



ALL IN THE FAMILY

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Five Things to Know About Trusts in Divorce

BY CHARLES R. HUNSINGER • OCTOBER 1, 2025

In Massachusetts, a person contemplating filing for divorce may be confronted with the question of what will happen to their trust interests. First, a trust is a legally independent entity in which one party, the trustee, holds and manages property for the benefit of a second party, the beneficiary. The trustee is a fiduciary, which means that they can only use the trust property for the benefit of the beneficiary and in accordance with the terms of the trust. Trust terms generally include who the beneficiaries are, timing for distributions to beneficiaries, the purposes for which trustees can make such distributions, the amount of trust property receivable by each beneficiary, and the duties of the trustees in administering the trust. Trusts can be revocable, which also permits amending the trust, or irrevocable, which generally prohibits amending the trust. A trust interest might seem a complicated thing, but there are some general rules for how the interest will be addressed in a divorce action.

MASSACHUSETTS LAW PERMITS TRUST INTERESTS TO BE DIVIDED BETWEEN DIVORCING SPOUSES.

Under Massachusetts law, a court entering a divorce judgment has the authority to divide all assets in which either party has any interest. This includes trust interests of either of the spouses. Each individual trust interest must be considered separately and under its own terms. Whether the trust can be divided or considered depends primarily on the terms of the specific trust at issue. In general, however, the more specific and enforceable a beneficiary's interest in the trust is, the more likely that trust interest can be included in the marital estate.

WHETHER A TRUST IS IN THE DIVISIBLE MARITAL ESTATE IS A FACT-SPECIFIC INQUIRY.

To determine whether a trust interest is in the divisible marital estate such that it can be divided between the parties, reviewing the trust instrument is essential. If one of the spouses created the trust and it is revocable, the trust is more likely to be included in the marital estate and considered property of the creator spouse. If one of the parties' parents, grandparents, or other family members created the trust for the benefit of the party and their siblings and dependents, the trust may be less likely to be included. A trust with multiple beneficiaries may be less likely to be included in the marital estate if the trustee is required to treat all beneficiaries the same. If the beneficiary spouse can compel

distributions, up to and including all of the property held in trust, the trust is more likely to be found to be in the marital estate and therefore divisible. If a beneficiary spouse is the sole beneficiary of the trust the trust is more likely to be found to be divisible.

Even if the trust assets themselves cannot be divided, those assets can still be part of the divisible marital estate. Often, the assets of the trust are considered to be on the beneficiary's side of the ledger in dividing assets. Then, other marital assets will be used to offset the trust interest such that the division of the marital estate is still equitable.

EVEN IF A TRUST IS NOT IN THE DIVISIBLE MARITAL ESTATE, IT CAN BE CONSIDERED IN A DIVORCE CASE.

In ordering a division of property incident to a divorce, judges are required to consider certain factors under General Laws chapter 208, section 34. One of the factors a judge must consider is the parties' respective expectancy of future assets and income. A trust is one such source of future assets and income and thus even a trust that is not divisible as part of the marital estate may affect the division of the marital assets. For example, if one of the parties has an interest in assets held in trust that will benefit that party in the future, the court may divide the marital assets unequally in favor of the spouse who will not benefit from a trust in the future.

VALUING A TRUST INTEREST IS ESSENTIAL.

It can be difficult to determine the value of a person's trust interest, not only because there may be multiple beneficiaries of a trust, an open class of beneficiaries that may dilute a spouse's interest, or because a trustee has discretion to benefit one beneficiary over another. Additionally, sometimes parties do not even know what assets the trust holds. Discovery is an essential tool for resolving disputes about the value of a trust interest. Not only does an attorney need to look at the trust instrument, but they also need to look at the historical practice of the trustees and the assets held in the trust. The value of a single person's trust interest can be affected by the number of other beneficiaries, the standard for distributions from the trust, the value of the trust property, and other factors. Consulting with an estate planning attorney may be necessary to arrive at a value for a trust interest, particularly where there is an open beneficiary class. Presenting evidence about the true value of a trust interest is essential because only presenting evidence of the trust balance is not sufficient to give the court a sense of a client or an opposing party's interest in that trust.

A DIVORCE DECREE CAN AUTOMATICALLY REVOKE SOME TRUST PROVISIONS.

Under Massachusetts law, a judgment of divorce automatically revokes any revocable beneficiary designation or designation of a former spouse as a trustee. Thus, a trust that was set up early in a person's marriage may no longer do what it was designed to do after divorce. You also may not want a trust to work the same way after a divorce as it did before the divorce. Either way, consulting with an experienced estate planner about your trust interests during and after a divorce is recommended. It is important to be aware of your estate planning and the effects of a divorce on that estate plan to prevent unintended consequences.