

Types of Trusts

As you work with your Estate Planning Attorney to determine whether a Safe Harbor Trust is the right option for you—and which provisions to add to it—you should also understand that there are two ways to enact it: *Now* and *Later*.

Now - Inter Vivos Trust (often used by single people)

This form of Trust is most commonly used by someone who is unmarried, and is known as a Stand-Alone Safe Harbor Trust, or an Inter Vivos Safe Harbor Trust. This is actually the only option available if you are single, but it is also an option for couples when they want to immediately place assets into a Safe Harbor Trust.

Caution must be taken before using an Inter Vivos Trust, however, because transfer of assets is not revocable. Plus, assets put into this Trust are subject to the Medicaid five-year lookback.

For a more in-depth look at the specific planning process for these types of Safe Harbor Trusts, please speak with a knowledgeable Elder Law Attorney.

Later - Testamentary Trust (often used by couples)

More frequently utilized by married couples is the Testamentary Safe Harbor Trust. It is essentially a blueprint for a Trust, and it is created inside of your Will but not activated until after the first spouse's passing.

You are not required to put your assets into the Trust when you create it. What does this mean? It means nothing changes in your life, and you retain all your assets until your death, as well as the ability to change your mind as long as you remain mentally competent. After you pass, your surviving spouse decides which half of the estate is moved into the Safe Harbor Trust. It is at that point that the protections of the Trust become activated.

Married couples can use this legal planning tool to effectively protect their spouse from problems with Medicaid, subsequent spouses, or estate taxes.



If you end up instituting a Safe Harbor Trust for the purpose of an inheritance—whether for your heirs or someone instituting one for you—it will be in the form of the Testamentary Safe Harbor Trust. Remember, this means it exists as a clause inside another Trust or Will and becomes a full-fledged Trust with all its protections when that person passes away.

It's wise to consult with an Elder Law or Estate Planning Attorney familiar with these strategies.

Align Beneficiaries

If you decide to incorporate the protections of a Safe Harbor Trust to protect your assets, be sure that you change your beneficiary designations on things such as your life insurance policies, bank accounts, annuities, financial holdings, etc. to align with your planning around the Safe Harbor Trust in your Will or Trust. This is because the designations in your other financial documents generally outweigh your Will or Trust, meaning that if you do not change your beneficiary designations in your other documents, your wishes may not be realized.

Let's Pause to Plan: On the subsequent pages, make notes about what you would like to focus on with this topic, or cross out anything that you know does not apply to you.