PAIR AI LLC

Trust Structure Guide

A practical U.S. comparison of major trust classifications, estate-planning vehicles, charitable structures, public-benefit trusts, asset-protection arrangements, business trusts, and institutional fiduciary vehicles.

REVISED FOR ACCURACY AND READABILITY

Primary-source review completed July 2026

IMPORTANT

Professional Use and Legal Notice

This guide is not a legal opinion and does not create an attorney-client relationship.
It is a general U.S. educational reference. Trust, probate, creditor, marital-property, public-benefit, charitable, securities, banking, ERISA, and state tax rules vary by jurisdiction. Federal law, indexed amounts, forms, regulations, and administrative guidance change. Every structure must be tested against the actual parties, assets, liabilities, domicile, situs, citizenship, transaction history, beneficiary circumstances, and intended administration.

No trust is literally "bulletproof." A defensible structure requires valid formation, legitimate purpose, correct funding, independent and documented fiduciary action, accurate valuation, tax compliance, respect for creditor and benefit rules, and administration consistent with the governing instrument.

The word "trust" may describe several dimensions at once. One arrangement can be irrevocable, inter vivos, grantor, domestic, directed, discretionary, spendthrift, and GST-exempt. The labels are not mutually exclusive products.

Baseline legal checklist

Capacity and intent; identifiable trust property; valid beneficiaries or authorized purpose; enforceable duties; trustee acceptance; governing law and situs; funding and title; tax classification; distribution standards; fiduciary succession; records, reporting, and dispute procedures.

Accuracy Review - Principal Revisions

Issue	Revision
Complex trust classification	Clarified that complex-trust status is an annual federal tax classification for a trust that does not meet all simple-trust requirements.
CRT UBTI treatment	Corrected the consequence: current Section 664 imposes a 100% excise tax on UBTI rather than automatically disqualifying the CRT.
S corporation stock in a CRT	Elevated the issue from a general UBTI concern to a shareholder-eligibility risk that can jeopardize the corporation's S election.
CRAT and FLIP-CRUT timing	Added the probability-of-exhaustion / Rev. Proc. 2016-42 framework for life CRATs and the first-day-of-following-tax-year flip rule.
Charitable and institutional classifications	Separated Section 501(c)(3), private-foundation, Section 4947(a)(1), collective-fund, QSF, and investment-trust concepts more precisely.
Benefits and compensation trusts	Clarified that QDT is an income-tax classification, qualified income trusts are state-administered Medicaid tools, and rabbi trust assets remain subject to employer creditors.
Additional material structures	Added retirement-account beneficiary trusts, QSSTs, ESBTs, and qualified income trusts.

CHAPTER 00

Executive Framework

Start with the client objective, then choose and layer legal classifications and named vehicles. Do not begin with a trust acronym and work backward.

Design layer	Questions to resolve	Common labels
Creation and timing	Created during life or at death?	Inter vivos; testamentary
Revocability and retained power	Who can amend, revoke, appoint, substitute, remove, or benefit?	Revocable; irrevocable; protector powers
Income-tax ownership	Who reports income and pays tax?	Grantor; nongrantor; simple; complex
Beneficiary economics	Mandatory income, support, discretion, annuity, unitrust, or purpose?	Support; discretionary; QTIP; CRAT; CRUT; CLT
Creditor and control terms	Can interests be assigned? Who directs investments or distributions?	Spendthrift; directed; DAPT; blind trust
Duration and transfer tax	One life, term of years, descendants, or permitted purpose?	GRAT; QPRT; dynasty; GST trust
Situs and nationality	Which court and persons control substantial decisions?	Domestic; foreign; offshore

THE CENTRAL TRADE-OFF

More control and access retained by a settlor usually means less transfer-tax separation and less creditor protection. Greater protection and tax separation usually require more independence, irrevocability, and administrative discipline.

CHAPTER 00

Recommended Design Sequence

1. Define the objective

Probate, incapacity, spouse support, transfer tax, public benefits, philanthropy, business control, creditor risk, or a combination.

2. Map the parties

Settlor or donor, trustee, trust director, protector, investment adviser, custodian, tax preparer, appraiser, current beneficiaries, remainders, and any charity or foundation board.

3. Classify the tax result

Grantor or nongrantor; simple or complex; estate inclusion; gift completion; GST status; charitable qualification; S corporation eligibility; state income-tax nexus.

4. Stress-test control

Removal, replacement, incapacity, divorce, death, deadlock, beneficiary-trustee powers, conflicts, related-party transactions, and powers of appointment.

5. Test the assets

Basis, debt, liquidity, valuation, sale plans, entity restrictions, policy performance, environmental issues, securities law, UBTI, and beneficiary-designation rules.

6. Build administration

Funding schedule, valuations, distributions, notices, minutes, tax filings, K-1s, investment policy, compliance calendar, and annual legal review.

NAVIGATION

Detailed Contents

The contents list is clickable in most PDF readers. Bookmarks are also embedded for chapters and individual trust profiles.

AT-A-GLANCE

Quick Selection Matrix - Part 1

This matrix identifies common starting points, not final recommendations. A complete plan may combine several vehicles and classifications.

Primary objective	Structures to consider	Primary upside	Main trade-off
Probate and incapacity	Revocable living trust; inter vivos trust	Continuity and nonprobate administration	Funding burden; no inherent transfer-tax or self-settled creditor protection
Spouse support plus remainder control	QTIP; credit shelter; marital GPOA; disclaimer trust	Marital deduction, control, and post-death flexibility	Election, basis, estate inclusion, and administration trade-offs
Noncitizen surviving spouse	QDOT	Potential marital-deduction deferral	U.S.-trustee, security, estate-tax, and Form 706-QDT requirements
Transfer appreciating assets	GRAT; IDGT; SLAT; dynasty trust	Moves future growth with transfer-tax leverage	Valuation, retained-power, mortality, and cash-flow risk
Life-insurance liquidity	ILIT with properly administered withdrawal powers	Potential estate exclusion and protected proceeds	Loss of ownership control; policy and annual notice administration
Residence transfer	QPRT	Discounted gift and appreciation shift	Mortality risk; fair-market rent and technical asset restrictions
Minor or education funding	2503(c) trust; Crummey trust; education trust; 529 plan comparison	Managed gifts and defined use	Age-21 access, notices, tax, and benefit coordination

AT-A-GLANCE

Quick Selection Matrix - Part 2

Primary objective	Structures to consider	Primary upside	Main trade-off
Inherited retirement account	See-through beneficiary trust; conduit or accumulation design	Post-death control, protection, and special-needs coordination	SECURE Act timing, beneficiary identification, trust tax, and documentation
Disabled beneficiary	Third-party SNT; first-party SNT; pooled SNT; QDT overlay	Benefits preservation and managed support	Strict distribution, sole-benefit, tax, and payback rules
Medicaid income cap	Qualified income trust	Can route excess recurring income under state eligibility rules	State-specific form, monthly administration, patient-pay, and reimbursement
Long-term-care asset planning	Medicaid asset protection trust	Advance preservation planning	Five-year lookback, loss of principal access, state rules, and tax consequences
Creditor protection	Spendthrift trust; DAPT; offshore trust	Pre-distribution or self-settled protection	State conflicts, exceptions, solvency, control, and fraudulent-transfer risk
Income plus charitable remainder	CRAT; CRUT; NICRUT; NIMCRUT; FLIP-CRUT	Potential deduction, payment stream, diversification, and charitable remainder	Irrevocability, actuarial tests, asset suitability, and specialist administration

AT-A-GLANCE

Quick Selection Matrix - Part 3

Primary objective	Structures to consider	Primary upside	Main trade-off
Charity first, family later	CLAT; CLUT; grantor or nongrantor CLT	Charitable stream and potential transfer leverage	Family delay, investment hurdle, valuation, and tax classification
Private philanthropy	Charitable purpose trust; private foundation in trust form	Durable mission and governance	Self-dealing, payout, excise tax, reporting, and fiduciary compliance
S corporation ownership	QSST or ESBT	Permits eligible trust shareholder status	Election deadlines, beneficiary restrictions, mandatory income or high-rate trust tax
Business or real-estate control	Voting trust; business trust; land trust; DST	Centralized management, title, or beneficial interests	Entity classification, securities, liability, sponsor, and state-law complexity
Employee benefits	Rabbi; secular; qualified plan; ESOP; VEBA trust	Compensation, retirement, stock ownership, and welfare funding	ERISA, tax, fiduciary, valuation, and reporting regimes
Purpose or court remedy	Pet or purpose trust; constructive or resulting trust	Enforces a permitted purpose or equitable remedy	State-specific validity, standing, enforcement, and no assumed tax benefit

CHAPTER 01

Foundational Trust Classifications

These labels describe creation, revocability, federal income-tax ownership, beneficiary economics, creditor restraints, and allocation of fiduciary authority. A single instrument commonly carries several classifications at once.

STRUCTURES COVERED

- Revocable Living Trust
- Irrevocable Trust
- Inter Vivos Trust
- Testamentary Trust
- Grantor Trust
- Nongrantor Trust
- Simple Trust
- Complex Trust
- Domestic Trust
- Foreign Trust
- Discretionary Trust
- Support Trust
- Spendthrift Trust
- Directed Trust
- Trust Protector Arrangement
- Blind Trust

CLASSIFICATION WARNING

Revocable, irrevocable, grantor, nongrantor, simple, complex, domestic, foreign, discretionary, spendthrift, and directed are classifications that can be layered onto named planning vehicles. They are not mutually exclusive products.

CHAPTER 01 / Foundational Trust Classifications

Revocable Living Trust

RLT; living trust

WHAT IT IS

An inter vivos trust that the settlor generally may amend or revoke during capacity. It is ordinarily a grantor trust for federal income tax purposes, and its assets are generally included in the settlor's gross estate.

PROS

- Avoids probate for assets actually titled to the trust.
- Creates continuity of management during incapacity.
- Highly flexible and usually private compared with a probate administration.

CONS / TRADE-OFFS

- Provides no inherent estate-tax or self-settled creditor protection.
- Fails if assets are never retitled or coordinated with beneficiary designations.
- Requires ongoing funding, records, and successor-trustee planning.

BEST FIT

Probate avoidance, incapacity planning, privacy, and coordinated lifetime administration.

CRITICAL WATCHPOINTS

Use a pour-over will; review homestead, retirement accounts, insurance, entity interests, and out-of-state real estate before retitling.

Authority / anchor: State trust law; IRC Sections 671-679 and 676.

CHAPTER 01 / Foundational Trust Classifications

Irrevocable Trust

Umbrella classification

WHAT IT IS

A trust the settlor cannot unilaterally revoke. Depending on the instrument and governing law, modification may still be possible through consent, court order, nonjudicial settlement, decanting, a power holder, or a trust protector.

PROS

- Can support transfer-tax, asset-protection, charitable, and long-term legacy objectives.
- Separates legal ownership from the settlor when properly funded and administered.
- Allows durable controls over use, timing, and succession.

CONS / TRADE-OFFS

- Usually requires a genuine surrender of control or access.
- May trigger gift-tax reporting, valuation, basis, and income-tax consequences.
- Poor drafting or administration can cause estate inclusion, creditor access, or loss of intended tax status.

BEST FIT

Advanced estate, asset-protection, charitable, insurance, and family-governance planning.

CRITICAL WATCHPOINTS

Analyze retained powers, beneficial access, fraudulent-transfer law, trustee independence, modification rules, and funding before execution.

Authority / anchor: State trust law; IRC Sections 2035-2038, 2511, and 671-679.

CHAPTER 01 / Foundational Trust Classifications

Inter Vivos Trust

Lifetime trust

WHAT IT IS

A trust created during the settlor's lifetime. It may be revocable or irrevocable and may be either grantor or nongrantor for federal income-tax purposes.

PROS

- Begins operating immediately and can be tested during life.
- Can manage property across incapacity and death.
- May avoid probate for properly funded assets.

CONS / TRADE-OFFS

- Requires present funding and administration.
- May create deed, title, lender, insurance, or transfer-tax issues.
- The label alone creates no tax or creditor protection.

BEST FIT

Any plan that needs lifetime management rather than a trust that begins only at death.

CRITICAL WATCHPOINTS

State clearly whether it is revocable, who holds amendment powers, and what happens at incapacity and death.

Authority / anchor: Uniform Trust Code Section 401 et seq.; state law.

CHAPTER 01 / Foundational Trust Classifications

Testamentary Trust

Trust under a will

WHAT IT IS

A trust created under a will and funded through the decedent's probate estate. It ordinarily becomes operative after death and the relevant probate funding steps.

PROS

- No lifetime retitling is required.
- Allows controlled inheritances for minors, disabled beneficiaries, or descendants.
- Court oversight may be useful in high-conflict situations.

CONS / TRADE-OFFS

- Does not avoid probate or provide lifetime incapacity management.
- May involve delay, publicity, court filings, and, depending on state law, continuing court supervision.
- Assets passing by contract, beneficiary designation, joint ownership, or a separate trust may bypass it.

BEST FIT

Post-death trusts where lifetime funding is unnecessary or impractical.

CRITICAL WATCHPOINTS

Coordinate the will with retirement accounts, life insurance, TOD/POD designations, jointly owned property, and business agreements.

Authority / anchor: State probate and trust law.

CHAPTER 01 / Foundational Trust Classifications

Grantor Trust

Owner trust for income-tax purposes

WHAT IT IS

A trust whose income, deductions, and credits are attributed to the grantor or another owner under IRC Sections 671-679, even though the trust may be irrevocable and outside the owner's taxable estate.

PROS

- The owner's payment of income tax can compound trust growth without an additional gift in many structures.
- Transactions between the owner and a wholly grantor trust are generally disregarded for federal income tax.
- Can simplify reporting and support sales, swaps, and basis-management planning.

CONS / TRADE-OFFS

- The owner bears the tax even when receiving no cash from the trust.
- Grantor-trust status and estate inclusion are separate analyses.
- Termination, reimbursement, substitution, and toggling powers require careful drafting.

BEST FIT

Revocable trusts, GRATs, IDGTs, SLATs, and other advanced transfer structures.

CRITICAL WATCHPOINTS

Model cash flow and state tax; specify tax reimbursement, substitution powers, and what happens if grantor status changes.

Authority / anchor: IRC Sections 671-679; Treasury Regulation Section 1.671-4.

CHAPTER 01 / Foundational Trust Classifications

Nongrantor Trust

Separate income-tax taxpayer

WHAT IT IS

A trust that is not treated as owned by a grantor or other person under the grantor-trust rules. The trust generally files Form 1041 and is taxed under Subchapter J, subject to distribution-deduction rules.

PROS

- Can create separate ownership and, in some cases, state income-tax planning opportunities.
- The settlor does not automatically bear the trust's tax.
- Supports independent, multigenerational administration.

CONS / TRADE-OFFS

- Federal brackets are compressed and the net investment income tax may apply quickly.
- DNI, capital-gain allocation, and state nexus can be complex.
- State tax savings may fail if trustees, beneficiaries, assets, or administration remain connected to the original state.

BEST FIT

Independent long-term trusts, completed-gift trusts, and some charitable or asset-protection arrangements.

CRITICAL WATCHPOINTS

Analyze source income, trustee residence, beneficiary residence, accumulated income, principal-and-income law, and distribution timing each year.

Authority / anchor: IRC Sections 641-668; Form 1041 instructions.

CHAPTER 01 / Foundational Trust Classifications

Simple Trust

Annual federal income-tax classification

WHAT IT IS

For a particular tax year, a trust generally is simple if it must distribute all fiduciary accounting income currently, makes no charitable distributions, and makes no principal distributions.

PROS

- Relatively straightforward DNI and beneficiary reporting.
- Reduces accumulation of taxable income at compressed trust rates.
- Provides a predictable current-income stream.

CONS / TRADE-OFFS

- Mandatory income may undermine protection or long-term growth.
- It offers less flexibility for reserves or unequal needs.
- A trust can be simple in one year and complex in another.

BEST FIT

Income trusts with mandatory current distributions and limited discretion.

CRITICAL WATCHPOINTS

Do not use the tax label as a drafting label; coordinate accounting income, DNI, capital gains, and state principal-and-income rules.

Authority / anchor: IRC Sections 651-652.

CHAPTER 01 / Foundational Trust Classifications

Complex Trust

Annual federal income-tax classification

WHAT IT IS

For a particular tax year, a trust is complex if it does not satisfy all requirements for simple-trust treatment. It may accumulate income, distribute principal, make qualifying charitable payments, or exercise broader distribution discretion.

PROS

- Permits flexible timing and amount of distributions.
- Can retain reserves, protect beneficiaries, and address changing needs.
- Can make charitable distributions if authorized.

CONS / TRADE-OFFS

- Requires more detailed fiduciary accounting and tax allocation.
- Accumulated income may face high marginal rates.
- Discretion can generate beneficiary disputes and fiduciary exposure.

BEST FIT

Discretionary family trusts, dynasty trusts, and trusts with principal distributions or charitable powers.

CRITICAL WATCHPOINTS

Maintain separate income/principal records, document discretionary decisions, and coordinate distributions with DNI and capital-gain treatment.

Authority / anchor: IRC Sections 661-663; Form 1041 instructions.

CHAPTER 01 / Foundational Trust Classifications

Domestic Trust

Federal court-and-control test

WHAT IT IS

A trust is domestic for federal tax purposes if a U.S. court can exercise primary supervision over its administration and one or more U.S. persons control all substantial decisions.

PROS

- Uses the ordinary U.S. fiduciary income-tax and reporting framework.
- Typically easier for U.S. banks, custodians, courts, and beneficiaries.
- Avoids the special foreign-trust reporting regime when the tests remain satisfied.

CONS / TRADE-OFFS

- May be taxed on worldwide income and may have state income-tax exposure.
- Changing trustees or control rights can unintentionally change status.
- Domestic status does not determine estate-tax inclusion or asset protection.

BEST FIT

Most U.S.-centered family, charitable, and commercial trusts.

CRITICAL WATCHPOINTS

Track trustee changes, veto powers, migration clauses, protectors, and any foreign person who can control a substantial decision.

Authority / anchor: IRC Section 7701(a)(30)(E); Treasury Regulation Section 301.7701-7.

CHAPTER 01 / Foundational Trust Classifications

Foreign Trust

Trust failing the domestic tests

WHAT IT IS

A trust that is not a domestic trust for federal tax purposes. U.S. owners, transferors, and beneficiaries may face specialized ownership, distribution, and information-reporting rules.

PROS

- May address genuine cross-border succession, family, or asset-location needs.
- Can use specialized foreign fiduciaries and governing law.
- May provide procedural or jurisdictional advantages when legitimately structured.

CONS / TRADE-OFFS

- Forms 3520 and 3520-A, owner statements, distribution records, and penalties can be severe.
- Accumulation distributions and undocumented distributions may receive unfavorable treatment.
- Banking, FATCA, FBAR, immigration, and multi-country tax issues compound quickly.

BEST FIT

Families with real cross-border facts, not ordinary domestic planning.

CRITICAL WATCHPOINTS

Obtain coordinated U.S. and foreign advice before creation, migration, contribution, loan, use of trust property, or distribution.

Authority / anchor: IRC Sections 679, 6048, 6677, and 7701(a)(31)(B); Forms 3520 and 3520-A.

CHAPTER 01 / Foundational Trust Classifications

Discretionary Trust

Discretion-based distribution trust

WHAT IT IS

A trust in which the trustee decides whether, when, and how much to distribute within the instrument's standards and fiduciary duties.

PROS

- Adapts to changing beneficiary needs, taxes, and family circumstances.
- Can strengthen creditor, divorce, and spendthrift protection.
- Allows incentives, safeguards, and unequal distributions where justified.

CONS / TRADE-OFFS

- Beneficiaries lack certainty and may distrust the trustee.
- Broad discretion can produce inconsistent decisions or litigation.
- A beneficiary serving as trustee may create tax or creditor problems if discretion is too broad.

BEST FIT

Long-term inheritances, vulnerable beneficiaries, and family wealth requiring active judgment.

CRITICAL WATCHPOINTS

Define standards, conflicts, information rights, distribution committees, removal rights, and whether other resources must be considered.

Authority / anchor: Uniform Trust Code Sections 504 and 814; state law.

CHAPTER 01 / Foundational Trust Classifications

Support Trust

HEMS or ascertainable-standard trust

WHAT IT IS

A trust directing or permitting distributions for support, often using health, education, maintenance, and support standards. The exact creditor and tax treatment depends on mandatory versus discretionary wording and beneficiary control.

PROS

- Provides a recognizable benchmark for trustees and beneficiaries.
- Can limit a beneficiary-trustee's power to an ascertainable standard.
- Balances access with preservation and protection.

CONS / TRADE-OFFS

- Disputes can arise over lifestyle, private school, housing, travel, and other resources.
- Mandatory support rights may be reachable by certain creditors.
- A rigid standard may not fit unusual opportunities or emergencies.

BEST FIT

Family trusts where defined support is intended without unrestricted access.

CRITICAL WATCHPOINTS

State whether distributions are mandatory or discretionary and whether the trustee considers income, insurance, parents, spouses, or other assets.

Authority / anchor: IRC Sections 2041(b)(1)(A) and 2514(c)(1); Uniform Trust Code Section 504.

CHAPTER 01 / Foundational Trust Classifications

Spendthrift Trust

Trust with a spendthrift restraint

WHAT IT IS

A trust containing a valid restraint on a beneficiary's voluntary and involuntary transfer of the beneficial interest before distribution.

PROS

- Can prevent assignment and block many creditors before funds are distributed.
- Protects beneficiaries from imprudent pledges, coercion, and premature dissipation.
- Works well with discretionary distributions and long-term trusts.

CONS / TRADE-OFFS

- Exceptions may apply for support claimants, government claims, or services protecting the interest.
- Protection usually ends when funds are distributed.
- Most states do not fully protect the settlor as a beneficiary unless a specific self-settled statute applies.

BEST FIT

Inheritance protection and beneficiary financial safeguards.

CRITICAL WATCHPOINTS

Coordinate the clause with state exceptions, overdue mandatory distributions, withdrawal rights, powers of appointment, and beneficiary control.

Authority / anchor: Uniform Trust Code Sections 501-505; state law.

CHAPTER 01 / Foundational Trust Classifications

Directed Trust

Trust director or adviser structure

WHAT IT IS

A trust that allocates one or more decision powers to a person other than the administrative trustee, such as an investment director, distribution director, family adviser, or trust protector.

PROS

- Separates investment, distribution, tax, and administrative expertise.
- Can preserve family or business knowledge while using a professional trustee.
- Supports concentrated assets, private companies, and customized governance.

CONS / TRADE-OFFS

- Divided responsibility can create gaps, finger-pointing, and information failures.
- Multiple fiduciaries increase cost and contracting complexity.
- Duties and liability vary materially by governing law.

BEST FIT

Trusts holding operating businesses, concentrated portfolios, special assets, or multigenerational governance systems.

CRITICAL WATCHPOINTS

Specify each power, fiduciary status, standard of care, duty to monitor, information flow, indemnity, succession, and deadlock process.

Authority / anchor: Uniform Directed Trust Act; Uniform Trust Code Section 808; state law.

CHAPTER 01 / Foundational Trust Classifications

Trust Protector Arrangement

Amendment, oversight, or emergency power holder

WHAT IT IS

A trust arrangement granting specified oversight, amendment, removal, tax, situs, or emergency powers to a protector or similar power holder. Whether that person is a fiduciary depends on the instrument and governing law.

PROS

- Adds adaptability without routine court involvement.
- Creates a check on trustees and a mechanism for changing law or family circumstances.
- Can facilitate situs changes, decanting, and succession.

CONS / TRADE-OFFS

- Overbroad powers may cause estate inclusion, gift-tax consequences, or fiduciary liability.
- Unclear status can lead to litigation or inaction.
- A protector can become a hidden controller or conflict point.

BEST FIT

Long-duration, dynasty, directed, asset-protection, and cross-border trusts.

CRITICAL WATCHPOINTS

Specify each power, whether it is personal or fiduciary, the standard of care, information rights, conflicts, compensation, succession, removal, and how a deadlock is resolved.

Authority / anchor: Uniform Directed Trust Act; state trust-protector statutes and case law.

CHAPTER 01 / Foundational Trust Classifications

Blind Trust

Qualified blind trust for federal ethics purposes

WHAT IT IS

For federal executive-branch ethics purposes, a qualified blind trust is an independently managed trust certified by the U.S. Office of Government Ethics. Initial assets are generally not treated as blind until divested or reduced below the regulatory threshold.

PROS

- Can reduce information and control that create conflicts of interest after certification and asset cleansing.
- Uses an independent trustee and formal communication restrictions.
- Provides a regulated framework for certain federal officials rather than an informal claim of blindness.

CONS / TRADE-OFFS

- OGE consultation, approval, model provisions, trustee independence, and certification are required for qualified status.
- Initial assets may remain conflict-producing until divested or reduced to a permitted amount.
- It is not a general-purpose estate-tax or creditor-protection strategy.

BEST FIT

Public officials, fiduciaries, and decision-makers facing material investment conflicts.

CRITICAL WATCHPOINTS

Do not label a trust "blind" for federal ethics purposes without the required process. Use OGE model language, an eligible independent trustee, restricted communications, and pre-execution certification.

Authority / anchor: 5 C.F.R. Part 2634, Subpart D; U.S. Office of Government Ethics qualified-trust guidance.

CHAPTER 02

Family, Marital, Transfer-Tax, and Inheritance Trusts

These structures coordinate spouse support, transfer-tax objectives, inheritance protection, life insurance, retained interests, minors, education, retirement benefits, and multigenerational governance.

STRUCTURES COVERED

- Credit Shelter Trust
- Marital General Power Trust
- Qualified Terminable Interest Property Trust
- Qualified Domestic Trust
- Disclaimer Trust
- Dynasty Trust
- Descendant's Continuing Trust
- Pot Trust
- Irrevocable Life Insurance Trust
- Grantor Retained Annuity Trust
- Grantor Retained Unitrust
- Qualified Personal Residence Trust
- Intentionally Defective Grantor Trust
- Spousal Lifetime Access Trust
- Crummey Trust
- Section 2503(c) Minor's Trust
- Education Trust
- Pet Trust
- Retirement-Account Beneficiary Trust

CLASSIFICATION WARNING

Revocable, irrevocable, grantor, nongrantor, simple, complex, domestic, foreign, discretionary, spendthrift, and directed are classifications that can be layered onto named planning vehicles. They are not mutually exclusive products.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Credit Shelter Trust

Bypass trust; family trust; B trust

WHAT IT IS

A trust commonly funded at the first spouse's death to use transfer-tax exemption and keep the trust assets, including later appreciation, outside the surviving spouse's taxable estate while permitting defined benefits for the survivor and descendants.

PROS

- Preserves exemption and can shelter future appreciation.
- Provides creditor, remarriage, and remainder-beneficiary protections.
- Can allocate GST exemption and preserve family control.

CONS / TRADE-OFFS

- Assets may not receive a second basis adjustment at the surviving spouse's death.
- Portability and higher exemptions may make full funding tax-inefficient in some estates.
- Formula funding, state estate tax, and administration can be complex.

BEST FIT

Married estates needing tax planning, asset protection, or control beyond outright portability.

CRITICAL WATCHPOINTS

Use flexible funding formulas, basis-management powers, disclaimer options, state estate-tax analysis, and carefully limited powers of appointment.

Authority / anchor: IRC Sections 2010, 2036-2041, 2056, and Chapter 13.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Marital General Power Trust

GPOA marital trust; A trust

WHAT IT IS

A marital-deduction trust generally paying all income to the surviving spouse and granting the spouse a qualifying general power of appointment. The property is ordinarily included in the survivor's estate.

PROS

- Qualifies for the marital deduction when requirements are met.
- Can provide broad access and control to the surviving spouse.
- Estate inclusion may produce a basis adjustment at the survivor's death.

CONS / TRADE-OFFS

- The spouse's power can defeat the first spouse's remainder plan.
- Assets are exposed to the survivor's estate tax and potentially creditors.
- It may be unsuitable for blended families or spendthrift concerns.

BEST FIT

Plans prioritizing the surviving spouse's control and basis adjustment.

CRITICAL WATCHPOINTS

Draft the income right, power of appointment, trustee powers, and funding method to satisfy the marital-deduction rules.

Authority / anchor: IRC Section 2056(b)(5); Treasury Regulations under Section 2056.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Qualified Terminable Interest Property Trust

QTIP trust

WHAT IT IS

A marital trust in which the surviving spouse has a qualifying income interest for life and no person may appoint property to another during the spouse's life. The executor or donor makes the applicable QTIP election.

PROS

- Combines marital-deduction deferral with control over the ultimate remainder.
- Useful for blended families and creditor-sensitive planning.
- Can be divided into GST-exempt and nonexempt shares with proper elections.

CONS / TRADE-OFFS

- The property is generally included in the surviving spouse's estate.
- All income must be paid at least annually, which may constrain investments.
- Dispositions of the spouse's income interest can trigger gift-tax consequences.

BEST FIT

Supporting a spouse while preserving the first transferor's remainder plan.

CRITICAL WATCHPOINTS

Coordinate income productivity, principal standards, election mechanics, reverse-QTIP planning, trustee conflicts, and Section 2519.

Authority / anchor: IRC Sections 2056(b)(7), 2044, 2207A, and 2519.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Qualified Domestic Trust

QDOT

WHAT IT IS

A special marital trust used when a surviving spouse is not a U.S. citizen. It must satisfy statutory U.S.-trustee and withholding or security requirements to obtain marital-deduction deferral.

PROS

- Can preserve marital-deduction treatment despite the spouse's noncitizenship.
- Provides managed support and estate-tax deferral.
- Can coordinate U.S. and international family succession.

CONS / TRADE-OFFS

- Certain principal distributions and the spouse's death may trigger estate tax.
- U.S.-trustee, bond, letter-of-credit, and reporting rules can be demanding.
- Cross-border residence and citizenship changes require continuous review.

BEST FIT

Estates passing property to a non-U.S.-citizen surviving spouse.

CRITICAL WATCHPOINTS

Address U.S. trustee requirements, security rules, hardship distributions, Form 706-QDT, governing law, and later citizenship.

Authority / anchor: IRC Section 2056A; Treasury Regulations under Section 2056A; Form 706-QDT.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Disclaimer Trust

Post-death flexible bypass trust

WHAT IT IS

A trust funded when a beneficiary, often a surviving spouse, makes a qualified disclaimer so the disclaimed property passes under the governing instrument to the trust.

PROS

- Allows post-death decisions based on then-current assets, exemptions, health, and family facts.
- Can avoid automatic overfunding of a bypass trust.
- Provides flexibility without giving the disclaimant a taxable transfer if all requirements are met.

CONS / TRADE-OFFS

- The federal deadline is generally nine months and acceptance of benefits can disqualify the disclaimer.
- The disclaimant cannot direct the property after disclaiming.
- State formalities and beneficiary-designation documents must align.

BEST FIT

Married plans that want optional bypass funding rather than a fixed formula.

CRITICAL WATCHPOINTS

Create a clear default destination, restrict impermissible powers, and implement a rapid post-death asset-and-tax review.

Authority / anchor: IRC Section 2518; Treasury Regulations under Section 2518; state disclaimer law.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Dynasty Trust

GST trust; perpetual or long-duration trust

WHAT IT IS

A multigenerational trust designed to hold assets for descendants over an extended period while allocating GST exemption or otherwise managing transfer tax at generational boundaries.

PROS

- Can preserve assets, governance, and creditor protection across generations.
- Proper GST planning may avoid transfer tax at each generational transfer.
- Supports centralized investment and family-purpose provisions.

CONS / TRADE-OFFS

- Long duration magnifies drafting errors, family conflict, and administrative cost.
- State perpetuities, tax, and trust-situs rules vary.
- Future tax law, beneficiaries, and asset classes are unpredictable.

BEST FIT

Substantial family wealth intended for multigenerational stewardship.

CRITICAL WATCHPOINTS

Use directed-trust architecture, decanting and amendment powers, trust protectors, tax reimbursement rules, situs flexibility, and precise GST allocation.

Authority / anchor: IRC Chapter 13; state rule-against-perpetuities and trust law.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Descendant's Continuing Trust

Lifetime inheritance trust; child's trust

WHAT IT IS

A separate trust continuing for a child or other descendant instead of distributing the inheritance outright, often with discretionary benefits and a limited power of appointment.

PROS

- Can protect against divorce, creditors, incapacity, and poor financial decisions.
- May keep assets outside the beneficiary's taxable estate.
- Allows the beneficiary to participate as trustee within carefully limited standards.

CONS / TRADE-OFFS

- Creates ongoing trustee, tax-return, investment, and recordkeeping obligations.
- A beneficiary may view restrictions as paternalistic.
- Excess control or broad powers can weaken tax and creditor protection.

BEST FIT

Most substantial inheritances where long-term protection is preferred to outright ownership.

CRITICAL WATCHPOINTS

Balance beneficiary autonomy with independent distribution powers; address appointment powers, removal rights, trusteeship, and state income tax.

Authority / anchor: State trust law; IRC Sections 2041, 2514, and 678.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Pot Trust

Sprinkling trust; common family fund

WHAT IT IS

A single trust for a group, commonly children, in which the trustee may distribute unequally according to need until a specified division date or event.

PROS

- Lets the trustee respond to unequal education, medical, and support needs.
- Keeps assets pooled and reduces the number of separate accounts during minority.
- Can replicate the flexible support a parent would have provided.

CONS / TRADE-OFFS

- Unequal distributions may create sibling resentment.
- Beneficiaries may lack transparency into allocations.
- Delayed division can postpone autonomy and complicate accounting.

BEST FIT

Families with minor children or beneficiaries whose needs are expected to differ.

CRITICAL WATCHPOINTS

Define the division date, whether prior distributions are equalized, how needs are evaluated, and how conflicts or deadlocks are handled.

Authority / anchor: State trust law.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Irrevocable Life Insurance Trust

ILIT

WHAT IT IS

An irrevocable trust that owns or acquires life-insurance policies, receives death proceeds, and administers those proceeds for beneficiaries under the trust terms.

PROS

- Proper ownership can keep policy proceeds outside the insured's gross estate.
- Creates estate liquidity, inheritance equalization, and controlled proceeds.
- Can protect proceeds from beneficiaries' creditors and poor management.

CONS / TRADE-OFFS

- The insured must relinquish incidents of ownership.
- Transfers of existing policies can implicate the three-year estate-inclusion rule and transfer-for-value issues.
- Premium gifts, withdrawal notices, policy performance, and trustee administration require discipline.

BEST FIT

Estate liquidity, business succession, legacy equalization, and protected insurance proceeds.

CRITICAL WATCHPOINTS

Use an independent owner and beneficiary designations; monitor premiums, Crummey notices, policy illustrations, carrier strength, and Sections 2035 and 2042.

Authority / anchor: IRC Sections 2035, 2042, 2503, and 101(a).

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Grantor Retained Annuity Trust

GRAT

WHAT IT IS

An irrevocable trust to which the grantor transfers assets while retaining a fixed annuity for a stated term. Value remaining after the term passes to the remainder beneficiaries.

PROS

- A properly structured zeroed-out GRAT can use little taxable gift.
- Appreciation above the Section 7520 hurdle can pass with transfer-tax efficiency.
- Grantor-trust treatment supports tax-efficient administration and substitutions.

CONS / TRADE-OFFS

- If the grantor dies during the term, some or all assets may return to the taxable estate.
- Underperformance produces little or no remainder.
- Annuity payments, valuations, and timing require exact administration; GST planning is constrained during the term.

BEST FIT

Volatile or rapidly appreciating assets where the grantor can tolerate retained payments and mortality risk.

CRITICAL WATCHPOINTS

Model term length, valuation discounts, annuity dates, in-kind payments, substitution powers, and rolling GRAT strategy.

Authority / anchor: IRC Section 2702; Treasury Regulation Section 25.2702-3; Section 7520.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Grantor Retained Unitrust

GRUT

WHAT IT IS

An irrevocable retained-interest trust paying the grantor a fixed percentage of the trust's annually determined value for a stated term, with the remainder passing to others.

PROS

- The retained payment adjusts with trust value.
- Can match a desire for percentage-based rather than fixed-dollar returns.
- May transfer excess appreciation to remainder beneficiaries.

CONS / TRADE-OFFS

- Annual valuation and changing payments add complexity.
- It is often less predictable and less commonly used than a GRAT.
- Mortality, underperformance, and Section 2702 qualification risks remain.

BEST FIT

Niche cases where a variable retained payment is preferable to a fixed annuity.

CRITICAL WATCHPOINTS

Confirm the retained interest qualifies, model volatility, and specify valuation and payment procedures.

Authority / anchor: IRC Section 2702; Treasury Regulation Section 25.2702-3.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Qualified Personal Residence Trust

QPRT

WHAT IT IS

An irrevocable trust holding a qualifying personal residence while the grantor retains the right to use it for a fixed term. The remainder passes to designated beneficiaries if the grantor survives the term.

PROS

- Can transfer a valuable residence at a discounted gift-tax value.
- Post-transfer appreciation can escape the grantor's estate.
- The grantor retains use during the stated term.

CONS / TRADE-OFFS

- Death during the term generally causes estate inclusion.
- After the term, continued occupancy usually requires fair-market rent.
- The trust is restricted in the assets it can hold and sale or replacement rules are technical.

BEST FIT

A residence expected to appreciate where the grantor is comfortable with term and post-term occupancy planning.

CRITICAL WATCHPOINTS

Review mortgage, residence qualification, term, sale or casualty, replacement property, rent, basis, insurance, and local property-tax consequences.

Authority / anchor: IRC Section 2702(a)(3)(A); Treasury Regulation Section 25.2702-5; Rev. Proc. 2003-42.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Intentionally Defective Grantor Trust

IDGT

WHAT IT IS

An irrevocable trust structured as a completed transfer for gift and estate-tax purposes while remaining a grantor trust for income-tax purposes. It is often funded by gift and sale for a promissory note.

PROS

- The grantor's tax payments can increase trust wealth without additional gift tax in many cases.
- Sales between grantor and trust are generally disregarded for federal income tax.
- Appreciation above the note or hurdle rate may remain outside the grantor's estate.

CONS / TRADE-OFFS

- Requires sophisticated valuation, seed capital, note, and cash-flow analysis.
- The grantor must carry the income-tax burden unless status changes or reimbursement is permitted.
- Retained powers can cause estate inclusion; basis may not step up at death.

BEST FIT

Closely held businesses, appreciating assets, and large completed-gift plans.

CRITICAL WATCHPOINTS

Substantiate solvency and value, use commercial note terms, avoid circular cash flow, and coordinate grantor powers with estate-inclusion rules.

Authority / anchor: IRC Sections 671-679, 2036-2038, and 7872; Rev. Rul. 85-13; applicable valuation authority.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Spousal Lifetime Access Trust

SLAT

WHAT IT IS

An irrevocable trust created by one spouse for the benefit of the other spouse and often descendants, usually designed as a completed gift outside the donor spouse's estate.

PROS

- Uses transfer-tax exemption while preserving indirect family access through the beneficiary spouse.
- Can protect assets and future appreciation.
- May be structured as a grantor trust for additional tax efficiency.

CONS / TRADE-OFFS

- Divorce or the beneficiary spouse's death can eliminate indirect access.
- Mirror-image trusts can trigger the reciprocal-trust doctrine.
- Access depends on fiduciary decisions and separate-property discipline.

BEST FIT

Married couples with substantial excess assets who want to use exemption without eliminating all family access.

CRITICAL WATCHPOINTS

Create material asymmetry between reciprocal plans; address divorce, remarriage, trustee independence, tax reimbursement, and community-property issues.

Authority / anchor: IRC Sections 671-679, 2036-2038, and 2511; reciprocal-trust case law.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Crummey Trust

Trust using withdrawal powers

WHAT IT IS

An irrevocable trust that grants beneficiaries genuine temporary withdrawal rights so contributions may qualify as present-interest gifts for the annual gift-tax exclusion.

PROS

- Permits annual-exclusion funding of longer-term trusts.
- Frequently supports ILIT premium payments and family gifting programs.
- Can combine present-interest treatment with post-withdrawal trust protection.

CONS / TRADE-OFFS

- Beneficiaries can exercise the withdrawal right.
- Notices, delivery proof, timing, and cash availability must be documented.
- Hanging powers and lapses can create gift, estate, or beneficiary-owner complications.

BEST FIT

Recurring annual gifts to ILITs, descendants' trusts, and other irrevocable vehicles.

CRITICAL WATCHPOINTS

Make rights real, send timely notices, preserve an actual withdrawal window, track lapses, and coordinate trustee liquidity.

Authority / anchor: IRC Section 2503(b); Crummey v. Commissioner, 397 F.2d 82 (9th Cir. 1968).

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Section 2503(c) Minor's Trust

Age-21 minor's trust

WHAT IT IS

A trust for a beneficiary under age 21 designed so gifts are treated as present interests if property and income may be used for the minor, the remaining property is payable at age 21, and the statute's death-before-21 rule is met.

PROS

- Can obtain annual-exclusion treatment without recurring Crummey withdrawal notices.
- Provides professional management during minority.
- Allows distributions for the minor before age 21.

CONS / TRADE-OFFS

- The beneficiary must receive or have a meaningful right to withdraw at age 21.
- Long-term protection after age 21 requires careful continuation mechanics and beneficiary choice.
- The statutory requirements are rigid.

BEST FIT

Discrete gifts for minors where access at age 21 is acceptable.

CRITICAL WATCHPOINTS

Draft the age-21 right and death disposition exactly; coordinate GST tax, successor trusts, and notice of the beneficiary's election.

Authority / anchor: IRC Section 2503(c).

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Education Trust

Family education trust

WHAT IT IS

A private trust whose distribution standard focuses on tuition, training, books, housing, or other education costs. The name itself does not create a special federal tax exemption.

PROS

- Centralizes education funding for one or multiple beneficiaries.
- Allows customized standards beyond a 529 plan.
- Can preserve unused funds for later generations or other purposes.

CONS / TRADE-OFFS

- Trust tax rates and administrative costs may outweigh benefits for modest funding.
- Trust assets or distributions may affect financial-aid or public-benefit analysis.
- Ambiguous definitions of education and equalization can create disputes.

BEST FIT

Families wanting a multigenerational private education fund with trustee oversight.

CRITICAL WATCHPOINTS

Coordinate with 529 plans, direct tuition payments, scholarship offsets, equalization, vocational training, age limits, and unused balances.

Authority / anchor: State trust law; IRC Sections 2503(e), 529, and Subchapter J as applicable.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Pet Trust

Animal-care trust

WHAT IT IS

A statutory purpose trust for the care of one or more identified animals alive during the settlor's lifetime, with an enforcer or other mechanism to ensure the trustee follows the care instructions.

PROS

- Provides dedicated care funds and binding instructions.
- Separates the caregiver from the financial fiduciary if desired.
- Allows successor caregivers, veterinary standards, and a remainder beneficiary.

CONS / TRADE-OFFS

- Overfunding may invite challenge or court reduction.
- Caregiver and trustee conflicts can undermine the plan.
- No tax preference arises merely because the trust benefits a pet.

BEST FIT

Owners who need reliable lifetime or post-death care for companion animals.

CRITICAL WATCHPOINTS

Use realistic budgets, compensation, inspection rights, emergency authority, successor caregivers, euthanasia standards, and a clear remainder.

Authority / anchor: Uniform Trust Code Section 408; state pet-trust statutes.

CHAPTER 02 / Family, Marital, Transfer-Tax, and Inheritance Trusts

Retirement-Account Beneficiary Trust

See-through trust; conduit or accumulation trust

WHAT IT IS

A trust named as beneficiary of an IRA or qualified retirement account. When the governing instrument, beneficiaries, and documentation satisfy the minimum-distribution regulations, the trust may be treated as a see-through trust for identifying applicable individual beneficiaries.

PROS

- Can protect inherited retirement benefits from a beneficiary's creditors, immaturity, remarriage, or mismanagement.
- Can coordinate minors, special-needs beneficiaries, blended families, and long-term distribution control.
- A conduit design can simplify beneficiary identification; an accumulation design can retain distributions for protection.

CONS / TRADE-OFFS

- SECURE Act distribution periods and the 2024 final regulations make beneficiary and timing analysis highly technical.
- Accumulated taxable distributions may face compressed trust income-tax brackets and state tax.
- One remote or nonindividual potential beneficiary can change or defeat intended see-through treatment.

BEST FIT

Retirement accounts requiring post-death control, creditor protection, special-needs planning, or beneficiary management.

CRITICAL WATCHPOINTS

Coordinate the beneficiary form and trust; test validity, irrevocability at death, identifiable beneficiaries, documentation deadlines, conduit versus accumulation terms, eligible designated beneficiary status, powers of appointment, charities, estates, and successor beneficiaries.

Authority / anchor: IRC Section 401(a)(9); Treasury Regulation Section 1.401(a)(9)-4; current IRS required-minimum-distribution guidance.

CHAPTER 03

Special Needs, Public Benefits, and Asset Protection

Public-benefit and creditor-planning trusts are fact-sensitive. Eligibility rules, payback, transfer penalties, jurisdiction, solvency, creditor exceptions, and administration can determine whether the structure succeeds.

STRUCTURES COVERED

- Third-Party Special Needs Trust
- First-Party Special Needs Trust
- Pooled Special Needs Trust
- Qualified Disability Trust
- Qualified Income Trust
- Medicaid Asset Protection Trust
- Domestic Asset Protection Trust
- Offshore Asset Protection Trust

CLASSIFICATION WARNING

Revocable, irrevocable, grantor, nongrantor, simple, complex, domestic, foreign, discretionary, spendthrift, and directed are classifications that can be layered onto named planning vehicles. They are not mutually exclusive products.

CHAPTER 03 / Special Needs, Public Benefits, and Asset Protection

Third-Party Special Needs Trust

Supplemental-needs trust funded by others

WHAT IT IS

A trust funded exclusively with assets belonging to someone other than the disabled beneficiary, drafted and administered to supplement rather than replace means-tested public benefits.

PROS

- Can preserve SSI, Medicaid, housing, and other benefits when administered correctly.
- Typically has no Medicaid payback requirement and may pass to family or charity at death.
- Provides lifelong management, protection, and quality-of-life expenditures.

CONS / TRADE-OFFS

- Incorrect distributions can reduce or suspend benefits.
- Requires a trustee familiar with food, shelter, in-kind support, ABLE accounts, and program rules.
- Beneficiary control must be limited.

BEST FIT

Parents, grandparents, and others leaving assets for a disabled beneficiary.

CRITICAL WATCHPOINTS

Never commingle the beneficiary's own assets; coordinate beneficiary designations, ABLE accounts, housing, tax, and the beneficiary's specific programs.

Authority / anchor: State trust law; SSA POMS SI 01120.200 et seq.; applicable benefit-program rules.

CHAPTER 03 / Special Needs, Public Benefits, and Asset Protection

First-Party Special Needs Trust

42 U.S.C. Section 1396p(d)(4)(A) trust

WHAT IT IS

A trust containing the disabled beneficiary's own assets, generally established for the sole benefit of an individual under age 65 and containing required Medicaid reimbursement provisions.

PROS

- Can preserve eligibility after a settlement, inheritance, support award, or accumulated assets.
- Provides professional management and controlled supplemental distributions.
- Allows the beneficiary's assets to fund enhanced care during life.

CONS / TRADE-OFFS

- Remaining assets generally reimburse Medicaid before other remainders.
- Age, sole-benefit, establishment, funding, and state-review rules are strict.
- Fees and distributions are scrutinized and may require notice or approval.

BEST FIT

A disabled person under 65 who receives or owns assets that would otherwise impair benefits.

CRITICAL WATCHPOINTS

Use current federal and state payback language; verify who establishes the trust, sole-benefit limits, liens, settlement approval, and benefit-specific rules.

Authority / anchor: 42 U.S.C. Section 1396p(d)(4)(A); SSA POMS SI 01120.203.

CHAPTER 03 / Special Needs, Public Benefits, and Asset Protection

Pooled Special Needs Trust

42 U.S.C. Section 1396p(d)(4)(C) pooled trust

WHAT IT IS

A trust administered by a nonprofit association that pools investments while maintaining a separate subaccount for each disabled beneficiary under a master agreement and joinder.

PROS

- Can provide professional administration when an individual trust is uneconomic.
- Offers pooled investment and benefit expertise.
- May accept first-party funds subject to federal and state rules.

CONS / TRADE-OFFS

- The nonprofit controls investment and distribution policies.
- Fees, remainder retention, and Medicaid payback terms vary.
- Transfers after age 65 may face benefit and transfer-penalty issues even when a pooled account is technically available.

BEST FIT

Modest or medium accounts, urgent funding, or cases lacking an appropriate individual trustee.

CRITICAL WATCHPOINTS

Review the master trust, joinder, fee schedule, termination rights, retained remainder, state Medicaid practice, and service quality.

Authority / anchor: 42 U.S.C. Section 1396p(d)(4)(C); SSA POMS SI 01120.203.

CHAPTER 03 / Special Needs, Public Benefits, and Asset Protection

Qualified Disability Trust

QDT income-tax classification

WHAT IT IS

A qualifying nongrantor trust for disabled beneficiaries that meets the federal tax definition and may claim the special personal exemption available under IRC Section 642(b)(2)(C). It is not automatically a special-needs safe harbor.

PROS

- May receive a more favorable personal exemption than an ordinary complex trust.
- Can coexist with third-party special-needs planning.
- Creates a dedicated tax and accounting structure for disabled beneficiaries.

CONS / TRADE-OFFS

- The statutory qualification tests are narrow and must be met annually.
- QDT status does not itself preserve SSI or Medicaid.
- Compressed trust rates and DNI rules still apply.

BEST FIT

Certain nongrantor trusts established solely for qualifying disabled beneficiaries.

CRITICAL WATCHPOINTS

Confirm the federal definition each year and separately analyze public-benefit eligibility, grantor-trust status, distributions, and beneficiary changes.

Authority / anchor: IRC Section 642(b)(2)(C); Form 1041 instructions.

CHAPTER 03 / Special Needs, Public Benefits, and Asset Protection

Qualified Income Trust

QIT; Miller trust for Medicaid income-cap states

WHAT IT IS

An irrevocable income trust described in 42 U.S.C. Section 1396p(d)(4)(B), used in certain income-cap Medicaid states so an applicant's income is paid through the trust and administered under state Medicaid rules. It does not shelter resources or make income disappear.

PROS

- Can permit Medicaid eligibility when recurring income exceeds a state's institutional income cap.
- Creates a defined account for patient-pay obligations, personal-needs allowances, and permitted deductions.
- Can be implemented without transferring the applicant's countable investment assets into the trust.

CONS / TRADE-OFFS

- Available only under applicable state Medicaid rules and requires exact monthly administration.
- The trust generally must contain a state reimbursement provision and cannot be used for unrestricted family benefit.
- Depositing the wrong income, missing a month, or paying impermissible expenses can disrupt eligibility.

BEST FIT

Applicants in Medicaid income-cap jurisdictions whose income exceeds the cap but who otherwise satisfy program requirements.

CRITICAL WATCHPOINTS

Use current state-approved language; establish and fund before the relevant eligibility month; route only permitted income; follow patient-pay rules; maintain a separate account and ledger; and coordinate spousal allowances, estate recovery, and payback.

Authority / anchor: 42 U.S.C. Section 1396p(d)(4)(B); applicable state Medicaid plan, regulations, and agency guidance.

CHAPTER 03 / Special Needs, Public Benefits, and Asset Protection

Medicaid Asset Protection Trust

MAPT; long-term-care planning trust

WHAT IT IS

An irrevocable trust designed so transferred assets are not countable or available for long-term-care Medicaid after applicable transfer-penalty periods, while preserving permitted income or other limited rights.

PROS

- Can preserve selected assets if established sufficiently in advance.
- May combine probate avoidance, management, and legacy planning.
- Can be tailored for a residence, income rights, and family trustees within state limits.

CONS / TRADE-OFFS

- Transfers are subject to the five-year nursing-home Medicaid lookback and state-specific rules.
- The settlor generally cannot retain unrestricted principal access.
- Tax basis, capital gains, home exemptions, estate recovery, and family control require careful design.

BEST FIT

Advance long-term-care planning for clients willing to surrender access well before likely need.

CRITICAL WATCHPOINTS

Analyze state Medicaid rules, transfer timing, retained income, home occupancy, trustee discretion, estate recovery, fraudulent transfer, and tax treatment.

Authority / anchor: 42 U.S.C. Section 1396p(c) and (d); state Medicaid law.

CHAPTER 03 / Special Needs, Public Benefits, and Asset Protection

Domestic Asset Protection Trust

DAPT; self-settled spendthrift trust

WHAT IT IS

An irrevocable self-settled trust created under a state statute that may protect a settlor-beneficiary from some future creditors if statutory requirements and transfer rules are satisfied.

PROS

- May provide prospective self-settled protection in a favorable jurisdiction.
- Can combine directed-trust governance, investment management, and estate planning.
- May preserve limited discretionary access.

CONS / TRADE-OFFS

- Recognition is uncertain when the settlor, assets, or creditors are connected to another state.
- Exceptions, fraudulent-transfer law, and the federal bankruptcy ten-year rule limit protection.
- Improper control, late planning, or false solvency can defeat the structure.

BEST FIT

Prospective planning for solvent clients with legitimate risk, excess assets, and meaningful situs connections.

CRITICAL WATCHPOINTS

Document solvency and no known claims; use an independent qualified trustee, real situs, clean funding, and no implied distribution agreement.

Authority / anchor: State DAPT statutes; 11 U.S.C. Section 548(e); state voidable-transfer law.

CHAPTER 03 / Special Needs, Public Benefits, and Asset Protection

Offshore Asset Protection Trust

Foreign self-settled protection trust

WHAT IT IS

A foreign trust established in a jurisdiction with protective trust and creditor-remedy laws, often using a foreign trustee, protector, and duress provisions.

PROS

- Can create substantial procedural, cost, and jurisdictional barriers for claimants.
- May diversify fiduciary and asset custody outside one legal system.
- Can provide a strong negotiated position when created early and administered legitimately.

CONS / TRADE-OFFS

- High setup and annual cost; complex U.S. tax and information reporting.
- U.S. courts may order repatriation or impose contempt sanctions.
- Fraudulent-transfer, tax-evasion, sanctions, banking, and reputational risks are serious.

BEST FIT

Exceptional high-exposure cases with legitimate cross-border objectives and clean pre-claim facts.

CRITICAL WATCHPOINTS

Coordinate U.S. litigation, tax, sanctions, FBAR/FATCA, Forms 3520/3520-A, trustee independence, custody, and emergency powers; never treat it as concealment.

Authority / anchor: IRC Sections 679, 6048, and 6677; foreign law; U.S. fraudulent-transfer and contempt law.

CHAPTER 04

Charitable and Split-Interest Trusts

Charitable trusts divide or dedicate beneficial interests between charitable and noncharitable parties. Qualification, actuarial tests, tax character, valuation, fiduciary roles, self-dealing, asset suitability, and annual reporting must function as one system.

STRUCTURES COVERED

- Charitable Remainder Annuity Trust
- Standard Charitable Remainder Unitrust
- Net-Income CRUT
- Net-Income-with-Makeup CRUT
- Flip CRUT
- Charitable Lead Annuity Trust
- Charitable Lead Unitrust
- Grantor Charitable Lead Trust
- Nongrantor Charitable Lead Trust
- Pooled Income Fund
- Charitable Purpose Trust

CLASSIFICATION WARNING

Revocable, irrevocable, grantor, nongrantor, simple, complex, domestic, foreign, discretionary, spendthrift, and directed are classifications that can be layered onto named planning vehicles. They are not mutually exclusive products.

CHAPTER 04 / Charitable and Split-Interest Trusts

Charitable Remainder Annuity Trust

CRAT

WHAT IT IS

An irrevocable split-interest trust paying a fixed annuity amount to one or more noncharitable beneficiaries for life or a permitted term of no more than 20 years, with the remainder passing to one or more qualified charities.

PROS

- Provides a predictable fixed payment that does not depend on annual asset value.
- May sell appreciated property without current regular income tax at trust level, while gain is tracked under the CRT tier system, subject to assignment-of-income and other limits.
- Creates a charitable remainder and may generate an income-, gift-, or estate-tax charitable deduction when requirements are met.

CONS / TRADE-OFFS

- Payments do not rise with inflation or asset appreciation, and additional contributions are prohibited.
- Life-term CRATs must satisfy the applicable probability-of-exhaustion framework or use a permitted qualified contingency where available.
- UBTI is subject to a 100% excise tax; valuation, self-dealing, payout, and Form 5227 compliance are technical.

BEST FIT

Donors preferring fixed payments, a one-time funding event, and a qualified charitable remainder.

CRITICAL WATCHPOINTS

Model the 5%-to-50% payout range, 10% remainder test, probability-of-exhaustion rule, Rev. Proc. 2016-42 contingency option, asset liquidity, four-tier taxation, and charity qualification.

Authority / anchor: IRC Section 664(d)(1); Treasury Regulations under Section 664; Rev. Proc. 2016-42; Form 5227.

CHAPTER 04 / Charitable and Split-Interest Trusts

Standard Charitable Remainder Unitrust

CRUT; fixed-percentage CRUT

WHAT IT IS

An irrevocable split-interest trust paying a fixed percentage of annually revalued net fair-market value to noncharitable beneficiaries, with the remainder passing to qualified charity.

PROS

- Payments can participate in investment growth and inflation because the trust is valued annually.
- Additional contributions are generally permitted when the governing instrument allows them.
- May sell appreciated property without current regular income tax at trust level, while gain is tracked and later carried out under the four-tier rules, subject to assignment-of-income and other limits.

CONS / TRADE-OFFS

- Payments fluctuate, annual valuation is mandatory, and the payout can erode principal if investment returns lag.
- UBTI is subject to a 100% excise tax; four-tier accounting, K-1s, appraisals, and Form 5227 require specialist administration.
- S corporation stock is generally an impermissible CRT asset because a CRT is not an eligible S corporation shareholder; debt, prearranged sales, and self-dealing create additional risk.

BEST FIT

Appreciated assets, charitable intent, diversification, and variable lifetime or term income.

CRITICAL WATCHPOINTS

Model payout sustainability and the 10% remainder test; review title, debt, S corporation status, sale timing, qualified appraisal, trustee independence, investment policy, self-dealing, UBTI, and backup charity provisions before funding.

Authority / anchor: IRC Section 664(d)(2); IRC Section 170(f)(2); Form 5227; IRS CRT guidance.

CHAPTER 04 / Charitable and Split-Interest Trusts

Net-Income CRUT

NICRUT

WHAT IT IS

A CRUT that pays the lesser of the stated unitrust percentage or trust accounting income for the year, without a makeup account for prior shortfalls.

PROS

- Aligns distributions with actual trust accounting income.
- Can preserve principal during low-income years.
- May fit assets that generate uneven or limited current income.

CONS / TRADE-OFFS

- Beneficiaries may receive much less than the stated percentage.
- No later makeup is available for prior shortfalls.
- Accounting-income definitions and investment choices can create conflicts or manipulation concerns.

BEST FIT

Donors who prioritize principal preservation and can tolerate variable, income-limited payments.

CRITICAL WATCHPOINTS

Define income under governing law, document investment policy, manage realized gains carefully, and disclose that the stated percentage is a ceiling, not a guaranteed payment.

Authority / anchor: IRC Section 664(d)(3); Treasury Regulation Section 1.664-3.

CHAPTER 04 / Charitable and Split-Interest Trusts

Net-Income-with-Makeup CRUT

NIMCRUT

WHAT IT IS

A net-income CRUT that tracks cumulative shortfalls below the stated unitrust amount and may pay those shortfalls in later years when trust accounting income exceeds the current-year unitrust amount.

PROS

- Supports delayed-income planning and later catch-up payments.
- Can combine growth-oriented investing with a future income phase.
- Offers more flexibility than a NICRUT when income is expected to rise.

CONS / TRADE-OFFS

- Makeup amounts are not guaranteed and depend on future accounting income.
- Administration and investment-income engineering are complex.
- Aggressive manipulation of income, related-party notes, or valuation can attract scrutiny.

BEST FIT

Illiquid or growth assets with a credible later-income strategy and beneficiaries who can defer cash flow.

CRITICAL WATCHPOINTS

Maintain a precise makeup ledger, use defensible accounting-income rules, and coordinate investments, sale timing, trustee duties, and tax reporting.

Authority / anchor: IRC Section 664(d)(3); Treasury Regulation Section 1.664-3.

CHAPTER 04 / Charitable and Split-Interest Trusts

Flip CRUT

FLIP-CRUT

WHAT IT IS

A CRUT that begins under a net-income or net-income-with-makeup method and changes to the standard unitrust method after an objective triggering event permitted by the regulations. The change generally takes effect on the first day of the taxable year following the trigger.

PROS

- Can hold an illiquid contribution before a sale and then provide standard unitrust payments after liquidity.
- Reduces pressure to make full payments while assets produce little income.
- Creates a planned transition from accumulation or illiquidity to income.

CONS / TRADE-OFFS

- The triggering event and effective timing are technical and must be objective.
- Annual valuation and net-income accounting remain necessary before the flip.
- Pre-flip shortfalls and makeup treatment require careful modeling because the post-flip rules change.

BEST FIT

Closely held stock, real estate, or other illiquid assets expected to become liquid upon a defined event.

CRITICAL WATCHPOINTS

Use an objectively determinable trigger permitted by the regulations, document the event date, model the transition year and makeup account, and review sale timing, debt, S corporation status, UBTI, and valuation risks.

Authority / anchor: Treasury Regulation Section 1.664-3(a)(1)(i)(c) and related Section 664 guidance.

CHAPTER 04 / Charitable and Split-Interest Trusts

Charitable Lead Annuity Trust

CLAT

WHAT IT IS

An irrevocable split-interest trust paying a fixed annuity to charity for a term or qualifying life period, after which the remainder passes to the grantor or noncharitable beneficiaries.

PROS

- A zeroed-out CLAT can transfer appreciation above the Section 7520 rate with low taxable gift.
- Charity receives a predictable payment stream.
- Can be designed as grantor or nongrantor for income-tax purposes.

CONS / TRADE-OFFS

- Family beneficiaries wait until the charitable lead period ends.
- Underperformance reduces or eliminates the remainder.
- GST, valuation, annuity, and grantor-versus-nongrantor rules are complex.

BEST FIT

Charitably inclined families transferring appreciating assets to descendants after a defined lead term.

CRITICAL WATCHPOINTS

Model term, annuity, Section 7520 rate, charitable recipient, asset cash flow, mortality if life-based, and income-tax classification.

Authority / anchor: IRC Sections 170(f)(2)(B), 2055(e)(2)(B), and 2522(c)(2)(B); Form 5227.

CHAPTER 04 / Charitable and Split-Interest Trusts

Charitable Lead Unitrust

CLUT

WHAT IT IS

A charitable lead trust paying charity a fixed percentage of annually revalued trust assets during the lead period, with the remainder passing to the grantor or other beneficiaries.

PROS

- Charity participates in growth and changing asset values.
- Payments adjust rather than remaining fixed.
- Can fit a donor whose charitable priority exceeds transfer-tax leverage.

CONS / TRADE-OFFS

- Annual valuation and payment volatility increase administration.
- The family remainder is uncertain and CLUTs are often less efficient for zeroed-out transfer planning than CLATs.
- Investment strategy must balance charity and remainder beneficiaries.

BEST FIT

Long-term charitable support where percentage-based payments are desired.

CRITICAL WATCHPOINTS

Specify valuation dates and assets, model market volatility, and align trustee duties and investment policy with both interests.

Authority / anchor: IRC Sections 170(f)(2)(B), 2055(e)(2)(B), and 2522(c)(2)(B); Form 5227.

CHAPTER 04 / Charitable and Split-Interest Trusts

Grantor Charitable Lead Trust

Grantor CLT

WHAT IT IS

A CLT treated as owned by the grantor for income-tax purposes, often providing an upfront charitable income-tax deduction subject to statutory limitations while taxing the grantor on trust income during grantor status.

PROS

- May accelerate a charitable income-tax deduction into the funding year.
- Creates a structured charitable payment stream.
- Can coordinate a high-income year with future charitable payments.

CONS / TRADE-OFFS

- The grantor pays tax on trust income without receiving the charitable payments.
- Loss of grantor status can cause recapture or other adverse consequences.
- It is commonly reversionary and may not achieve the same family transfer objective as a nongrantor CLT.

BEST FIT

Donors seeking income-tax timing benefits and willing to bear future tax during the charitable term.

CRITICAL WATCHPOINTS

Model deduction limitations, recapture, grantor powers, reversion, charitable term, and cash flow before funding.

Authority / anchor: IRC Sections 170(f)(2)(B) and 671-679; Treasury Regulations under Section 170.

CHAPTER 04 / Charitable and Split-Interest Trusts

Nongrantor Charitable Lead Trust

Family CLT; separate-taxpayer CLT

WHAT IT IS

A CLT that is a separate taxpayer. It generally claims trust-level charitable deductions as qualifying amounts are paid, while the remainder may pass to family or other noncharitable beneficiaries.

PROS

- Can combine charitable payments with transfer-tax leverage for descendants.
- The grantor does not report all trust income merely by funding the trust.
- Appreciation above the modeled hurdle can benefit the remainder.

CONS / TRADE-OFFS

- The donor generally receives no upfront individual income-tax charitable deduction.
- Trust income, charitable deduction timing, and unrelated-business income require specialized reporting.
- Underperformance and administrative costs reduce family value.

BEST FIT

Transfer-tax planning that gives charity the lead interest and family the remainder.

CRITICAL WATCHPOINTS

Coordinate trust-level Section 642(c) deductions, asset cash flow, valuation, remainder beneficiaries, and GST consequences.

Authority / anchor: IRC Sections 642(c), 2055(e)(2)(B), and 2522(c)(2)(B); Form 5227.

CHAPTER 04 / Charitable and Split-Interest Trusts

Pooled Income Fund

PIF

WHAT IT IS

A fund maintained by a qualified charity that commingles irrevocable donor contributions, pays each donor or other income beneficiary a proportional share of fund income, and retains the principal for charity at termination.

PROS

- Offers pooled professional administration and diversification.
- Can provide life income and a charitable deduction without a separate trust.
- May be accessible for smaller contributions than a standalone CRT.

CONS / TRADE-OFFS

- The sponsoring charity controls the fund and investment menu.
- Payments are limited to actual income and may be low or volatile.
- Contributions are irrevocable and availability is limited.

BEST FIT

Donors seeking a simpler pooled charitable life-income vehicle.

CRITICAL WATCHPOINTS

Review the fund's historic income, fees, irrevocability, beneficiary terms, investment policy, and sponsoring charity.

Authority / anchor: IRC Section 642(c)(5); Form 5227 and Form 1041 instructions.

CHAPTER 04 / Charitable and Split-Interest Trusts

Charitable Purpose Trust

Charitable trust; private-foundation trust form

WHAT IT IS

An irrevocable trust dedicated exclusively to charitable purposes. A trust recognized under Section 501(c)(3) may be classified as a public charity or private foundation; a nonexempt charitable trust described in Section 4947(a)(1) is a distinct federal tax category.

PROS

- Can create a durable philanthropic mission and governance framework.
- May qualify for federal tax exemption and deductible contributions.
- A trust form can provide continuity and constrain mission drift.

CONS / TRADE-OFFS

- Assets cannot revert to private use and fiduciaries face charitable-trust duties.
- Private foundations face excise taxes, self-dealing, payout, excess-business-holdings, and taxable-expenditure rules.
- The trust form can be less flexible than a nonprofit corporation for board governance.

BEST FIT

Family foundations, perpetual charitable endowments, and mission-restricted funds.

CRITICAL WATCHPOINTS

Choose trust versus nonprofit corporation deliberately; define trustees, succession, grant authority, conflicts, investment policy, amendment, and dissolution.

Authority / anchor: IRC Sections 501(c)(3), 4940-4948, 4947(a)(1), and 508; state charitable-trust law.

CHAPTER 05

Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Commercial and institutional arrangements may operate more like entities, pooled funds, compensation vehicles, title holders, or transactional custodians. Entity classification, securities law, banking law, ERISA, tax elections, and contract terms may dominate.

STRUCTURES COVERED

- Land Trust
- Delaware Statutory Trust
- Business Trust
- Voting Trust
- Qualified Subchapter S Trust
- Electing Small Business Trust
- Rabbi Trust
- Secular Trust
- Qualified Retirement Plan Trust
- Employee Stock Ownership Plan Trust
- Voluntary Employees' Beneficiary Association
- Qualified Funeral Trust
- Totten Trust
- Liquidating Trust
- Bankruptcy, Settlement, or Claims Trust
- Escrow or Security Trust
- Collective Investment Trust
- Unit Investment Trust

CLASSIFICATION WARNING

Revocable, irrevocable, grantor, nongrantor, simple, complex, domestic, foreign, discretionary, spendthrift, and directed are classifications that can be layered onto named planning vehicles. They are not mutually exclusive products.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Land Trust

Title-holding trust; real-estate land trust

WHAT IT IS

A state-law arrangement in which a trustee holds legal title to real property while one or more beneficiaries retain defined economic and control rights. Its effect varies substantially by jurisdiction.

PROS

- Can centralize title and simplify transfers of beneficial interests.
- May provide a degree of privacy where public-record rules permit.
- Can support multi-owner management and probate planning.

CONS / TRADE-OFFS

- Creates no automatic income-tax, estate-tax, or creditor-protection benefit.
- Lenders, title insurers, homestead law, and beneficial-ownership reporting may complicate use.
- Some states do not recognize the classic land-trust model.

BEST FIT

Specific real-estate ownership and title-management situations supported by local law.

CRITICAL WATCHPOINTS

Review due-on-sale clauses, insurance, property tax, lender consent, authority to direct, liability, entity ownership, and local disclosure rules.

Authority / anchor: Applicable state land-trust, real-property, and fiduciary law.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Delaware Statutory Trust

DST; 1031 DST when tax requirements are met

WHAT IT IS

A separate legal entity formed under the Delaware Statutory Trust Act. Certain narrowly structured DST interests may be treated as direct interests in real property for Section 1031 under Rev. Rul. 2004-86, but not every DST or beneficial interest qualifies.

PROS

- Provides centralized management, limited-liability features, and fractional beneficial ownership.
- Can give passive investors access to institutional real estate.
- A qualifying structure may support like-kind exchange planning.

CONS / TRADE-OFFS

- Interests are illiquid and investors usually have little operational control.
- Sponsor fees, leverage, concentration, securities risk, and exit timing can be significant.
- The tax result depends on strict structure and facts; not every DST interest qualifies.

BEST FIT

Passive fractional real-estate ownership and properly structured Section 1031 replacement property.

CRITICAL WATCHPOINTS

Review the governing instrument, securities offering, sponsor, debt, fees, concentration, transfer limits, exit terms, and each restricted trustee power required for the intended federal tax classification.

Authority / anchor: 12 Del. C. Chapter 38; IRC Section 1031; Rev. Rul. 2004-86.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Business Trust

Massachusetts trust; common-law business trust

WHAT IT IS

An unincorporated business or investment enterprise operated by trustees for holders of beneficial interests, with legal and tax classification depending on governing law and organizational characteristics.

PROS

- Offers contractual flexibility and centralized trustee management.
- Beneficial interests may be transferable and adaptable to investment programs.
- Can fit specialized commercial or securitization transactions.

CONS / TRADE-OFFS

- Entity classification, securities law, fiduciary duties, and owner liability vary.
- It is less familiar than an LLC or corporation and can create due-diligence friction.
- Tax treatment may differ from the label and can change with powers and operations.

BEST FIT

Niche commercial, investment, securitization, and legacy structures where trust form has a specific advantage.

CRITICAL WATCHPOINTS

Obtain entity-classification, securities, liability, tax, filing, and governing-law analysis rather than relying on the word trust.

Authority / anchor: State business-trust law; Treasury Regulation Sections 301.7701-2 through -4.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Voting Trust

Shareholder voting-control trust

WHAT IT IS

A corporate-law arrangement in which shareholders transfer voting rights, and sometimes legal title, to a voting trustee for a stated period while retaining economic rights under certificates or the agreement.

PROS

- Stabilizes voting control and succession.
- Coordinates dispersed owners and can prevent deadlock or hostile shifts.
- Separates governance from economic ownership for a defined purpose.

CONS / TRADE-OFFS

- Statutory duration, filing, disclosure, and form requirements vary by state.
- Minority owners may challenge conflicts or oppression.
- Separation of voting and economics can reduce accountability.

BEST FIT

Closely held companies, family enterprises, reorganizations, and negotiated control arrangements.

CRITICAL WATCHPOINTS

Coordinate state corporation law, shareholder agreements, transfer restrictions, fiduciary duties, term, deadlock, and termination.

Authority / anchor: Applicable state corporation and voting-trust statutes.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Qualified Subchapter S Trust

QSST; eligible S corporation shareholder trust

WHAT IT IS

A trust meeting IRC Section 1361(d) whose current income beneficiary makes a timely QSST election. In general, it has one current income beneficiary, must distribute all accounting income currently, and is treated as owned by that beneficiary for the S corporation stock portion.

PROS

- Allows qualifying trust ownership without terminating the corporation's S election.
- Passes the S corporation income tax attributes to the current beneficiary under the QSST rules.
- Can combine trust administration with a single beneficiary's current economic interest.

CONS / TRADE-OFFS

- One-current-beneficiary and mandatory-income rules reduce flexibility and protection.
- Election deadlines, stock transfers, beneficiary changes, and trust modifications can terminate eligibility.
- Principal distributions during the beneficiary's life and successor arrangements are constrained.

BEST FIT

S corporation stock held for one current beneficiary where mandatory income and a beneficiary-level election are acceptable.

CRITICAL WATCHPOINTS

Review every beneficiary and distribution provision before funding; obtain the beneficiary election on time; monitor changes, severances, deaths, and modifications; and coordinate shareholder agreements, basis, redemptions, and state tax.

Authority / anchor: IRC Sections 1361(c)(2)(A)(i) and 1361(d); Treasury Regulations under Section 1361; current IRS election guidance.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Electing Small Business Trust

ESBT; eligible S corporation shareholder trust

WHAT IT IS

A qualifying trust that makes an ESBT election under IRC Section 1361(e). It may have multiple permitted beneficiaries and can accumulate income, while the S corporation portion is taxed under special rules at the trust level.

PROS

- Permits multiple beneficiaries and broader discretionary distribution terms than a QSST.
- Can preserve S corporation eligibility while retaining dynasty, protection, and family-governance features.
- Avoids the QSST requirement to distribute all fiduciary accounting income currently to one beneficiary.

CONS / TRADE-OFFS

- The S portion is subject to a special high-rate trust tax regime and no ordinary distribution deduction for that portion.
- The trust, beneficiaries, and election must remain within technical eligibility rules.
- Separate accounting, state tax, basis, shareholder agreement, and estimated-tax administration can be complex.

BEST FIT

S corporation stock intended for a discretionary, multibeneficiary, dynasty, or protective trust where flexibility outweighs tax-rate cost.

CRITICAL WATCHPOINTS

Make the election timely; confirm every potential current beneficiary is permitted; separately account for the S portion; monitor charitable interests, nonresident beneficiaries, grantor portions, modifications, and termination events.

Authority / anchor: IRC Sections 641(c), 1361(c)(2)(A)(v), and 1361(e); Treasury Regulations under Sections 641 and 1361.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Rabbi Trust

Nonqualified deferred-compensation grantor trust

WHAT IT IS

A grantor trust holding assets to support an employer's nonqualified deferred-compensation obligations while keeping the assets available to the employer's general creditors upon insolvency.

PROS

- Segregates assets and provides administrative assurance in ordinary operations, without securing them against employer creditors.
- Can preserve income-tax deferral when structured and operated as an unfunded arrangement.
- Creates separate custody and can support change-in-control administration.

CONS / TRADE-OFFS

- Creditor exposure upon employer insolvency is essential to the tax design.
- Section 409A, constructive-receipt, economic-benefit, ERISA, and funding rules are complex.
- It does not provide the protections of a qualified retirement plan.

BEST FIT

Executive deferred-compensation plans seeking asset segregation and administration while preserving the creditor exposure required for tax deferral.

CRITICAL WATCHPOINTS

Use the current model insolvency language, preserve creditor access, coordinate claims procedures and independent custody, and test Section 409A, constructive-receipt, economic-benefit, and ERISA consequences.

Authority / anchor: Rev. Proc. 92-64; Notice 2000-56; IRC Sections 409A and 671-679.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Secular Trust

Protected deferred-compensation trust

WHAT IT IS

A funded employee-benefit trust generally designed to protect assets from the employer's creditors, which commonly causes current taxation, vesting, or ERISA consequences that differ from a rabbi trust.

PROS

- Provides stronger asset security for the employee than a rabbi trust.
- Separates funded benefits from the employer's insolvency risk.
- Can support negotiated retention or compensation arrangements.

CONS / TRADE-OFFS

- The employee may be taxed before actual cash distribution.
- ERISA funding, vesting, withholding, valuation, and Section 409A issues may apply.
- The arrangement can be expensive and inflexible.

BEST FIT

Cases where benefit security is more important than long-term tax deferral.

CRITICAL WATCHPOINTS

Model the exact tax inclusion date, vesting, plan status, payroll withholding, investment control, creditor rights, and distribution restrictions.

Authority / anchor: IRC Sections 83 and 409A; ERISA; applicable grantor-trust rules.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Qualified Retirement Plan Trust

Section 401(a) plan trust; ERISA plan trust

WHAT IT IS

A trust forming part of a qualifying pension, profit-sharing, or stock-bonus plan. Plan assets are generally held for participants and beneficiaries under tax and ERISA fiduciary rules.

PROS

- Provides tax-deferred accumulation and employer-sponsored retirement benefits.
- Can offer strong federal anti-alienation and creditor protections.
- Supports pooled professional administration and investment.

CONS / TRADE-OFFS

- Qualification, nondiscrimination, fiduciary, reporting, prohibited-transaction, and distribution rules are extensive.
- Participants have limited access before permitted events.
- Failures can create excise taxes, correction costs, or disqualification risk.

BEST FIT

Employer retirement plans requiring qualified tax treatment and fiduciary asset segregation.

CRITICAL WATCHPOINTS

Maintain the plan document, trust, investment policy, participant data, testing, Form 5500, fiduciary process, fees, and prohibited-transaction controls.

Authority / anchor: IRC Section 401(a); ERISA Section 403, 29 U.S.C. Section 1103.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Employee Stock Ownership Plan Trust

ESOP trust

WHAT IT IS

A qualified defined-contribution plan trust designed to invest primarily in employer securities and allocate benefits to employee participants.

PROS

- Can facilitate business succession and broad employee ownership.
- May provide significant corporate and selling-shareholder tax incentives when requirements are met.
- Can borrow to acquire employer stock through a leveraged ESOP.

CONS / TRADE-OFFS

- Employer-stock concentration creates participant and fiduciary risk.
- Independent valuation, trustee process, repurchase obligations, and administration are costly.
- Transactions are frequent targets of fiduciary litigation and regulatory review.

BEST FIT

Established companies pursuing employee ownership, succession, or capital strategy with durable cash flow.

CRITICAL WATCHPOINTS

Use an independent trustee and qualified appraiser; model debt, repurchase liability, governance, diversification, and prohibited transactions.

Authority / anchor: IRC Sections 401(a) and 4975(e)(7); ERISA.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Voluntary Employees' Beneficiary Association

VEBA; Section 501(c)(9) welfare-benefit vehicle

WHAT IT IS

A tax-exempt organization, sometimes formed as a trust, organized to provide life, sick, accident, or similar benefits to members, dependents, or designated beneficiaries.

PROS

- Can pool and segregate assets for employee welfare benefits.
- May qualify for federal tax exemption when organizational and operational tests are met.
- Supports collectively governed benefit programs.

CONS / TRADE-OFFS

- Permitted benefits, membership, nondiscrimination, funding, and private-inurement rules are specialized.
- Form 990 and benefit-plan compliance may apply.
- It is not a general-purpose employer asset-protection or compensation trust.

BEST FIT

Employee welfare benefit programs with a qualifying membership and benefit purpose.

CRITICAL WATCHPOINTS

Define eligible employees, benefits, funding, trustees, claims, nondiscrimination, investment, dissolution, and interaction with ERISA and health-plan law.

Authority / anchor: IRC Section 501(c)(9); Treasury Regulation Section 1.501(c)(9)-1 et seq.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Qualified Funeral Trust

QFT; pre-need funeral trust tax election

WHAT IT IS

A qualifying domestic pre-need funeral trust whose trustee elects the specialized tax regime under IRC Section 685 and reports on Form 1041-QFT.

PROS

- Creates dedicated funding for contracted funeral or burial services.
- Allows specialized trust-level and composite reporting.
- Separates pre-need funds from ordinary operating accounts.

CONS / TRADE-OFFS

- Purpose, contract, contribution, and election requirements are narrow.
- Annual limits and state pre-need funeral laws apply.
- It is an industry-specific structure, not a general estate-planning trust.

BEST FIT

Funeral providers and consumers using qualifying pre-need arrangements.

CRITICAL WATCHPOINTS

Confirm current contribution limits, election, state licensing, permissible investments and uses, refunds, portability, and Form 1041-QFT reporting.

Authority / anchor: IRC Section 685; Notice 98-6; Form 1041-QFT instructions.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Totten Trust

Payable-on-death bank account; tentative trust

WHAT IT IS

A revocable bank-account arrangement titled by the depositor in trust for a named beneficiary, generally effective as a nonprobate transfer at the depositor's death.

PROS

- Simple, inexpensive, and retains the depositor's control during life.
- Avoids probate for the specific account when the designation is effective.
- Usually requires little ongoing administration.

CONS / TRADE-OFFS

- Provides no comprehensive incapacity plan or managed inheritance.
- Offers no inherent estate-tax or creditor protection.
- Can create inconsistency with a will, trust plan, minors, or estate liquidity needs.

BEST FIT

Straightforward transfer of a deposit account to a responsible adult beneficiary.

CRITICAL WATCHPOINTS

Confirm the bank's contract and state law, contingent beneficiaries, ownership during incapacity, minor beneficiaries, and coordination with the overall estate plan.

Authority / anchor: State banking, probate, and nonprobate-transfer law.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Liquidating Trust

Wind-down trust

WHAT IT IS

A trust established to collect, hold, sell, and distribute assets following a corporate, partnership, fund, or other entity liquidation, usually for a limited duration and defined claimant group.

PROS

- Centralizes contingent assets, claims, reserves, and distributions after dissolution.
- Allows an entity to complete a wind-down without remaining fully operational.
- Can provide transparent fiduciary administration.

CONS / TRADE-OFFS

- Tax classification and time limits are strict and fact-sensitive.
- Trustee, claims, valuation, and reporting costs reduce recoveries.
- Expansion into an ongoing business can undermine liquidating-trust treatment.

BEST FIT

Orderly dissolution with contingent claims, hard-to-sell assets, or delayed recoveries.

CRITICAL WATCHPOINTS

Limit activities to conservation and liquidation, set a duration, define beneficiaries and reserves, and obtain tax classification and court or stakeholder approvals as needed.

Authority / anchor: Treasury Regulation Section 301.7701-4(d); applicable entity and insolvency law.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Bankruptcy, Settlement, or Claims Trust

Claims trust; litigation settlement trust; QSF distinction

WHAT IT IS

A court order, bankruptcy plan, or settlement may create a trust to hold and distribute assets for creditors or claimants. A qualified settlement fund under Treasury Regulation Section 1.468B-1 is a separate federal tax classification and may be organized as a trust or another fund.

PROS

- Centralizes claim review, reserves, investments, and distributions.
- Can facilitate a confirmed plan, global settlement, or long-tail claims process.
- Creates defined governance, reporting, and dispute procedures.

CONS / TRADE-OFFS

- Court orders, plan documents, claimant rights, and tax classification can be highly specialized.
- A qualified settlement fund generally files Form 1120-SF rather than Form 1041.
- Administrative expense, estimation risk, conflicts, and long-duration liabilities may be substantial.

BEST FIT

Bankruptcy plans, mass-tort or litigation settlements, creditor recoveries, and other court-supervised distribution programs.

CRITICAL WATCHPOINTS

Distinguish a bankruptcy or claims trust from a qualified settlement fund; coordinate court authority, tax classification, claims procedures, releases, investment limits, reporting, and termination.

Authority / anchor: 11 U.S.C.; Treasury Regulation Section 1.468B-1 et seq.; Form 1120-SF; governing court orders.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Escrow or Security Trust

Transactional holding trust; collateral trust

WHAT IT IS

A limited-purpose fiduciary arrangement holding money, securities, documents, or collateral until contractual conditions occur or obligations are discharged.

PROS

- Protects counterparties through neutral custody and objective release mechanics.
- Can support collateral administration, reserves, and multi-party transactions.
- Provides a documented chain of control and fiduciary accountability.

CONS / TRADE-OFFS

- Disputes over conditions can freeze assets and trigger interpleader or litigation.
- Fees, investment limits, and insolvency characterization matter.
- It is not a substitute for perfection, guarantees, or a full estate plan.

BEST FIT

Mergers, indemnity escrows, bond issues, secured financings, and other conditional transfers.

CRITICAL WATCHPOINTS

Specify conditions, notices, objection periods, permitted investments, interest, fees, indemnity, bankruptcy treatment, perfection, and dispute procedures.

Authority / anchor: Contract, secured-transactions, bankruptcy, and state fiduciary law.

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Collective Investment Trust

CIT; collective investment fund; common trust fund

WHAT IT IS

A bank-administered pooled fiduciary fund holding commingled assets of eligible trust or retirement-plan accounts under banking, tax, securities, and ERISA rules. Common trust funds and retirement-plan collective funds are related 12 C.F.R. Section 9.18 categories, but the terms are not always interchangeable.

PROS

- Can offer institutional pricing, pooled diversification, and efficient trading.
- Avoids some mutual-fund retail expenses and can be tailored to plan investors.
- Supports professional fiduciary management at scale.

CONS / TRADE-OFFS

- Eligible investors are limited and public disclosure may be less extensive than for mutual funds.
- Liquidity windows, valuation, and bank governance may constrain investors.
- Plan fiduciaries still must conduct prudence and fee review.

BEST FIT

Qualified plans and institutional fiduciary accounts eligible under the fund's governing rules.

CRITICAL WATCHPOINTS

Review declaration of trust, participation eligibility, valuation, liquidity, fees, securities exemptions, ERISA disclosures, and bank regulator oversight.

Authority / anchor: 12 C.F.R. Section 9.18; IRC Sections 401(a) and 584 as applicable; Investment Company Act Section 3(c)(11).

CHAPTER 05 / Business, Employee-Benefit, Real-Estate, and Administrative Trusts

Unit Investment Trust

UIT; registered investment trust

WHAT IT IS

A registered investment company that issues redeemable units in a generally fixed portfolio for a defined term. It is an investment product, not a personal estate-planning trust.

PROS

- Offers a transparent portfolio and predetermined investment strategy.
- Provides diversification and a defined termination structure.
- Units can be convenient for targeted market exposure.

CONS / TRADE-OFFS

- Limited active management can be a disadvantage in changing markets.
- Sales charges, expenses, tax realization, and market risk apply.
- The trust label does not provide personal fiduciary, probate, or asset-protection benefits.

BEST FIT

Investors seeking a specific fixed-portfolio securities product.

CRITICAL WATCHPOINTS

Review the prospectus, sponsor, fees, tax treatment, liquidity, concentration, termination, and whether an ETF or mutual fund is more appropriate.

Authority / anchor: Investment Company Act of 1940, including 15 U.S.C. Section 80a-4(2).

CHAPTER 06

Purpose, Statutory, and Court-Imposed Trusts

Some trusts exist because a statute validates a purpose or because a court imposes an equitable remedy. They should not be confused with ordinary voluntary estate-planning vehicles or assumed to have favorable tax treatment.

STRUCTURES COVERED

- Noncharitable Purpose Trust
- Constructive Trust
- Resulting Trust
- Custodial Trust

CLASSIFICATION WARNING

Revocable, irrevocable, grantor, nongrantor, simple, complex, domestic, foreign, discretionary, spendthrift, and directed are classifications that can be layered onto named planning vehicles. They are not mutually exclusive products.

CHAPTER 06 / Purpose, Statutory, and Court-Imposed Trusts

Noncharitable Purpose Trust

Honorary or special-purpose trust

WHAT IT IS

A trust for a lawful noncharitable purpose without a definite human beneficiary, enforceable only where governing law authorizes the purpose and provides an enforcer or comparable mechanism.

PROS

- Can preserve property, collections, monuments, gravesites, family compounds, or other defined purposes.
- Allows dedicated funding and fiduciary administration.
- Can separate purpose enforcement from family ownership.

CONS / TRADE-OFFS

- State authorization, duration, and enforcement vary.
- No ordinary beneficiary exists to enforce duties unless the instrument and statute provide one.
- Excess funding and changed circumstances may require court or statutory modification.

BEST FIT

A specific lawful purpose that cannot be expressed as an ordinary beneficiary trust or charity.

CRITICAL WATCHPOINTS

Appoint an enforcer, define measurable purpose and duration, budget realistically, authorize modification, and name a remainder beneficiary.

Authority / anchor: Uniform Trust Code Section 409; state purpose-trust statutes.

CHAPTER 06 / Purpose, Statutory, and Court-Imposed Trusts

Constructive Trust

Equitable remedy

WHAT IT IS

A remedy imposed by a court to prevent unjust enrichment by treating a person holding property wrongfully as obligated to hold or transfer it for the person equitably entitled to it.

PROS

- Can trace and recover specific property or proceeds.
- Offers flexible relief for fraud, breach of fiduciary duty, mistake, or wrongful acquisition.
- May provide priority tied to identified property rather than a general damages claim.

CONS / TRADE-OFFS

- It is not a planned trust or automatic property interest before judicial recognition.
- Proof, tracing, defenses, insolvency, and competing claims can be difficult.
- Litigation cost and equitable discretion create uncertainty.

BEST FIT

Disputes involving wrongful retention or acquisition of identifiable property.

CRITICAL WATCHPOINTS

Plead alternative remedies, preserve tracing evidence, analyze bona fide purchasers and insolvency, and do not market a constructive trust as a planning vehicle.

Authority / anchor: State equity and restitution law.

CHAPTER 06 / Purpose, Statutory, and Court-Imposed Trusts

Resulting Trust

Implied trust based on presumed intent

WHAT IT IS

An equitable trust inferred from circumstances when an express disposition fails, property is transferred without an intended beneficial gift, or another recognized resulting-trust doctrine applies.

PROS

- Can restore beneficial ownership consistent with inferred intent.
- Addresses failed trusts, incomplete dispositions, and some purchase-money disputes.
- Provides a property-based remedy rather than only damages.

CONS / TRADE-OFFS

- The doctrine is fact-intensive and varies by state.
- Presumptions of gift or ownership may defeat the claim.
- Evidence can be stale, ambiguous, or barred by limitations and third-party rights.

BEST FIT

Ownership and failed-disposition disputes where the formal title does not reflect alleged beneficial intent.

CRITICAL WATCHPOINTS

Preserve payment records, communications, title documents, and intent evidence; analyze family-gift presumptions, creditors, and bona fide purchasers.

Authority / anchor: State trust, property, and restitution law.

CHAPTER 06 / Purpose, Statutory, and Court-Imposed Trusts

Custodial Trust

Uniform Custodial Trust Act arrangement

WHAT IT IS

A simplified statutory trust created by registering property in the name of a custodial trustee for a beneficiary under an adopting state's custodial-trust law.

PROS

- Can provide straightforward management without a lengthy custom instrument.
- May support an adult beneficiary who wants assistance with property management.
- Offers statutory default duties and succession rules where adopted.

CONS / TRADE-OFFS

- The Uniform Custodial Trust Act has not been adopted everywhere.
- Customization, tax planning, and asset protection are limited compared with a bespoke trust.
- Financial institutions may be unfamiliar with the form.

BEST FIT

Simple management arrangements in a jurisdiction that recognizes custodial trusts.

CRITICAL WATCHPOINTS

Confirm adoption, registration wording, beneficiary capacity, revocation rights, successor trustee, tax reporting, and institution acceptance.

Authority / anchor: Uniform Custodial Trust Act; adopting state law.

CHAPTER 07

CRUT Governance and Foundation Remainder Blueprint

A CRUT instrument and its operating architecture should be designed together. The donor, trustee, advisers, income beneficiaries, charitable remainder, and foundation governance need distinct and documented roles.

RECOMMENDED DEFAULT

Use an independent trustee or corporate fiduciary for a complex CRUT; separate custody and investment management; a specialist administrator for four-tier accounting, valuations, Form 5227, and K-1s; and a separately governed qualified charity or foundation as the remainder beneficiary.

CRUT Role Map

Role	Recommended responsibility	Key control
Donor / settlor	Contributes legally owned property and selects permitted economic and charitable terms.	No side agreement, personal use, loan, or retained control inconsistent with the trust.
CRUT trustee / fiduciary	Holds title, follows the instrument, values assets, approves investments and payments, and protects current and charitable interests.	Independent judgment, documented process, succession, removal, conflicts, and fiduciary acceptance.
Income beneficiary	Receives only the prescribed unitrust amount and information required by law and the instrument.	No extra withdrawals, borrowing, pledging, or personal use of trust property.
Investment adviser	Implements a written investment policy under delegated authority and reports to the trustee.	The trustee retains oversight; the adviser does not control beneficiary payments or charitable designations.
Custodian	Holds marketable assets and supplies independent statements and transaction records.	Separate custody, reconciliations, and dual authorization for cash movement.

CRUT Role Map - Continued

Role	Recommended responsibility	Key control
CRUT administrator / CPA	Maintains four-tier accounts, calculates payments, prepares Form 5227 and K-1s, and tracks basis and realized gain.	Independent data, annual reconciliation, filing calendar, and exception reporting.
Appraiser	Values nonmarketable contributions and annual assets when required.	Qualified, independent, defensible methodology and complete workpapers.
Charitable remainder beneficiary	Receives remaining trust property at termination.	Must be qualified when distribution occurs; include backup and compliant substitution provisions.
Foundation board / trustees	Govern the foundation after receipt; approve grants, investments, conflicts, and compliance.	Separate minutes, accounts, fiduciaries, and Chapter 42 controls for a private foundation.
Legal and tax counsel	Draft, model, review transaction timing, funding, self-dealing, UBTI, valuation, state law, and elections.	Written assumptions, role map, closing checklist, and periodic compliance review.

CHAPTER 07

Recommended Operating Architecture

DONOR / SETTLOR

Irrevocably contributes legally owned and properly valued property under the written instrument.

↓

CHARITABLE REMAINDER UNITRUST

Independent trustee | Custodian | Investment adviser | CRUT administrator / CPA | Appraiser

Annual unitrust payment to named noncharitable beneficiary or beneficiaries; no extra withdrawals or personal use.

↓ remainder at termination

QUALIFIED CHARITY OR FOUNDATION

Separate board or trustees | Separate accounts | Separate investment policy | Grant and tax compliance

CONTROL PRINCIPLE

Being named as the remainder beneficiary does not make the foundation the CRUT trustee or manager. The trustee administers the CRUT; the foundation board governs the foundation after assets are received.

CHAPTER 07

Trustee Configuration - Comparative View

Configuration	Pros	Cons / risks	Best use
Donor as trustee	Continuity and lower direct cost	Conflict optics, concentration of roles, self-dealing and valuation risk, weaker independence	Only when counsel confirms authority and independent systems support administration
Independent individual	Personal knowledge and flexibility	Capacity, continuity, expertise, insurance, and availability concerns	Moderate-sized trusts with a highly qualified fiduciary
Corporate trustee	Systems, continuity, custody, tax support, and independent process	Fees, minimums, slower decisions, and investment constraints	Large, illiquid, complex, or audit-sensitive CRUTs
Charity as trustee	Mission alignment and charitable-administration experience	Potential conflicts, investment limits, and limited acceptance of complex assets	Where a qualified charity offers a credible specialist program
Directed structure	Separates investment expertise from administration	Allocation-of-duty, information-flow, and multiple-fee risk	Special or concentrated assets under clear governing law and contracts

The donor may be able to serve as trustee in some circumstances, but concentration of control, self-dealing, valuation, investment, and distribution functions should be stress-tested. An independent or corporate trustee is generally more defensible for illiquid, complex, or audit-sensitive assets.

CHAPTER 07

CRUT Red Flags Requiring Enhanced Review

- A signed purchase agreement, binding commitment, or other facts indicating a prearranged sale before the charitable transfer.
- S corporation stock: a CRT is generally not an eligible S corporation shareholder, creating possible termination of the S election.
- Debt-financed property, partnership interests, active trades or businesses, or assets likely to generate UBTI, which is subject to a 100% excise tax in a CRT.
- Related-party use, loans, compensation, rent, purchases, sales, or expense reimbursement involving the donor, trustee, foundation, or other disqualified persons.
- An interested-party valuation, unsupported discounts, incomplete title, restrictions, environmental exposure, or no qualified appraisal where required.
- One person controlling the donor, trustee, investment process, valuation, payment approval, and remainder foundation without documented checks.
- No written investment policy connecting payout, liquidity, taxes, fees, life expectancy or term, and the protected charitable remainder.
- No backup qualified charity or no procedure if the named foundation is not qualified when the remainder becomes distributable.
- Failure to determine annual fair market value, pay the exact unitrust amount, maintain four-tier accounts, issue K-1s, or file Form 5227.

CHAPTER 07

CRUT Technical Checkpoints

ECONOMIC QUALIFICATION

Confirm a unitrust percentage from 5% through 50%, a permitted life or term interest, and an actuarial charitable remainder of at least 10% of initial fair market value.

ASSET SUITABILITY

Confirm title, basis, debt, entity tax status, transfer restrictions, liquidity, valuation, environmental and securities issues, and any pending sale or redemption.

TAX CHARACTER

Model the ordinary-income, capital-gain, other-income, and corpus tiers; identify UBTI; and explain that trust-level tax exemption does not make beneficiary payments tax-free.

SELF-DEALING

Treat donor, trustee, certain family members, controlled entities, and related private-foundation persons as potential disqualified persons; document fees and prohibit personal use or loans.

GOVERNANCE

Separate custody, valuation, investment advice, payment approval, administration, and foundation governance when the asset or transaction creates heightened risk.

TERMINATION AND CHARITY

Name a qualified remainder charity, backup charity, compliant substitution mechanism, and clear termination, commutation, and trustee succession provisions.

CHAPTER 08

Drafting, Funding, and Administration Checklist

The legal instrument is only one component. The closing file should demonstrate that the structure was selected for legitimate objectives, funded correctly, and assigned to people and systems capable of administering it.

Client and objective

- Identify settlor, donor, beneficiaries, citizenship, domicile, marital-property regime, disability, benefit status, and business relationships.
- State primary and secondary objectives, constraints, risk tolerance, and rejected alternatives.
- Document solvency, existing claims, anticipated transactions, source of assets, and any professional or regulatory limitations.

Asset diligence

- Confirm legal owner, title, basis, fair market value, debt, restrictions, liquidity, cash flow, transfer consents, and beneficiary-designation rules.
- Review purchase offers, letters of intent, negotiations, options, redemptions, pending sales, insurance illustrations, leases, and entity agreements.
- Obtain a qualified appraisal or other defensible valuation where required and preserve complete source records.

Fiduciary architecture

- Name initial and successor trustees, directors, protectors, advisers, custodians, administrators, appraisers, distribution committees, and foundation managers.
- Allocate powers and fiduciary standards; provide information sharing, indemnity, compensation, removal, succession, dispute, and deadlock rules.
- Separate donor control, valuation, custody, payment approval, and beneficiary or foundation governance when the risk profile warrants.

CHAPTER 08

Drafting and Administration Checklist - Continued

Tax design

- Determine grantor or nongrantor status, simple or complex classification, estate inclusion, gift completion, GST allocation, charitable qualification, S corporation eligibility, and state nexus.
- Model income tax, basis, deductions, payout sustainability, retained payments, liquidity, and the economic effect of tax reimbursement or grantor-status changes.
- Assign responsibility for Forms 1041, 5227, 3520, 3520-A, 706, 706-QDT, 709, K-1, 990-PF, 1120-SF, elections, and state filings as applicable.

Instrument controls

- Use clear distribution standards, beneficiary powers, amendment or decanting authority, situs change, tax-savings clauses, and backup dispositions.
- Address incapacity, divorce, death, removal, vacancy, conflicts, digital assets, concentrated assets, insurance, business interests, and powers of appointment.
- Include prohibited-transaction, self-dealing, personal-use, loan, commingling, valuation, confidentiality, and records controls appropriate to the structure.

Funding and closing

- Execute assignments, deeds, beneficiary forms, entity consents, insurance changes, account openings, tax identification, appraisals, and elections.
- Prepare a funding schedule and verify post-closing title and custodian receipt rather than relying only on signed assignments.
- Deliver trustee acceptance, investment policy, valuation, notices, tax elections, role map, administration calendar, and closing memorandum.

CHAPTER 08

Drafting and Administration Checklist - Continued

Ongoing administration

- Calendar valuations, distributions, notices, tax filings, charitable payments, policy premiums, meetings, elections, and compliance reviews.
- Maintain separate books, bank and custody accounts, minutes, invoices, appraisals, beneficiary communications, and written fiduciary decisions.
- Review annually for law changes, situs, trustee capacity, beneficiary circumstances, public benefits, investment performance, insurance, and modification options.

CHAPTER 08

Illustrative Administration Cadence

Trigger / cadence	Primary owner	Core evidence
Funding and closing - once per contribution	Trustee, counsel, custodian, appraiser	Executed transfer documents, title confirmation, valuation, trustee acceptance, account records, and closing memorandum.
Valuation and payout - at least annually	Trustee, administrator, appraiser	Valuation file, unitrust or annuity calculation, payment authorization, and beneficiary notice.
Tax reporting - quarterly monitoring and annual filing	CPA or specialist administrator	Four-tier or fiduciary ledger, Forms 1041 or 5227, K-1s, elections, extensions, and proof of filing.
Investment and liquidity review - quarterly or as specified	Trustee and investment adviser	Investment-policy review, performance and liquidity report, concentration analysis, fees, and documented decisions.
Compliance event review - event driven	Trustee and legal or tax counsel	Conflict and self-dealing review, UBTI and shareholder-eligibility analysis, charity-status verification, state-law analysis, and corrective-action record.

DOCUMENT THE EXCEPTIONS

Routine administration should produce evidence. Missed dates, unusual distributions, valuation disputes, related-party transactions, law changes, beneficiary changes, and corrective actions should be escalated and documented rather than handled informally.

CHAPTER 09

Vehicles Commonly Confused with Trusts - Part 1

Several planning and investment vehicles are called trusts conversationally or serve trust-like goals, but they have different legal ownership, tax, fiduciary, and control rules.

Vehicle	What it is	Why confused	Key distinction
Donor-advised fund	Account maintained by a sponsoring public charity	Donor recommends investments and grants after an irrevocable gift	The sponsor legally owns and controls the assets; donor rights are advisory, not a beneficial trust interest
Private foundation corporation	Nonprofit corporation classified as a private foundation	May perform the same philanthropic function as a foundation organized as a trust	Corporate board governance applies, although federal Chapter 42 rules may be similar
UTMA / UGMA account	Statutory custodianship for a minor	A custodian manages property for a beneficiary	The minor owns the property and receives control at the statutory age; it is not a discretionary long-term trust
529 plan	Tax-favored state education savings program	An account owner controls education funds for a beneficiary	It is a statutory program account with separate qualified-expense, beneficiary-change, and rollover rules

CHAPTER 09

Vehicles Commonly Confused with Trusts - Part 2

Vehicle	What it is	Why confused	Key distinction
Charitable gift annuity	Contractual payment obligation of a charity	Combines payments with a charitable transfer	The annuitant is a general creditor of the charity; no separate CRT is created
LLC or family limited partnership	State-law entity with members or partners	Often holds family assets and imposes governance restrictions	Owners hold entity interests, not equitable trust interests; tax, liability, and fiduciary rules differ
REIT	Tax-elected real-estate company or trust meeting statutory tests	The name may include trust and investors own shares	It is an operating investment vehicle under securities and REIT tax rules, not a personal estate-planning trust
TOD deed or beneficiary deed	Statutory nonprobate real-estate designation	Transfers property at death without probate	Provides no lifetime fiduciary management or continuing beneficiary protection unless the recipient is a trust

CHAPTER 10

Selected Primary Authorities and Official Guidance

These links are starting points for current research. Confirm amendments, regulations, forms, state enactments, agency manuals, and jurisdiction-specific authority before relying on any structure.

1. IRS - Trusts and estates overview / Form 1041
Current fiduciary income-tax forms, instructions, grantor, simple, complex, pooled-income, QDT, and QFT references.

2. IRS - Instructions for Form 1041
Annual federal income-tax classification and reporting details for estates and trusts.

3. U.S. Code - Internal Revenue Code, Subchapter J
Statutory framework for trust, estate, grantor, beneficiary, and charitable income taxation.

4. IRS - Foreign trust reporting
Forms 3520 and 3520-A, U.S. owners, transfers, distributions, and penalties.

5. IRS - Estate and gift tax
Current federal estate, gift, and generation-skipping transfer tax starting points.

6. IRS - Section 7520 interest rates
Monthly actuarial valuation rates used in retained-interest and charitable planning.

7. IRS - Charitable remainder trusts
CRAT and CRUT qualification, payments, taxation, filing, and termination overview.

CHAPTER 10

Selected Primary Authorities - Continued

8. IRS - Technical Guide 70: Charitable Trusts
Detailed CRT, CLT, pooled-income, self-dealing, UBTI, and administration guidance.

9. IRS - Instructions for Form 5227
Current annual split-interest trust reporting and terminology.

10. IRS - Rev. Proc. 2016-42
Qualified contingency framework addressing the CRAT probability-of-exhaustion test.

11. IRS - Rev. Rul. 2004-86
Narrow federal tax treatment of a specified Delaware statutory trust and Section 1031 interests.

12. Delaware Code - Title 12, Chapter 38
Delaware Statutory Trust Act.

13. OCC - Collective investment funds
Bank-administered collective investment fund overview under 12 C.F.R. Section 9.18.

14. U.S. Office of Government Ethics - Qualified trusts
Qualified blind and diversified trust certification, model provisions, and compliance.

CHAPTER 10

Selected Primary Authorities - Continued

15. SSA POMS SI 01120.200
Trust resource treatment for Supplemental Security Income.

16. SSA POMS SI 01120.203
Special-needs and pooled-trust treatment for SSI.

17. U.S. Code - 42 U.S.C. Section 1396p
Medicaid trusts, transfer penalties, special-needs trusts, pooled trusts, QITs, and estate recovery.

18. U.S. Code - 11 U.S.C. Section 548
Federal bankruptcy avoidance, including the 10-year self-settled-trust provision.

19. U.S. Department of Labor - Fiduciary responsibilities
ERISA prudence, loyalty, plan assets, fees, and monitoring starting point.

20. IRS - Required minimum distributions
Current retirement-account beneficiary and minimum-distribution guidance.

21. Electronic Code of Federal Regulations - 26 C.F.R. Section 1.401(a)(9)-4
See-through trust and retirement-beneficiary identification rules.

CHAPTER 10

Selected Primary Authorities - Continued

22. IRS - S corporation shareholders and elections
Current S corporation filing and shareholder eligibility starting point.

23. IRS - Rev. Proc. 92-64
Model rabbi trust language for nonqualified deferred compensation.

24. IRS - Form 1041-QFT
Qualified funeral trust election and reporting materials.

25. SEC - Unit investment trusts
Federal investment-company framework and investor information.

RESEARCH DATE
Official federal and state sources were reviewed for this revised edition in July 2026. The guide intentionally avoids relying on indexed dollar amounts or state-specific conclusions that can change independently.

PAIR AI LLC

Trust Structure Guide

Revised professional reference edition

USE THIS GUIDE TO FRAME THE QUESTIONS - NOT TO REPLACE THE ANALYSIS

For each engagement, identify the objective, parties, assets, tax classifications, governing law, fiduciary architecture, funding steps, and administration system. A sound trust plan is an integrated legal and operating structure, not merely a signed instrument.