

What You Need to Know and Frequently Asked Questions

TRIGGER TRUST

SETUP

A trigger trust is a private contractual agreement between the person setting up the trust (settlor) and the trustee of the trust. The trust must designate beneficiaries and a protector. At the start of the process we will email you the information we will need to draft the trust. Once we receive the information from you, it will take us approximately one week to draft the trust and email to you for execution. You will need to sign the trust and have your signature notarized (either at the time of execution or later). The trust is not publicly registered or recorded.

The trigger trust starts as a domestic irrevocable trust, but it contains innovative provisions that allow it to adapt and strengthen when threats emerge, including changing the trustee of the trust to a foreign trustee and changing the governing law of the trust to a foreign jurisdiction. The trust protector has broad powers to modify the trust, change beneficiaries, and relocate the trust to foreign jurisdictions with superior asset protection laws.

We will prepare a grant deed to transfer the ownership of your real estate (if any) to the trust and record with the appropriate county recorder. For other assets we can prepare an assignment agreement, but we will not be able to set up bank or investment accounts for the trust. Only the trustee of the trust can do so. We will obtain a tax identification number for the trust to facilitate taxation.

We usually structure our trigger trusts to be fully ignored for all tax purposes during normal operations. This means that the trust will be ignored for income tax purposes and for gift tax purposes. The trust should also not result in property tax reassessment on California real property transferred to the trust. For all tax purposes, the trigger trust operates identically to a living trust under normal circumstances.

What makes a trigger trust different from a standard domestic asset protection trust? A trigger trust contains special provisions that are activated when specific threats occur (Events of Duress). When an Event of Duress is declared (such as a lawsuit filing, judgment, or collection proceeding against you), the trust can quickly relocate to a foreign jurisdiction with stronger asset protection laws, change trustees, and modify its structure to provide maximum protection. This makes it far more flexible and responsive than traditional asset protection trusts.

Does an irrevocable trust avoid probate? Yes. Assets transferred to any type of trust will avoid probate.

What is the difference between revocable and irrevocable trusts? If the person transferring assets to the trust retains the power to transfer the assets back to their name, the trust is deemed revocable

and there is no protection from creditor claims. If there is no such power the trust is irrevocable. All asset protection trusts must be irrevocable. However, having a trust protector with the power to revoke the trust and return the assets to you will not cause the trust to be deemed revocable by you.

Who may be the beneficiary of the trust? Anyone other than you or your spouse (with some rare exceptions). Children or other family members are the most common choices. Just because someone is named as a beneficiary does not mean that they will receive any distributions from the trust. Distributions are ultimately within your control, through the trustee and the protector, and you retain veto power over distributions.

Who may be the trustee? You can appoint anyone, including yourself, as the trustee of the trust initially. However, because the trustee's name will appear on the title of the assets transferred to the trust, we recommend you pick someone with a different last name. Additionally, neither you nor your spouse may serve as trustee if the trust relocates to a foreign jurisdiction under the Event of Duress provisions. Once the trust is triggered to become a foreign trust, only a foreign trust company can serve as the trustee.

Who may be the trust protector? You can appoint anyone other than yourself or your spouse as the trust protector. The trust protector is the most important appointment and it should be the person you trust the most. In a trigger trust, the protector must be a non-U.S. person (someone who is not a U.S. citizen, resident alien, or entity organized in the United States). This is critical for the Event of Duress provisions to function properly.

What if I have trouble finding a trust protector? Our law firm works with professional corporate trust protectors outside the United States who specialize in serving this role for trigger trusts. They charge an annual fee typically starting around \$500 to \$800 per trust. These professional protectors have experience with international trust law and can properly exercise the Event of Duress provisions when needed.

MAINTENANCE

There are no annual tax filing or other reporting requirements for the trust while it remains a domestic trust. We do recommend that you maintain books and records for the trust and establish a bank account for the trust. If the trust will own your residence, then the rent payments should be deposited to the trust's account and property expenses should be paid from that account.

What are the trustee's responsibilities? A trustee's name will appear on title to real property owned by the trust. The trustee will also be the one who will physically go to the bank and open an account in the name of the trust. The trustee will be the sole signatory on that bank account. In the event of either refinancing, selling or if you would need to transfer the real property back to your name, the trustee will need to sign the necessary grant deed.

What happens during an Event of Duress? When an Event of Duress occurs (such as a lawsuit filing, judgment, or collection proceeding), the current trustee can give written notice to you and the trust protector that it would be in the best interest of the beneficiaries to better safeguard the trust assets. Once this notice is given and with the consent of the Protector, the following occurs:

1. The current trustee is removed and stripped of its powers.
2. The Emergency Trustee (designated in the trust) is appointed as successor trustee.
3. The governing law of the trust changes from U.S. law to the jurisdiction where the Emergency Trustee is located.
4. All or any part of the trust property is removed from the United States and transferred to the jurisdiction of the Emergency Trustee.
5. The situs of administration changes to the jurisdiction of the Emergency Trustee.

How do I replace the trustee? The trust protector can remove or replace the trustee. The specific terms of your trust will dictate how to remove the trustee. If the trust owns real property, an Affidavit Substitution of Trustee may need to be recorded.

How do I make changes to the beneficiaries? This is dictated by the terms of the trust. The power to change beneficiaries is granted to the trust protector with your consent. This provides flexibility while maintaining the asset protection features of the trust.

What type of personal or real property can be held in my trust? The trust can hold any type of property. If you transfer your residence to the trust, you should pay rent to the trust to live in the residence, and the trust can then use that money to make mortgage payments and pay property taxes. If you have transferred income producing property into the trust (real or personal), then keep in mind that the trust can only distribute money to the named beneficiaries (though you retain veto power). For this reason, we carefully structure trigger trusts to ensure you maintain practical control while preserving asset protection.

How do I add real properties to my trust? Any real property is added or removed from a trust by a grant deed (warranty deed outside of California).

How often should I have my trust reviewed? Because of the periodic changes in the law and changes in your life, the trust should be reviewed every 4-5 years. Watch out for the following events: sale of a property in the trust; purchase of a property; refinancing of a property; birth of a child; death of one of the settlors; beneficiaries, trustee or protector.

Does my trust need its own tax identification number? Your trust, if a grantor trust, will use your social security number and report your income from the trust on your 1040. If your trust will open a bank account, it should have an Employer Tax Identification Number (EIN). We would obtain it for you, if needed.

Should I inform the mortgage company of the transfer of title? No, there is no obligation to do so, and if properly structured the mortgage lender will not be able to exercise the due on sale clause in the mortgage.

What about property insurance? If you have an existing homeowners or other property and casualty insurance policy, then you should notify your insurance agent of the transfer to the trust so that the trustee can be added as an additional insured to the policy.

TAXATION

Do I or the Trustee file taxes differently regarding the assets in this Trust? No, all income related to trust assets will continue to be reported on your personal income tax return while the trust operates as a domestic grantor trust.

Will the Trust be required to file a tax return at any time? Most trigger trusts we draft are structured as grantor trusts for income tax purposes while they remain domestic. This means that the trust is ignored for all income tax purposes and no returns are required. It further means that you still get the benefit of the mortgage interest deduction, the \$250,000/\$500,000 gain exclusion on sale and the property tax deduction. However, if the trust relocates to a foreign jurisdiction under the Event of Duress provisions, you will need to file Form 3520 and 3520-A to report the foreign trust. We will assist you and your accountant with this if it becomes necessary.

Are there gift taxes? We draft most trigger trusts to avoid the application of the gift tax initially. This also means that the assets transferred to the trust remain in your estate for estate tax purposes. Because you have a testamentary limited power of appointment over the trust property, you have not made a completed gift for gift tax purposes.

FLEXIBILITY AND CONTROL

What control do I maintain over trust property? While the trigger trust is irrevocable by you directly, you maintain significant practical control through several mechanisms:

1. You have veto power over distributions to beneficiaries.
2. You have a testamentary limited power of appointment, allowing you to redirect trust property upon your death to any of your descendants.
3. The trust protector (whom you choose) must obtain your consent before making certain decisions.
4. You have the power to replace the trust protector.

Can assets be removed from the trust? Your protector has the power to return the trust assets to you, distribute the assets to the trust's beneficiaries, or terminate the trust. This provides an exit strategy if circumstances change and the trust is no longer needed.

SPECIAL FEATURES OF THE TRIGGER TRUST

What is the Emergency Trustee? The Emergency Trustee is a specialized trustee located in a foreign jurisdiction (typically in a country with strong asset protection laws like Saint Vincent and the Grenadines or Nevis). This trustee is named in the trust document and stands ready to take over administration if an Event of Duress occurs. The Emergency Trustee has an irrevocable power of attorney to transfer trust property to itself and assume control of the trust administration.

What happens if I'm under duress? The trust contains a duress clause that prevents any modifications or distributions that you make while under legal compulsion. If you're being pressured by creditors, courts, or other parties, the trust protector and trustee are directed to ignore any instructions you give under duress. This protects both you and the trust assets.

Can the trust operate in multiple jurisdictions? Yes. The trust can begin as a domestic U.S. trust and later relocate to a foreign jurisdiction if needed. The trust protector has the power to change the governing law and situs of administration at any time. This jurisdictional flexibility is one of the trigger trust's most powerful features.

What jurisdictions are commonly used for relocated trusts? We commonly use jurisdictions such as Saint Vincent and the Grenadines, Nevis, the Cook Islands, and Belize. These jurisdictions have modern trust laws specifically designed to protect trust assets from foreign creditors and judgments.

They do not recognize U.S. court judgments against trusts, require creditors to re-litigate claims under local law, have short statutes of limitation, and require creditors to post bonds.

If you have further questions, we are always happy to answer them.

Schedule Your Free Consultation

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CREATIVE AND AGGRESSIVE ASSET PROTECTION PLANNING