WHAT THE HECK IS A TRUST? DO YOU NEED ONE?

A Resource Guide for Understanding and Using Trusts as Planning Tools

CZEPIGA DALY POPE & PERRI

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What the Heck is a Trust?

A trust is a written document that spells out how assets (money, real estate, stocks, etc.) that you put into your trust during your lifetime should be distributed. It also spells out what happens to the trust assets after you pass away.

Common objectives of trusts include:

- Avoiding probate
- Reducing estate taxes
- Protecting property (for example, from creditors, long-term care costs, potential divorces, etc.)
- Providing for future generations

There are different types of trusts, but all trusts have three parties:

- **Grantor:** who creates and funds the trust with assets
- **Trustee:** who manages the trust assets
- **Beneficiary:** who is entitled to trust funds either during the Grantor's lifetime or after the Grantor's death

In any trust agreement, however, the trust cannot become effective until the trust is funded. This happens when the grantor makes the trust the legal owner of the assets.

What is a Revocable Living Trust?

A living trust is a written document that you create during your lifetime. You may choose to fund it during your lifetime, or leave it unfunded until your death.

"Funding" means that you actually make the trust the legal owner of your assets. For example, you might choose to retitle your bank accounts, brokerage accounts, or even your house into the name of your trust.

Your trust will contain provisions for management of the transferred assets during your lifetime and will include, as well, what happens to those assets upon your death. After your death, it functions as a Will substitute. The trustee will administer the trust in accordance with its terms. Most often you, if you so choose, will be the trustee, although you can name a spouse, child or bank as a co-trustee.

A living trust is revocable, meaning that you can end it at any time. You, as the creator of the trust, reserve the right to amend it and alter the trust however you please and you can obtain access to all the assets at any time for any reason.

Because you control everything in your trust, the trust does not protect assets from any creditor or nursing home.

A living trust accomplishes three goals:

1. Avoids probate. Those assets that you have transferred to the trust prior to your death will avoid the probate process. Upon your death, the successor trustee will do with the assets whatever the trust says.

The bottom line: Upon your death, the trust serves as a Will to the extent that it has assets in it.

2. Privacy. Unlike a Will, which is a public document that must be filed with the Probate Court at death, a living trust is private and is not available for inspection by the public at your death.

3. Protection if you become incapacitated. The living trust will ensure that your assets are managed for your benefit in the event that you become incapacitated. Should you become either physically or mentally disabled, if your assets are in a living trust, your successor trustee will continue to manage the trust and its assets in accordance with the terms that you established. There is no need to seek a conservator in the Probate Court

New Connecticut Laws That May Affect Your Estate Plan

If a trust is part of your estate plan, you should pay attention to a new Connecticut law that went into effect January 1, 2020.

Chances are you would not be interested in reading the recently adopted Connecticut Uniform Trust Code (UTC), which is over 100 pages long! But there are provisions in this legislation that we feel you should be aware of.

Some of the changes provide you additional benefits of having a trust, and others may cause you to consider updating the trust you have in place.

Here are the changes you should know about:

1. Courts, in some circumstances, now have the authority to amend or terminate an irrevocable trust if it finds that the beneficiaries all consent and that the change does not violate a material purpose of the trust.

Wait a minute. Your trust is a legal document that states your wishes. You created this estate planning document in the first place to specify exactly how you wanted everything distributed after you're gone. **How would you feel if a court changed what you intended for your beneficiaries?**

It depends on how you feel about unforeseen circumstances. Take this example of a change in your family situation: Your son has a history of substance abuse, so you set aside his inheritance in trust for his life, but he straightens out his life at age 30 and files a motion in court to modify your trust so he can now directly access all that you've bequeathed to him. In this scenario, it is possible the court will direct that the trustee distribute your son's share directly to him, in spite of what his trust states.

Depending on your objectives, you may be pleased that the court would recognize your son's recovery and provided him with access to his inheritance or you may feel angry that the court would base its assumption on mere recovery and not on other personal factors that weren't clearly stated in the trust.

The good news…

You now have the power to limit a court's ability to make changes to your trust.

You can add language that clearly specifies the purposes for which your trust was established and thereby prevent a future modification that would defeat those purposes. To reduce or eliminate the chances of a misinterpretation of your wishes, we recommend setting some guardrails within which a court would be confined should a beneficiary make a motion to a court (after you die) to modify or terminate the trust document you created for them.

Keep in mind that the UTC does not apply to a revocable living trust during your life, although the new law does affect the trust once you are deceased. **The ability of the court to change a trust under the new law applies only to trusts that are irrevocable.**

2. Your trust beneficiaries will be better informed – about their rights as beneficiaries and about activities related to the trust. The new law imposes new reporting requirements on the trustee to keep the beneficiaries reasonably informed about the trust's administration, which includes a duty to provide an annual report that summarizes how the trustee has managed the assets in the trust.

3. You can now designate a representative to receive information on behalf of a beneficiary – which is helpful if your beneficiary has a disability that might make it difficult to understand the information. This is also helpful when there are concerns about sharing sensitive financial information with a beneficiary who has mental health, substance abuse or other personal challenges.

4. Trustees will have more guidance as to what is expected of them, as the Code now includes provisions that list a trustee's powers and duties. So those you choose for this important role will now have a better understanding of their role.

5. Your trust can provide your beneficiaries enhanced protection from creditors. The new law provides that a beneficiary's creditors can't seize trust assets, even if the beneficiary is the trustee of their own trust, or seek a court order compelling a distribution to the beneficiary. The trust must include specific distribution language—most commonly referred to as a "general support" standard—but it provides the trustee/beneficiary with very broad authority. This is important for example, if you want to shield your assets for your child in the case of his or her divorce, preventing your child's ex-spouse from accessing what's in the trust. It's also helpful for beneficiaries who are business owners or who are employed in high-risk occupations, like the medical field. This has always been the case when a trustee and the beneficiary are different individuals, but now your child may also serve in the role as their own trustee so that they can maintain control of their own inheritance.

6. You can have your trust continue for a longer period than before, enabling you to set up a multi-generational trust. This can be a useful tool if you have a child who has a sizable estate of his or her own because the trust can prevent the assets from being taxed in the child's estate. A multi-generational trust might also make sense if you have a special asset that you want to preserve for many years into the future, such as a family business or special vacation property.

7. You may insulate your own assets from creditors. Connecticut now allows Domestic Asset Protection Trusts (DAPT). Under a DAPT, you may, in limited instances, transfer assets to an irrevocable trust, name someone else as trustee, and shield the assets you transfer from your own creditors. There are many specific conditions that you must satisfy, but this technique takes asset protection planning to a new level.

Changes in Connecticut trust law don't affect us all, but if you have a trust and think you need to make some adjustments, you will want to call us to set up an appointment. And if you don't have a trust, now is a good time to learn how a trust can help you plan for your future needs and provide for your family.

The Benefits of a Medicaid Irrevocable Trust

A Medicaid irrevocable trust, also known as an asset protection trust, may allow you to qualify for Medicaid benefits while preserving assets for family members or other beneficiaries. It is a legally enforceable arrangement that allows you to transfer property to someone else (the trustee) who holds the property for family members, typically children.

You and your spouse are not beneficiaries of this trust. Typically, one or more of your children would be the trustee. The trust is “irrevocable” meaning that you cannot amend or revoke it.

At the time of asset transfers to the trust, the “gift” is subject to the transfer of asset rules -- in most cases this is a five-year lookback period.

Under federal law, a state may not look back more than 60 months from the Medicaid application date in an attempt to find disqualifying asset transfers. In month 61, a Medicaid applicant is financially eligible for Medicaid because the gift made 61 months ago does not have to be disclosed to the State.

There are many benefits to establishing a Medicaid irrevocable trust:

- **Flexibility:** You would retain some control over the trust, including the ability to add or remove beneficiaries, excluding yourself, or to change the trustee.

- **Life Use or Use and Occupancy Agreement:** If you transferred your residence into the trust, you would either retain a life use in the house, or have a Use and Occupancy Agreement, permitting you to live there undisturbed and obligating you to pay the carrying costs of property. You would still be eligible to deduct the real estate taxes for income tax purposes.

- **Sale of Residence:** If you transfer your residence or another property you own to the trust, you have the flexibility to sell the property during your lifetime. Thus, if your home is sold during your lifetime and you retained a life use, a portion of the sales proceeds based on the value of your life use would be payable to you, but most of the sales proceeds would be payable to the trust.

  Any gain would be reported on your individual income tax return. As such, you would qualify for the personal residence capital gains tax exclusion ($250,000 in the case of a single individual; $500,000 in the case of a couple). This is a significant tax benefit and ensures flexibility in the event the home is sold. Also, as discussed below, if the home is unsold at your death, it qualifies for the stepped up tax basis which will minimize any capital gains taxes that are later realized upon its sale.

- **Tax Benefits:** The trust has substantial tax benefits. First the trust is a “Grantor Trust” for income tax purposes, which means that it is not recognized as a separate taxable entity. Consequently, the trustee is not required to file a separate income tax return during your lifetime. The income earned on trust assets is reported by you on your own income tax return and under your own Social Security Number.

The transfer of your assets to the trust for the benefit of children or other family members is not a completed gift for gift tax purposes (although it is a completed gift for Medicaid purposes). A gift tax return is required to be filed for the calendar year when assets are transferred to the trust.

Finally, the trust assets (except annuities) are eligible for a stepped-up tax cost basis to the fair market value on the donor's date of death.

The cost basis is the value the IRS uses to determine gain or loss on the sale of capital assets (e.g., real estate and securities). A taxpayer's cost basis is the sum that the donor paid for the asset plus, in the case of real property, any improvements to the property.

There is a tremendous income tax benefit to the trust beneficiaries in using the fair market value on the date of death as their cost basis, as opposed to the "carry-over" basis rule that typically applies to gifted assets (in which the donor's cost basis transfers to the donees).

But what if something happens to me or my spouse during the 5 year lookback period and one of us needs to apply for Medicaid benefits?

Un-funding the Trust

If you transfer your house to the trust and you or your spouse enters the nursing home within five years, the trustee could gift the house back to the healthy spouse and, because the house is exempt, there is no harm in receiving the house back because it is an exempt asset. The healthy spouse could then spend down if need be.

Additionally, there are spend-thrift provision in the trust which provide creditor protection.

If you have transferred additional assets to the trust it is important to remember that should either spouse need long term care services prior to the end of the five-year look-back period all of the assets transferred to the trust will not be protected. It may then be necessary to use some of the gifted funds for the cost of care.

The trust is worded in such a way that will enable some trust property to be distributed to one of the beneficiaries and then distributed to you. The trustee should not pay any amounts from the trust directly to you or your spouse. In addition your trustee should keep good records of any expenses paid from the trust assets.

Will Trust Assets Be Considered When Applying for Medicaid?

A Connecticut Supreme Court decision, *Pikula v. Department of Social Services*, establishes clear guidelines for determining if a trust should be considered a "supplemental needs trust" or a "general support trust."

In general, assets held in a supplemental needs trust are considered unavailable in determining Medicaid eligibility for the trust beneficiary.

The language of a supplemental needs trust states that the trust funds are specifically used to supplement the beneficiary's needs beyond what Medicaid will cover.

Assets held in a general support trust are considered available and unprotected under the Medicaid regulations as the trust language often gives broad discretion to the Trustee to provide for the beneficiary's general support and maintenance, which would include the cost of long term care.

The good news is that the *Pikula* decision expands on the concept of unavailability for Medicaid to include some trusts that were – prior to this decision – considered general support trusts.

What does this mean?

It means that such **trusts may be protected for Medicaid purposes**, thus ensuring Medicaid eligibility.

Three Important Factors

The court in *Pikula* looked at three overriding factors when determining if trust assets may be considered protected for the beneficiary:

- The Trustee's discretion in making distributions of trust income and principal;
- The limitations on the Trustee within which the Trustee must operate; and
- The amount of trust assets as viewed within the context of the facts, such as the overall cost of long term care.

These three prongs are now crucial in determining whether trust assets are considered available within the context of Medicaid eligibility.

If you have an existing trust for a loved one who may need public benefits in the future, make sure that you meet with a qualified elder law attorney to review the trust in light of the landmark *Pikula* decision.

It could mean the difference between your loved one saving the trust assets for his or her benefit, or losing it all to long-term care costs.

Revocable Trusts vs. Irrevocable Trusts: What's the Difference?

So you've been doing your estate planning homework. You've learned that perhaps you should have a trust in addition to a Will.

But then you hear that there are different types of trusts!

This article will help you understand the difference between the two main trusts that you may want to consider: the revocable trust and the irrevocable trust.

REVOCABLE TRUST

A revocable trust is a trust created during your lifetime. You are the creator, or grantor, of the trust and you are also often its trustee. You are also the beneficiary – the trust is there to serve you. Your assets (such as your real property, bank accounts, investment accounts, etc.) are re-titled into the name of the trust. A revocable trust is often referred to as a living trust.

You retain control

Once your assets are re-titled into the name of the trust, as trustee, you now oversee and manage the trust assets. Essentially, it is merely a change on paper. You continue to retain control over all of your assets. The trust is "revocable" meaning you can amend it or even revoke it entirely at any point in your lifetime.

The revocable trust also allows you to name a successor trustee so that at some point if you are unable to manage your assets, someone else whom you trust can step in and do it for you.

Avoid probate

The trust provides for a distribution provision upon your passing – similar to a Will – which states whom you wish to receive the assets in the trust when you have passed away. **The main difference between a revocable trust and a Will, however, is that upon your passing, the assets in your trust avoid probate.**

A Will only controls assets held in your name alone – not assets that are jointly held, have designated beneficiaries, or are assets held in a trust. Consequently, there is no prolonged probate process when you pass away so long as you have properly titled all your solely owned assets in your revocable trust.

IRREVOCABLE TRUST

An irrevocable trust is also a trust created during your lifetime. You are the grantor of the irrevocable trust, but you cannot serve as trustee. You must name another trusted individual to serve as trustee. Whether you are a beneficiary of the trust depends on what you are trying to achieve by creating the trust.

But why can't you serve as trustee of your own trust?

Preparing for long term care

An irrevocable trust is also considered an "asset protection trust." This means that you are transferring assets into this trust to not only avoid probate, but to also start the process of protecting assets in case of a future long term care crisis.

You lose control

The goal is that the transfer date of the assets will be beyond the five year look-back period under the Medicaid rules should there be a need to apply for Medicaid benefits. The State of Connecticut's position is that if you have control over the assets (that is, if you are trustee of your own trust) then those trust assets are available to you to pay for your care should a long term care crisis unfold.

The bottom line is that you lose control over your assets in an irrevocable trust. You are entrusting someone else to act as trustee in your best interest.

You cannot revoke

As stated in its name, you cannot revoke an irrevocable trust. As grantor of the trust, however, you do retain certain powers such as changing the beneficiaries of the trust or changing your trustee(s).

For some, the creation of an irrevocable trust is a big decision that must be weighed against many other factors.

Considering whether to create a trust is not an easy decision. Choosing the right type of trust to set up is even more challenging if you don't have the right information. Should you have a revocable or an irrevocable trust? Make sure that you meet with a qualified estate planning and elder law attorney to help you make the right choice.

How Can a Special Needs Trust Help Me?

A special needs trust (SNT) can dramatically improve the quality of life for individuals living with permanent disabilities. It is a wonderful way for you to ensure that your loved one can maintain a quality standard of living once you are no longer here.

A key benefit of a special needs trust is that it protects eligibility for public benefits. Most public benefits have asset limits tied to them. For example, in the state of Connecticut, in order for an individual to be on Medicaid, they cannot have more than $1,600 in assets in their name.

Now consider this. If your loved one inherited a large sum of cash, they would have more than $1,600 in their name and would be disqualified from receiving Medicaid!

But if that inheritance money went into a special needs trust, it would not disqualify your loved one from Medicaid. The assets in the trust can then be used to pay for things that will make a difference in his or her ability to live fully within a community.

When government program benefits are crucial to maintaining your loved one's healthcare and daily living needs, and his or her ability to have some degree of independence, an SNT is the tool you want. A special needs planning attorney can show you how the funds held in trust can provide for those amenities that are not provided by public programs.

Other times a special needs trust can protect money from interfering with public benefits for a person with a disability is when there is an inheritance and when there is a personal injury or medical malpractice settlement.

Distribution Planning for SSI and Medicaid

If a special needs trust is not administered properly, it can be the worst thing to happen to a person with a disability. If, for example, distributions from the trust are not made correctly, it's possible that SSI and Medicaid benefits will be reduced. Know the rules! You don't want to lose benefits.

Types of Special Needs Trusts

There are two different types of special needs trusts (SNTs): self-settled and third party.

1. A self-settled special needs trust

This is typically a trust that an individual creates and funds with his or her own resources. Federal law requires that it be created by an individual, a parent, grandparent, guardian or court.

The resources of an individual with disabilities are transferred to the trust. This is commonly referred to as funding the trust. These trusts must have a payback provision included in the trust document. This means that any state that has rendered Medicaid assistance will be paid back to the extent of such assistance, out of the remaining funds in the trust. This occurs upon the death of the individual with disabilities.

Third-party special needs trusts are not required to have such a payback provision. Self-settled special needs trusts with the exception of pooled trusts must be established and funded before the disabled individual attains the age of 65.

A pooled trust is also a self-settled special needs trust. These trusts are typically used when the disabled individual is over the age of 65.

Pooled trusts are managed by a non-profit organization. Currently, there is one pooled trust in Connecticut, PLAN of Connecticut. Other states have similar pooled trusts as well. In the case of the pooled trust, the trustee opens a sub-account for each individual with disabilities and the assets are pooled for investment purposes.

Because pooled trusts are self-settled trusts, the disabled individual's assets are subject to the payback provisions referred to above. Federal law permits the disabled beneficiary to elect to have the trust assets remaining at his or her death to be used for the benefit of other disabled individuals or provide that the remaining trust assets be paid back to any state that has rendered medical assistance (payback provisions).

2. Third party special needs trusts

These are trusts that are both created by a third party other than the individual with disabilities (like a parent or grandparent) and are funded with assets of a third party. Thus, the assets of the individual with disabilities are not transferred to a third-party special needs trust. These trusts may be inter vivos or testamentary, meaning that they can be effective during the third party's lifetime or after his or her death.

Unlike self-settled SNTs, third-party SNTs have the advantage of not requiring a payback provision to any state which has rendered medical assistance upon the death of the individual with disabilities. Thus, other family members may inherit trust assets remaining after the disabled individual's death.

Planning for both the resources of the disabled individual and to ensure that he or she can maintain or become eligible for SSI or Medicaid requires care. Further, estate planning for clients who have disabled children or other disabled family members who they want to benefit either during their lives or after death, requires competent legal counsel. The interplay of both federal and state law makes this area of practice even more challenging.

SNT trustees responsibilities

The trustee must be keenly aware of the unique issues pertaining to distributions of trust principal and income when disabled individuals are beneficiaries. Keeping government benefits intact and preserving limited resources for such individuals are both paramount in clients' minds. Non-professional trustees will need competent counsel advice as to distribution planning for the person with disabilities as well as other trust administration issues.

Life care plans

In the case of a disabled child, a life care plan may be prepared to better assess the needs of that child. This is particularly so in the case if the child receives a personal injury settlement. A life care plan can be of utmost importance to the trustee who is working to invest assets to ensure that they will outlast the child and to maintain a quality of life for that child that adequately meets his or her medical and personal needs.

Trust investments

Trust investments are an important part of special needs trust planning. If parents have a child with disabilities but have limited financial resources, they may want to consider funding such a trust with life insurance to ensure that there are sufficient resources to adequately meet the child's needs. With regard to other trust assets, trustees have to be sufficiently prepared to invest assets to meet state law requirements that pertain to trust investments as well as the needs of the disabled beneficiary.

Special Needs Trusts: Who Should Be Trustee?

Serving as trustee for a special needs trust demands time and skill. Time to work with professionals who provide counsel, and skill to make critical decisions that could impact a beneficiary's quality of life, public benefits and financial security.

So what's involved and whom should you choose as trustee?

First, it's important to understand the 3 parties to a Special Needs Trust (SNT):

1. **Settlor/Grantor**: the person who establishes an SNT
2. **Trustee**: the person who determines what distributions can be made from the trust and is responsible for the overall management of the trust, which could include managing investments or working with a financial planner to manage investments
3. **Beneficiary**: the person with disabilities for whose benefit the SNT is established

The role of the trustee

The trustee's job is critical. He or she will be responsible for ensuring that the beneficiary retains government benefits and that the funds in the trust are only used to supplement, and not replace, those benefits. Under no circumstances can the beneficiary be a trustee as this would allow the assets to be considered available for purposes of government benefits.

A trustee must understand:

- The personal needs of the person with disabilities
- The wishes of the settler/grantor
- The various income and asset rules for government benefits programs.

Trustees control assets

A beneficiary can never compel nor control distributions. The trustee typically has sole, discretion regarding any distribution from the trust to the primary beneficiary. However, the assets in certain types of SNTs must be used only for the sole benefit of the beneficiary, primarily to supplement services not otherwise provided for by the government.

The assets are not to be used for items which are fully covered by benefits. For example, Medicaid, Medicare or private insurance may cover prescription drugs; therefore the trustee should not use SNT assets for this purpose.

On the other hand, if a beneficiary wants to take a vacation, and, assuming the trust assets can financially support the trip, the SNT could pay for the cost of the trip. If the beneficiary needs a caregiver to accompany him on the trip, the SNT could also pay for travel expenses for the caregiver.

Who may serve as Trustee?

Anyone, other than the beneficiary, can serve as trustee. However, it must be someone who is willing to accept responsibility for managing funds and making distributions to the beneficiary.

If you are thinking about using a bank trust department for trust administration, it is important to know that they are not familiar with public benefit programs which means that maintaining eligibility for these programs may inadvertently be diminished or lost if improper distributions are made from the trust. As a result, many banks are not willing to handle the administration of Special Needs Trusts.

On the other hand, attorneys or non-profit trustees focusing on Special Needs Trust administration may be a wiser choice due to their in-depth knowledge of public benefit programs and the laws and public policies affecting special needs trusts.

If you end up deciding to give this responsibility to a family member or friend, we highly recommend that you retain and work closely with a Connecticut special needs attorney for advice.

How to Leave Money to an Irresponsible Child: Inheritance and Financial Responsibility

As parents, we all want what's best for our children, but we also realize that they don't always know what's best for them.

When considering how your financial assets will be distributed upon your death, **assessing your children's level of financial responsibility is a critical component of making effective choices** and creating a solution for a lasting legacy.

The truth is, developing good money management skills can take an entire lifetime.

There's so much to learn about not only the intricacies of complex financial affairs, but also about personal strengths and weaknesses when it comes to investing, spending, and saving.

Financial maturity is something that must be learned. This is why 77% of people who win a lottery or come into some other kind of cash windfall end up broke within a few years. They just don't know how to handle their newfound wealth.

For parents trying to figure out the best way to provide for their children, this question of financial responsibility is a big one. While a Will ostensibly ensures that your assets are distributed according to your wishes, a trust is a better option in many scenarios.

How does a trust work?

A trust allows you more control over how and when an inheritance is distributed to a child by putting a trustee, sometimes a trusted friend or relative, in charge of managing the assets. The trustee could also be the attorney who drafted the trust or a financial institution like a bank.

There are a variety of ways to structure a trust depending on your specific situation:

1. **Annuities**: This is a trust that distributes the inheritance over time based on a payment schedule that you deem appropriate. Typically, payments are made in equal amounts, such as $20,000 per year.
2. **Incentive Trust:** This term (sometimes called "Pay for Performance") applies to any trust in which there are conditions the child must meet in order to "earn" distributions. Many parents tie distributions to the attainment of educational or employment goals, but you can be as creative as you like. Some parents choose to connect distributions to more personal life goals or philanthropic service.

3. **Age-based Trust**: A more traditional route to take is to set distributions based on the child reaching certain ages. (Just remember, age does not automatically equal wisdom!)
4. **Income-matching Trust**: In this case, annual distributions are made in an amount matching the child's earned income or a percentage of that income.

What about assets that are not monetary?

Alternatively, you can provide for your children via non-monetary assets. For instance, you might leave a home in a trust, ensuring that your child always has the comfort and stability of having a place to live. (To ensure your child can't sell the house for cash, put the house in a trust that requires the money from any sale to be reinvested in another house.)

You can also earmark your child's inheritance to be used for the purpose of paying off either student loans or a mortgage. (Just be sure to double check for any early payment penalties.)

There is no one-size-fits-all solution when it comes to leaving money to your kids. At the end of the day, you need to carefully consider their needs in the context of their personality and level of maturity. Sometimes, you might have to apply a little tough love, but they will thank you for it in the long run.

Love Your Pets? You Might Want to Consider a Pet Trust

The loss of a pet is heartbreaking. But have you thought about what happens to your pet, when you die?

Your pets depend on you, they are loyal to you. They know they can count on you. You can only imagine their sense of loss when you're no longer in their lives.

The Humane Society estimates that between 100,000 and 500,000 pets end up in shelters every year after their owners die or become incapacitated.

Would you want that to happen to your pet?

Connecticut law provides pet owners with an estate planning tool to plan for our pets' care at our death or incapacity – it's called a pet trust.

What is a pet trust?

A pet trust is a legally enforceable arrangement that specifies how your pets will be provided for and taken care of financially if you pass away or become ill or disabled. You'll put aside some cash (or other form of assets) that will be held for the care of your pets, and you'll choose one or more caregivers to care for your pets in the manner which you spell out. For example, you can include:

- How often to feed them and what they should be fed
- What veterinarian should they see and how often
- Specific burial or cremation arrangements once the pet passes

Why set up a pet trust?

Because you're a responsible pet parent! Your pet has brought you immeasurable joy – you want assurance knowing that they will be safe and provided for when you can no longer be there for them.

To set up a pet trust, you need to:

1. Choose a trust protector – someone designated to act on behalf of the pets named in the pet trust

2. Select trustees – One or more people to care for your pets or who has the authority to appoint a caretaker

3. Identify which pets are to be beneficiaries of the pet trust

4. Have a source of funding to pay for care of your pets. For example, a lump sum payment from your estate, or designating your Pet Trust the beneficiary of a modest life insurance policy.

Think about how your pets have added to your life – then take the steps to decide their fate. And take comfort in knowing that a pet trust will ensure that they will be protected and cared for in the years to come.

This resource guide has been created especially for you by Czepiga Daly Pope & Perri, a law firm offering services in estate and tax planning, elder law, probate, elder law litigation and special needs trust services.

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Estate Planning | Elder Law | Special Needs | Litigation | Probate

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IMPORTANT

New Connecticut Laws: How Will They Affect Your Estate Plan?

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Wait a minute. Your trust is a legal document that states your wishes. You created this estate planning document in the first place to specify exactly how you wanted everything distributed after you're gone. How would you feel if a court changed what you intended for your beneficiaries?

It depends on how you feel about unforeseen circumstances. Take this example of a change in your family situation: Your son has a history of substance abuse, so you set aside his inheritance in trust for his life, but he straightens out his life at age 30 and files a motion in court to modify your trust so he can now directly access all that you've bequeathed to him. In this scenario, it is possible the court will direct that the trustee distribute your son's share directly to him, in spite of what his trust states.

Depending on your objectives, you may be pleased that the court would recognize your son's recovery and provided him with access to his inheritance or you may feel angry that the court would base its assumption on mere recovery and not on other personal factors that weren't clearly stated in the trust.

THE GOOD NEWS...

You now have the power to limit a court's ability to make changes to your trust.

You can add language that clearly specifies the purposes for which your trust was established and thereby prevent a future modification that would defeat those purposes. To reduce or eliminate the chances of a misinterpretation of your wishes, we recommend setting some guardrails within which a court would be confined should a beneficiary make a motion to a court (after you die) to modify or terminate the trust document you created for them.

Keep in mind that the UTC does not apply to a revocable living trust during your life, although the new law does affect the trust once you are deceased. **The ability of the court to change a trust under the new law applies only to trusts that are irrevocable.**

2. Your trust beneficiaries will be better informed – about their rights as beneficiaries and about activities related to the trust. The new law imposes new reporting requirements on the trustee to keep the beneficiaries reasonably informed about the trust's administration, which includes a duty to provide an annual report that summarizes how the trustee has managed the assets in the trust.

3. You can now designate a representative to receive information on behalf of a beneficiary – which is helpful if your beneficiary has a disability that might make it difficult to understand the information. This is also helpful when there are concerns about sharing sensitive financial information with a beneficiary who has mental health, substance abuse or other personal challenges.

4. Trustees will have more guidance as to what is expected of them, as the Code now includes provisions that list a trustee's powers and duties. So those you choose for this important role will now have a better understanding of their role.

5. Your trust can provide your beneficiaries enhanced protection from creditors. The new law provides that a beneficiary's creditors can't seize trust assets, even if the beneficiary is the trustee of their own trust, or seek a court order compelling a distribution to the beneficiary. The trust must include specific distribution language — most commonly referred to as a "general support" standard — but it provides the trustee/beneficiary with very broad authority. This is important for example, if you want to shield your assets for your child in the case of his or her divorce, preventing your child's ex-spouse from accessing what's in the trust. It's also helpful for beneficiaries who are business owners or who are employed in high-risk occupations, like the medical field. This has always been the case when a trustee and the beneficiary are different individuals, but now your child may also serve in the role as their own trustee so that they can maintain control of their own inheritance.

6. You can have your trust continue for a longer period than before, enabling you to set up a multi-generational trust. This can be a useful tool if you have a child who has a sizable estate of his or her own because the trust can prevent the assets from being taxed in the child's estate. A multi-generational trust might also make sense if you have a special asset that you want to preserve for many years into the future, such as a family business or special vacation property.

7. You may insulate your own assets from creditors. Connecticut now allows Domestic Asset Protection Trusts (DAPT). Under a DAPT, you may, in limited instances, transfer assets to an irrevocable trust, name someone else as trustee, and shield the assets you transfer from your own creditors. There are many specific conditions that you must satisfy, but this technique takes asset protection planning to a new level.

Changes in Connecticut trust law don't affect us all, but if you have a trust and think you need to make some adjustments, you will want to call us to set up an appointment. And if you don't have a trust, now is a good time to learn how a trust can help you plan for your future needs and provide for your family.

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