you should consider all possible options, including:

- a family member or close friend
- a professional trustee
- a New York lawyer

Your trustee will be taking on serious responsibilities, so you should consider a variety of factors, such as:

- your faith in their ability to exercise good judgment
- their understanding of your values
- family dynamics or their relationships with the other beneficiaries
- their interpersonal skills and ability to handle sensitive matters
- the likelihood that they will be available to serve
- whether they have sufficient financial or other expertise required for your trust

Once you identify a suitable trustee, be sure to discuss their possible appointment with them. Professional trustees will require formal engagement.

A New York estate planning lawyer can help you assess your options and choose an appropriate trustee for your trust. See [Chapter 4: Creating a New York Trust — Step 2: Select a trustee](#) for more information about trustees.

6. What kind of property can I put into a New York trust?

Trusts can be structured to hold most types of assets, such as:

- cash and investments
- your home and other real estate
- personal property, such as jewelry, cars and art

Note that many types of property will require specific legal steps to be transferred into a trust. If you don't follow these steps, the property will remain in your estate, and the benefits of setting up a trust will be lost.

See [Chapter 4: Creating a New York Trust — Step 5: Formally put assets into your trust.](#)

7. How much will it cost to create a trust in New York?

While trusts have many [advantages](#), one drawback is that setting up and maintaining a trust does cost money. These costs include legal fees as well as expenses for maintaining the trust.

Legal fees vary from lawyer to lawyer, but will generally depend on how complex your trust is. You should take advantage of initial consultations with potential lawyers to understand the fees and expenses involved. Before hiring a lawyer, you should also get all fee information in writing.

Costs of maintaining a trust mainly include fees to the trustee, who will be responsible for managing the trust. If you're creating a revocable trust, you will typically serve as the trustee during your lifetime, which means you won't have to pay trustee compensation for that time.

However, if someone else serves as your trustee, under [Sec. 2309 of New York's Court Procedure Act](#), a trustee can receive commissions of 1% of property paid out of the trust, plus an annual commission calculated as follows:

- \$10.50 per \$1,000 on the first \$400,000 of principal in the trust
- \$4.50 per \$1,000 on the next \$600,000 of principal in the trust
- \$3.00 per \$1,000 on all additional principal

Corporate trustees will likely charge more. You'll have to weigh the benefits of having a trust against these expenses. A New York trusts attorney can help you with this analysis.

8. How do I find an attorney to create a New York trust?

Estate planning lawyers are plentiful in New York. However, for the best results you should focus on choosing a lawyer experienced with New York trusts who's dedicated to providing a positive client experience.

At Rosenblum Law, we've handled New York trusts and comprehensive estate plans for clients from all walks of life. We understand how intimidating estate planning can be, which is why we focus on making the process as simple as possible.

If you're interested in creating a trust or discussing your estate plan in general, our New York estate planning attorneys can help answer your questions and understand your options. If we decide to work together on one or more aspects of your estate plan, we'll also guide you through each stage of the process and help ensure you have a plan in place that meets your needs and goals.

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