

IRREVOCABLE GRANTOR TRUSTS

# Trust Guide

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A GUIDE FOR GRANTORS AND TRUSTEES



Washington Elder Law PLLC

ESTATE, TAX & LONG TERM CARE PLANNING

Complimentary Workshops Available

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## Welcome!

Congratulations on taking an important step in securing your future and protecting the things that matter most. This guide is designed to help you confidently manage your Irrevocable Grantor Trust, understand your responsibilities, and know where to turn with questions. We're honored to continue supporting you on your journey.

— The Washington Elder Law Team

*Let's get started...*



## FIRST STEPS

01

*First*

Open a trust checking account (if needed)

02

*Second*

Fund the remaining assets into your Trust, as planned, and send us proof

03

*Third*

Add the trustee as an insured on real estate insurance policies

04

*Fourth*

Calendar your homestead exemption filing (if needed)

05

*Fifth*

Review Your Trust Documents

06

*Sixth*

Calendar a reminder to schedule a meeting with us next year to keep your plan current and working for you

# Understanding Your Trust

## IMPORTANT WORDS USED IN THIS GUIDE

**Grantor:** person who creates a Trust

**Trustee:** person who controls or administers a Trust, often the Grantor, or creator, of the Trust

**Beneficiary:** person who receives the money or benefit from a Trust (either during life of Grantor(s) or after death of Grantor(s) as a residuary beneficiary)

**Funding the Trust:** The act of moving assets to a Trust by recording a new deed, changing the title on accounts or changing beneficiaries on policies

## WHY IRREVOCABLE TRUSTS MATTER

- Irrevocable Grantor Trusts are designed to protect your assets from creditors. As the name suggests, they are "irrevocable," meaning they generally cannot be changed or undone once they are created.
- If you are the Grantor you cannot directly take assets back out of the Trust for your own personal use. Because you are not allowed to revoke the Trust or use the Trust's assets for your own benefit, your creditors also cannot reach into the Trust to claim those assets. This structure helps keep the assets inside the Trust safe and protected.

## GRANTOR(S) POWERS - WHAT GRANTORS CAN CHANGE

The Grantor(s) retain a number of powers over the Irrevocable Trust. These include the right to do the following during the Grantor's lifetime:

- change or remove Beneficiaries,
- change the amount or percentage any Beneficiary will receive,
- remove or replace Trustees for any reason or no reason,
- fill Trustee vacancies which may occur.

## ASSETS INTO TRUST / FUNDING THE TRUST

- The Grantor(s) will need to determine what assets to transfer into the Trust. That is a function of which assets you want to have readily available to you, and which assets to which you do not need direct access to the principal.
- Grantor(s) can add assets to the Trust at any time and at different times without limitation. However, be aware of the Medicaid five year look-forward period for each transfer. (see below)

## **ADD TRUSTEE AS AN ADDITIONAL INSURED FOR REAL ESTATE**

- If the Grantor(s) transfers real estate into the Trust, the insurance agents for all property or umbrella insurance properties which cover that real estate must be notified to add the names of the Trustee(s) as an additional insured.
- The name of the Grantor(s) should not be removed from the policies; just add the Trustee(s) as an additional insured.

## **FILE FOR HOMESTEAD EXEMPTION**

- If the Grantor(s) transfers a personal residence into the Trust and intends to maintain this property as their residence, remember to re-file for Homestead Exemption in the county of residence in order to keep the tax exemption.
- This typically must be done prior to April 1 of the year st after the transfer.

## **PAYING HOUSEHOLD BILLS**

- Even if the Grantor(s) transfers a personal residence into the Trust, all household bills, such as taxes, utilities, maintenance, and repairs, must still be paid by personal funds; these expenses CANNOT be paid by the Trust.

## **RENTAL, INVESTMENT OR INCOME-GENERATING REAL ESTATE**

- If any such property is put into the Trust, Grantor(s) should provide tenants of any rental properties with the name and contact information of your Trustee and instruction to make future rental checks payable to the Trustee. The Trustee should also contact tenants to verify they had been advised of the change.
- The Trustee should pay from Trust funds all expenses for rental, investment, or income-generating real estate which have been transferred to the Trust .
- This rule is different than for expenses for the personal residence.

## **INCOME TAX TREATMENT OF TRUST**

- The Trust does NOT need a separate tax identification number (called a TIN or an EIN) for federal income tax purposes.
- Use your Social Security number as the TIN for the Trust. For federal income tax purposes, the Grantor (you) and the Trust are considered one and the same.





## PRINCIPAL DISTRIBUTIONS OUT OF THE LIFETIME TRUST

- At the request of the Grantor(s), the Trustee can make distributions of principal (non-income assets) out of the Trust to anyone/entity (e.g. church, children, grandchildren, etc.) who is named as a principal beneficiary in the lifetime Trust.
- The Grantor(s) is never a principal beneficiary, even if the Trustee is both the Trustee and the Grantor.
- The Trustee cannot make distributions of principal to the Grantor(s) or for his/her/their direct benefit. (i.e. pay roofer for new roof or to car dealer for new car)
- In order to get principal out of the Trust for the benefit of the Grantor(s), the Trustee must make a completed gift to someone other than the Grantor(s), and that person will need to make a completed gift back to the Grantor(s). Although not required, we recommend that such gifts be made to the Trust's Residuary Beneficiaries, because if any of them refuses to make the gift back to the Grantor, then the Grantor has the power to alter that person's inheritance in the Trust, by e.g. reducing her or his share, or removing her or him as a Beneficiary altogether.

## TRUSTS FROM WHICH GRANTOR CAN RECEIVE INCOME

- For those of you who have a Trust for which you are an Income Beneficiary, income can automatically flow from Trust assets to you without having to go through any third parties.
- Income is anything that is taxable on your federal tax return. If in doubt, you should check with your financial advisor or tax professional.
- Any income must be taken within thirty (30) days after the close of the Trust tax year (which is the same as your tax year, which for most people is the calendar year), or it gets rolled into principal, and cannot then freely be taken by you, but you may be taxed on it nonetheless.
- The Grantor(s) should make arrangements to have the income paid to them directly.

## TRUSTS FROM WHICH THE GRANTOR CANNOT RECEIVE INCOME

- If you have set up this kind of Trust, then you cannot take income from this Trust, and no one on your behalf can directly give you income out of the Trust.
- Only those people you have identified as Income Beneficiaries (see your Trust terms) can be given income from the Trust.

## **MEDICAID GIFT RULES**

- If a Grantor put an asset into an Irrevocable Trust, then applies for Medicaid for himself or a spouse, Mississippi considers that transfer of ownership a gift.
- When one applies for Medicaid, the state will look at bank records to determine whether or not that person or spouse made any gifts of \$500 or more in any month during the previous five (5) years.
- When looking at assets put into a Trust, the five-year look-forward period (the date on which a Trust asset will be protected from Medicaid) begins as soon as an asset is put into the Trust.
- It does not matter when a gift was made from the Trust assets; the key date is when the asset went into the Trust.
- Therefore, after five (5) years have passed from the date an asset was put into the Trust, it is generally advantageous to make gifts out of those Trust assets rather than from personal funds of the Grantor(s).

## **STEP UP IN BASIS AT TIME OF DEATH**

- Assets put into the Trust get a stepped-up basis at the time of the Grantor's death, if the asset is still in the Trust at the time of the Grantor's death.
- The tax basis for any asset put into the Trust will become the value of the asset at the time of the Grantor's death - rather than the value at the date it was acquired by the Grantor originally.
- There is no capital gains tax due when the asset is put into the Trust.

## **LIMITATIONS ON REVOKING OR MODIFYING TRUST**

- The Trustee is the person appointed to manage and administer a Trust. The Trustee is often the Grantor, or creator, of the Trust. Because this Trust is irrevocable, neither the Grantor(s) nor the Trustee can revoke or modify most of the terms of the Trust. (The Grantor usually retains certain powers to change specific things in the document (see above) but the Grantor can never give directly back to themselves.)

## **READ THE TRUST DOCUMENTS**

- Read the Trust document carefully. It contains a full explanation of how the Trust works and describes the powers and duties as Trustee. Everything is not covered in this guide.





## DUTIES OF A GENERAL TRUSTEE OF AN IRREVOCABLE GRANTOR TRUST

The Trustee is the person appointed to manage and administer a Trust. The Trustee is often the Grantor, or creator, of the Trust.

**The Trustee must, as a general rule, at a minimum do the following:**

- Sign as Trustee. Whenever the Trustee signs a document in his or her capacity as Trustee, the Trustee should sign his or her name followed by the word Trustee (e.g. John Doe, Trustee).
- Verify that all desired assets have been transferred into the Trust
- Make sure all Trust assets are invested prudently. Consider the purpose of the investment (e.g. generating income or creating growth), and avoid risky investments. A financial advisor can help you make wise choices.
- Keep good records. Document all your activity as Trustee, so that anyone can clearly see and understand everything that has been done. At a minimum, keep copies of account statements, tax records, check registers, asset transfer records, and correspondence.
- Keep Trust assets separate. All assets and income of each Trust must be kept scrupulously separate from those of any other person or Trust, including the Grantor(s). Do NOT commingle funds.
- Assure proper use of Trust assets. The Trustee must assure to the extent possible that the Trust assets are not misused by the Trust Beneficiary.
- Before making a distribution from the Trust, confirm that it is authorized under the terms and intent of the Trust.
- Don't make any payments, or disburse any assets, out of the Trust for the direct benefit of the Grantor(s). Be aware of who receives trust assets or the benefit of trust assets so as not to violate the purpose of the Trust.
- Don't pay personal or household expenses of the Grantor(s) out of the Trust
- Make any gifts out of the Trust (not the Grantor's personal assets/accounts)
- Take the time to complete the tasks correctly.
- Trust distribution upon death of the Beneficiary. The Trustee must ensure that, upon the death of the Trust Beneficiary, the remaining Trust assets are distributed as the Grantor(s) intended and directed them to go.

# Next Steps

*Your trust is now in place — a powerful step toward protecting what matters most. To keep your plan working smoothly, here are a few things to keep in mind going forward:*

- Check in with us periodically. Laws and life circumstances change. We recommend touching base every year or two to ensure your plan still meets your needs.
- Notify us of any major life changes. Let us know if you move, experience a significant health or financial shift, or if your family situation changes (such as marriage, divorce, births, or deaths).
- Let us know before acquiring new property. We can advise you on proper titling and whether the asset should be held in the trust.
- Keep an eye on non-trust accounts. If you begin accumulating a significant balance outside the trust, contact us to review whether changes are needed to maintain asset protection.
- Reach out with questions. Whether it's something small or significant, we're here to help you navigate it.
- Maintaining your trust is a shared process — and we're honored to be your guide along the way.



## A PERSONAL NOTE:

Thank you for trusting us to be part of your planning journey. This guide was created with care to help you feel more confident and supported as you move forward. If you ever have questions, concerns, or just want reassurance that your plan is still on track, we're only a phone call away. Wishing you peace of mind and all the best in the years ahead.

— The Washington Elder Law Team

WE WOULD LIKE TO INVITE YOU AND YOUR  
FAMILY TO JOIN US FOR OUR ONLINE WORKSHOP

## **TRUST PLANNING** IRREVOCABLE GRANTOR TRUSTS



**PRESENTED BY: Brian G. Isaacson, Attorney-CPA**

Call us to learn more about  
our complimentary workshops

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Online Registration at:  
**[www.washingtonelderlaw.net](http://www.washingtonelderlaw.net)**



**Washington Elder Law** PLLC  
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114 - 2<sup>nd</sup> Ave South Suite 103 | Edmonds, WA 98020



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