

# SOUTH CAROLINA TRUST AGREEMENTS

## – WHY YOU SHOULD CONSIDER ONE OF YOUR ESTATE PLAN

*“If you have wisely made the decision to create your estate plan you will likely execute a Last Will and Testament as the foundation of your plan.”*



**KUHN & KUHN LAW FIRM**

Wills \* Trusts \* Probate \* Divorce \* Child Custody



Despite understanding the importance of estate planning, over half of all Americans do not have a comprehensive estate plan in place. If you have wisely made the decision to create your estate plan you will likely execute a Last Will and Testament as the foundation of your plan. Most estate plans, however, include far more than just a Will. In recent years trust agreements have increased in popularity as additions to the average estate plan.

Of course you should consult with your South Carolina estate planning attorney before making a final decision about whether or not a trust agreement is right for your estate plan; however, a basic understanding of what a trust agreement is may help you decide if a trust agreement will make a valuable addition to your plan.

## WHAT IS A TRUST AGREEMENT?



At its most basic a trust agreement is a legal agreement whereby the creator of the trust appoints someone to guard assets for the benefit of a third party to whom those assets are eventually distributed. You have likely entered into trust agreements numerous times in your life without even realizing it.

For example, if you give your sister a family heirloom and ask her to hold onto it until your niece is old enough to have it you effectively created a trust agreement.

## TRUST BASICS – THE ELEMENTS

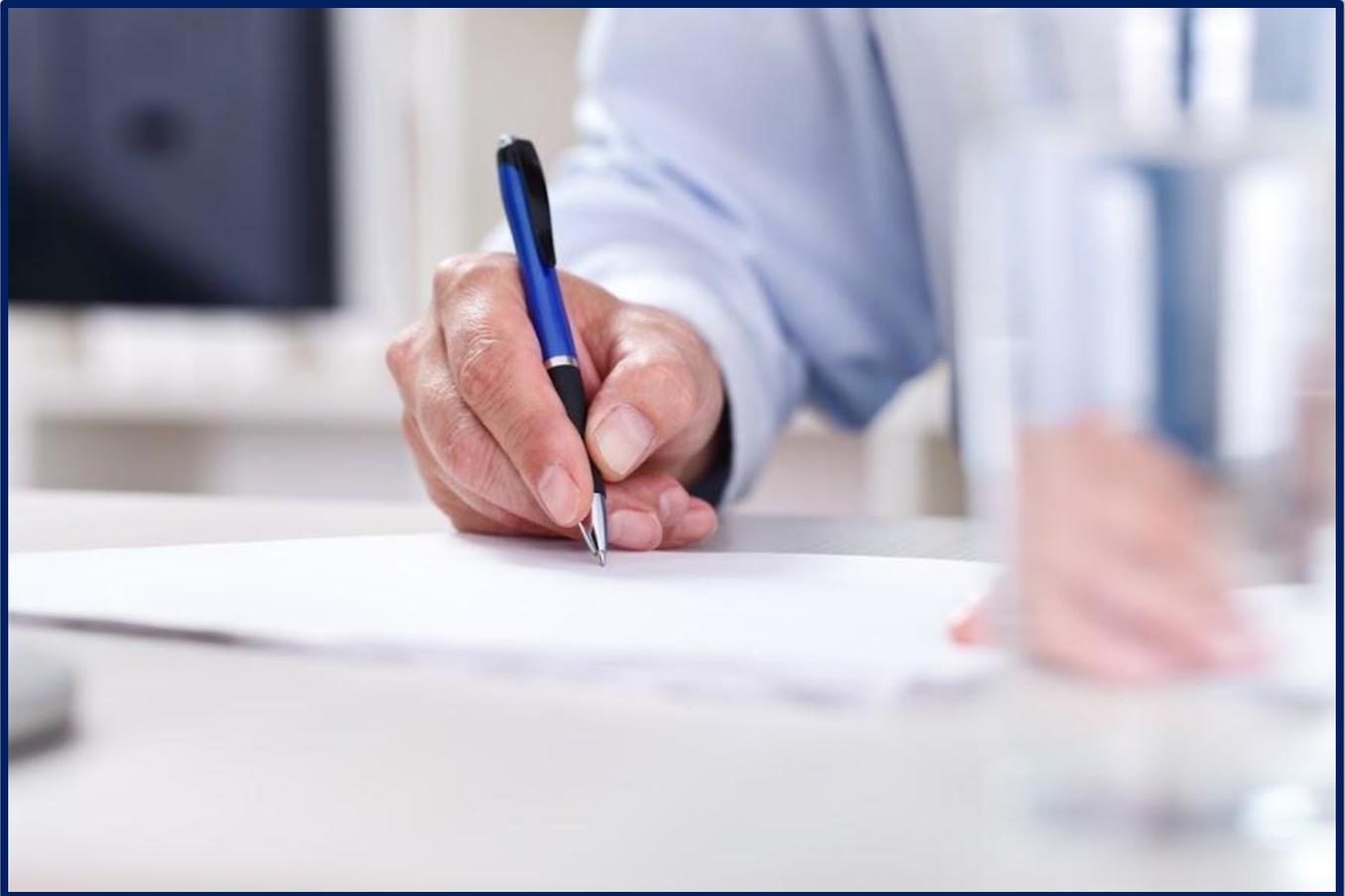


Trusts have evolved to the point where there is a specialized trust for almost any specific estate planning goal. All trust agreements, however, require the same basic elements, including:

- **Maker** – the person who creates a trust is referred to as the “maker” or “trustor” of the trust.
- **Trustee** – the Trustee is responsible for managing and investing trust assets as well as administering the terms of the trust.
- **Beneficiary** – every trust must have at least one beneficiary. A beneficiary can be an individual, charity, organization, or even the family pet.
- **Terms** – the terms of your trust will dictate how the trust assets are invested, managed, and distributed to beneficiaries. As the trust maker you can create any terms you wish as long as they are not illegal, unconscionable, or impractical.
- **Assets** – almost any type of assets can be used to fund a trust, including cash, stocks and bonds, or real property.

## REVOCABLE VS. IRREVOCABLE – TESTAMENTARY VS. LIVING

Trusts are broadly divided first as either a testamentary or living trust. A testamentary trust is one that does not take effect until the death of the maker whereas a living trust, formally referred to as an *inter vivos* trust, is one that takes effect as soon as all the formalities of creation have been completed.

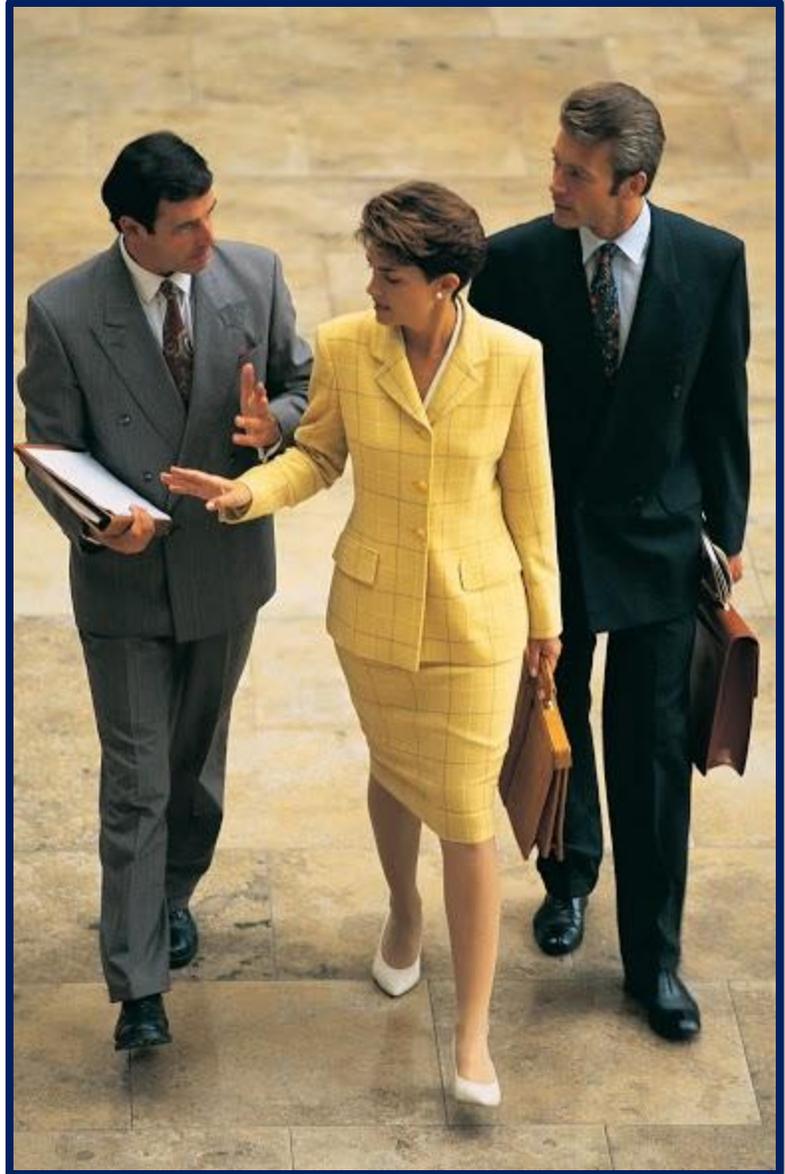


Next, living trusts can further be subdivided into revocable or irrevocable living trusts. As the names imply, a revocable trust is one that can be changed, modified, or revoked by the trust maker at any time. An irrevocable trust, on the other hand, cannot be changed, modified, or revoked by the maker after the trust becomes effective.

## TRUST BENEFITS

Once upon a time trusts were used almost exclusively by wealthy families as a way to guard and control the family wealth and ultimately pass it down to future generations. Today, thanks to the evolution of trust agreements over the past century, trusts offer a wide range of benefits to the average person as part of his or her estate plan, including:

- **Probate avoidance** – when you die all assets owned by you are potentially required to go through the legal process known as probate. Probate can take months, even years to complete. . . Assets held in the right type of trust, however, bypass probate altogether.
- **Incapacity planning** – revocable living trusts are frequently used as part of an incapacity plan. By naming yourself as the trustee and a spouse/parent/child as successor trustee, assets held by the trust are



immediately transferred to the control of the successor trustee upon your incapacity.

- **Charitable gifting** – there are a wide variety of trusts that can be used to further philanthropic gifting in your estate plan. For example, both the charitable remainder and charitable lead trust can be used to leave gifts to both a charitable and a non-charitable beneficiary.
- **Special needs planning** – a special needs trust allows you to provide supplemental financial support to a special needs loved one without jeopardizing the beneficiary's eligibility for assistance program such as Medicaid and SSI.
- **Pet planning** – you don't have to be a Hollywood movie star or eccentric socialite to care what happens to your family pet when you die. A pet trust allows you the peace of mind of knowing that your pet will be well-cared for long after your own death or incapacity.



- **Asset protection** – a trust can provide asset protection from creditors as well as from spend-thrift beneficiaries. A Medicaid trust can also be used to shelter assets for Medicaid planning purposes to ensure that you will qualify for benefits when the need arises.
- **Tax avoidance** – once an asset is transferred into an irrevocable trust it becomes trust property and is no longer owned by you. As such, the value of the asset is not considered when calculating your estate’s gift and estate tax obligation.

As you can see, almost any estate plan can benefit from the addition of a trust agreement designed to accomplish the creator’s specific estate planning goals. Consult with your South Carolina estate planning attorney for more information or to get started on your trust agreement.



American Bar Association, [Trusts](#)

U.S. Trust, [Trust Basics](#)

Living Trust Network, [Types of Trusts](#)

Vanguard, [Living Trusts: Learn the Basics](#)

## About Kuhn & Kuhn Law Firm



Our firm is dedicated to providing you with quality estate planning and family law resources, so you can become familiar with all of the existing options. When you visit or call our office, we want you to feel comfortable discussing such an important issue concerning both you and your family. We want to arm you with the information you need to make an informed decision about your family's future.

If you have a well-drafted estate plan in place, you'll ensure that your estate passes to whom you want, when you want, and is carried out in the manner you've chosen. You can rest assured that your family will not have to endure the public process and costly matter of probate. The government will not be able to take what you've spent a lifetime building. But you need to be aware of the many options that exist in estate planning—and you must choose your attorney wisely.

If you or someone you love is contemplating a separation or divorce, you can count on our help in reaching a cost-effective and fair resolution. Our team of legal professionals is experienced in all aspects of South Carolina divorce law. Whether your divorce is contested or uncontested, involves a prenuptial agreement, needs child custody or child support terms to be negotiated, or involves more complex issues, a family law attorney at our firm can inform you of your legal options, provide helpful guidance, and protect your rights.

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