

THE INS AND OUTS OF  
PROBATE FOR  
GENEALOGISTS –  
AVOIDING PROBATE WITH  
A TRUST

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**What is a Trust?**

A trust is a relationship whereby property is held by one party for the benefit of another.

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**Origin of Trusts**

- Originated with the idea of the difference between legal ownership and the beneficial ownership
- Started at the time of the Crusades when property was left with heirs and courts declared that in equity the property was that of the real owner
- The manager or heirs would refuse to return the property
- King would order the cause be decided by the Lord Chancellor who established the Courts of Chancery

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### Trust property is not part of the Estate

- Has been used as a way to avoid the probate laws
- Today are more of a tax planning device rather than an Estate planning device

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### Finding a Trust

- Not a public document
- Found with other important papers from the ancestor
- Only public if subject to litigation in court

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### Definitions

- Trustor – Person who conveys the property
- Trustee – Person who receives the property
- Trust – Document creating and giving the provisions of a trust
- Beneficiary – Person who gets the property

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### Definitions

- As Trustee for – Words used to appoint Trustee
- Settlor – Person who creates the Trust
- Distribution – Property paid out or given out of the Trust

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### Wording is very important

- Must be specific in conveyance of property to the trust
- Duties and powers of the trustee or trustees must be specific
- Any limitations on distributions from the trust also need to be specific

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### Litigation is not uncommon

You may encounter a dispute over a trust in the course of researching court records

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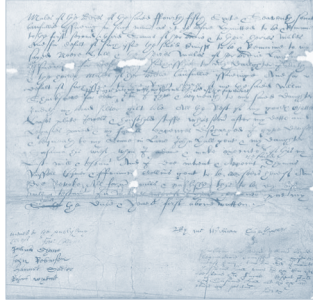
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## Types of Trusts

- Testamentary – Takes effective upon death
- Living – Is in force and effect during the life of the Trustor/Settlor



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## Testamentary Trust

- Takes effect upon the death of one or more of the Trustors
- Essentially lies dormant during the life of the trustor
- Terminates upon the distribution of the property held by the trust

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## Living Trust

- Takes effect upon the transfer of property to the trust
- Terminates at the time of the death of the last trustor
- Is not the same as a “living will”
- Usually provides for an incapacitated or incompetent person

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Living Trust continued

- Does not have to pertain to an incompetent or incapacitated person
- May be used for charitable or tax planning purposes

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