

Trusts: The difference between amendments and restatements

Some people have trusts as part of their estate plan, or are named as beneficiaries in another person's trust. The potential benefits of a trust include keeping affairs private, avoiding probate, and fluid administration in the event of incapacity or death. A revocable trust can be modified while the Grantor is alive.

Revising the terms of a trust is known as "amending" the trust. An amendment is generally appropriate when there are only a few minor changes to make, like rewording a certain paragraph, changing the successor trustee, or modifying beneficiaries. The amendment acts as a patch to the trust and both documents (trust and amendment) must be kept as long as the trust is in effect. A trust can be amended any number of times.

If it becomes confusing to have multiple documents (the original trust plus all of its amendments), or if more extensive changes are desired, it may be appropriate to fully "restate" the trust. When doing this, it makes all prior documents obsolete; the newly restated trust is now the governing document. It retains the trust's original name, original date, and original Grantor(s), but everything else gets rewritten. Normally, in the first paragraph of the restatement, it will incorporate a list of important dates from when the trust was created, amended, and/or restated so that you can follow the paper trail. It's important to note that the title of the trust (i.e. the trust name) does not change with amendments or restatements, nor does one get a new tax identification number for a restated trust.

Fully restating the trust versus doing an amendment is at the discretion of the attorney preparing the documents. The choice may depend on cost, how many parts of the trust are impacted, how many current amendments are in effect, and how quickly it needs to get done. Neither one is necessarily better than the other. Your beneficiaries are eventually entitled to a copy of the complete current trust document (whether that's a trust, trust + amendments, restated trust, or restated trust + amendments), so a full restatement may be less confusing and won't show the trail of changes made over the years.

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