

# AI-01747 Family Estate Trust

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What is a family trust? What is the minimum amount to consider thinking about family trust? How and where to setup family trust. List the pros cons of a family trust.

A family trust is an estate planning tool designed to manage and distribute assets to family members (and sometimes other beneficiaries) according to the wishes of the person who creates the trust, known as the "grantor" or "settlor."

Here's a breakdown of what a family trust entails:

What is a Family Trust?

- Parties Involved:
  - Grantor (or Settlor): The person who creates the trust and transfers assets into it.
  - Trustee: The individual or entity responsible for managing the trust's assets according to the trust document's terms. This can be the grantor, a family member, a professional trustee, or a corporate trustee.
  - Beneficiaries: The individuals or groups who will benefit from the trust's assets, typically family members.
- Purpose:
  - Asset Management and Protection: Ensures assets are managed and distributed according to the grantor's specific instructions, both during their lifetime and after their death.
  - Probate Avoidance: Assets held within a properly funded trust typically avoid the often lengthy, costly, and public probate process, allowing for a quicker and more private distribution to beneficiaries.

- **Control over Distributions:** Allows the grantor to dictate when, how, and under what conditions beneficiaries receive their inheritance (e.g., at a certain age, after achieving a specific milestone like graduating college).
- **Tax Benefits:** Can offer potential tax advantages, such as minimizing estate taxes and capital gains taxes, especially for larger estates.
- **Protection from Creditors/Lawsuits:** In certain types of trusts (irrevocable trusts), assets can be protected from creditors and legal claims against beneficiaries.
- **Continuity:** Provides for seamless management of assets in case of the grantor's incapacitation or death.

#### Minimum Amount to Consider a Family Trust

Technically, there's no strict minimum amount required to set up a trust. You can establish a trust with any amount of assets that have some value and can be transferred into the trust.

However, the benefits of a trust often outweigh the costs and complexities primarily for estates with a certain level of assets. While there's no magic number, many sources suggest that if you have under \$100,000 in assets, a trust might not be worth the cost and complexity, and simpler estate planning tools like a well-structured will, joint ownership, and beneficiary designations might be more suitable. For estates valued at \$5 million or more, trusts generally provide significant advantages. The median size of a trust fund has been reported around \$285,000.

It's important to remember that your "assets" include more than just cash; they encompass real estate, investments, business interests, vehicles, and life insurance policies.

#### How and Where to Set Up a Family Trust

Setting up a family trust involves several key steps and generally requires professional guidance:

- **Define Your Objectives:** Clearly articulate your goals for the trust. What do you want to achieve (e.g., asset protection, specific distribution conditions, tax planning, avoiding probate)?
- **Choose the Type of Trust:** Family trusts are typically a type of living trust, which can be either:

- Revocable Trust: Can be changed or dissolved by the grantor during their lifetime. Offers flexibility but limited asset protection and tax benefits.
- Irrevocable Trust: Cannot be changed or revoked once established. Offers greater asset protection and potential tax benefits, but the grantor gives up control over the assets.
- There are also specialized trusts for specific purposes.
- Choose Trustees: Select reliable individuals or entities to manage the trust. This can be yourself (as initial trustee), a family member, a professional trustee, or a corporate trustee. It's crucial to name successor trustees.
- Draft the Trust Document: This is a legally binding document that outlines the terms of the trust, including:
  - Identification of the grantor, trustees, and beneficiaries.
  - Instructions for managing and distributing assets.
  - Conditions for distributions.
  - Provisions for successor trustees.
  - This document must comply with state laws.
- Fund the Trust: This is a critical step where you formally transfer ownership of your assets into the trust. This involves changing titles on real estate, bank accounts, investment accounts, etc., to reflect the trust's ownership. If assets are not properly "funded" into the trust, they may still go through probate.
- Communicate with Your Family (Optional but Recommended): While not legally required, transparent communication about the trust's purpose and terms can help prevent misunderstandings and conflicts among beneficiaries.
- Review and Update: Trusts are not "set it and forget it." It's essential to review and update your trust periodically, especially after significant life events (marriage, divorce, birth of children, death of a beneficiary or trustee, changes in laws).

Where to set it up:

The most common and recommended way to set up a family trust is by working with an estate planning attorney. An attorney can:

- Help you determine if a trust is right for your specific situation.
- Advise on the best type of trust for your goals.
- Draft a legally sound and customized trust document that complies with your state's laws.
- Guide you through the asset funding process.

While online services exist for creating trusts, they may not offer the personalized advice and comprehensive planning that an attorney provides, especially for complex estates or specific family dynamics.

#### Pros and Cons of a Family Trust

Here's a summary of the advantages and disadvantages:

##### Pros:

- **Avoids Probate:** Assets in a trust bypass the public, time-consuming, and often expensive probate court process, allowing for quicker and private distribution to beneficiaries.
- **Asset Protection:** For irrevocable trusts, assets can be shielded from creditors, lawsuits, and even divorce proceedings against beneficiaries.
- **Control Over Asset Distribution:** Allows the grantor to set specific conditions and timelines for how and when beneficiaries receive assets, which is particularly useful for minors, financially irresponsible beneficiaries, or those with special needs.
- **Privacy:** Unlike wills, which become public record, the details of a trust remain private.
- **Potential Tax Benefits:** Can help minimize estate taxes, capital gains taxes, and other taxes, especially for high-net-worth individuals.
- **Continuity of Management:** Ensures assets are managed even if the grantor becomes incapacitated or passes away.
- **Flexibility (for Revocable Trusts):** A revocable trust can be modified or even terminated by the grantor during their lifetime.
- **Avoids Guardianship/Conservatorship:** If you become incapacitated, the trustee can immediately step in to manage your affairs without court

intervention.

Cons:

- **Cost of Setup:** Creating a trust generally involves higher upfront legal fees compared to a simple will. A very simple living trust can cost around \$1,500 to \$2,000, while a complicated one can range from \$2,500 to \$5,000 or more.
- **Complexity:** Setting up and managing a trust can be complex and typically requires professional assistance.
- **Loss of Control (for Irrevocable Trusts):** Once assets are transferred into an irrevocable trust, the grantor generally gives up control over those assets.
- **Ongoing Administration:** Trusts require ongoing management by the trustee, including maintaining records, filing taxes (in some cases), and adhering to the trust's terms.
- **Funding Requirement:** You must actively transfer (fund) assets into the trust for it to be effective. If assets are left out, they may still go through probate.
- **No Income Tax Advantages on Distributed Income:** The trust itself doesn't pay income tax on distributed income; beneficiaries pay tax on the distributed income based on their personal marginal tax rates. Undistributed income, however, may be taxed at the highest rates.
- **Losses Can't Be Subtracted from Your Income:** If assets held in the trust incur losses, these generally cannot be offset against the grantor's personal income.

It's crucial to consult with an experienced estate planning attorney to determine if a family trust is the right solution for your specific circumstances and to ensure it is properly established and funded.