

Is a noncharitable purpose trust right for you?

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There are two trust types that don't require one or more human beneficiaries: charitable trusts and noncharitable purpose ("NCP") trusts. A charitable trust is the more common of the two, but an NCP trust could also be a formidable tool to help achieve your estate planning goals.

Defining an NCP trust

Historically, trusts were required to have human beneficiaries. Why? Because, for a trust to be valid, there must be someone to enforce it. Charitable trusts were the exception: The attorney general of the relevant jurisdiction was authorized to enforce the trust in the public interest.

Over the years, however, many U.S. states and a number of foreign jurisdictions have enacted legislation (including provisions of the Uniform Probate Code and the Uniform Trust Code) that authorizes NCP trusts.

These trusts may be used to achieve a variety of purposes, such as caring for a pet or other animal (including its offspring); maintaining a gravesite; providing for future graveside religious ceremonies (often referred to as "honorary" trusts); maintaining art collections, antiques, automobiles, jewelry or other personal property; and funding or otherwise sustaining a family business.

A trust may be an NCP trust even if the grantor's children or other heirs will ultimately receive trust property as "remaindermen." Suppose, for example, that you create an NCP trust to maintain and exhibit your art collection. After a specified time period — let's say 20 years — the trust terminates and the collection is distributed to your children. The fact that your children will receive the art once the trust has fulfilled its purpose doesn't change its character as an NCP trust. Nor does it render the trust valid or enforceable absent an applicable NCP trust statute.

To be valid, an NCP trust must meet certain requirements. Most important, it must (1) have a purpose that's certain, reasonable and attainable, (2) not violate public policy, and (3) be capable of enforcement. Typically, an NCP trust is enforced by a designated "enforcer" — someone whose job it is to ensure that the trust's purpose is fulfilled and who has the authority to bring a court action — and/or a "trust protector," who's empowered to modify the trust when its purpose has been achieved or is no longer relevant.

Choosing the right jurisdiction

The permitted uses of NCP trusts, as well as their duration, vary significantly from state to state, as do the powers of a trust protector or enforcer. Some states, for example, allow only pet trusts, honorary trusts or both. Other states authorize NCP trusts for most purposes, so long as they don't violate public policy. Most states limit an NCP trust's duration to a term of 21 years, although some permit longer terms or even "dynasty" NCP trusts of unlimited duration.

Please contact us for additional information.

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