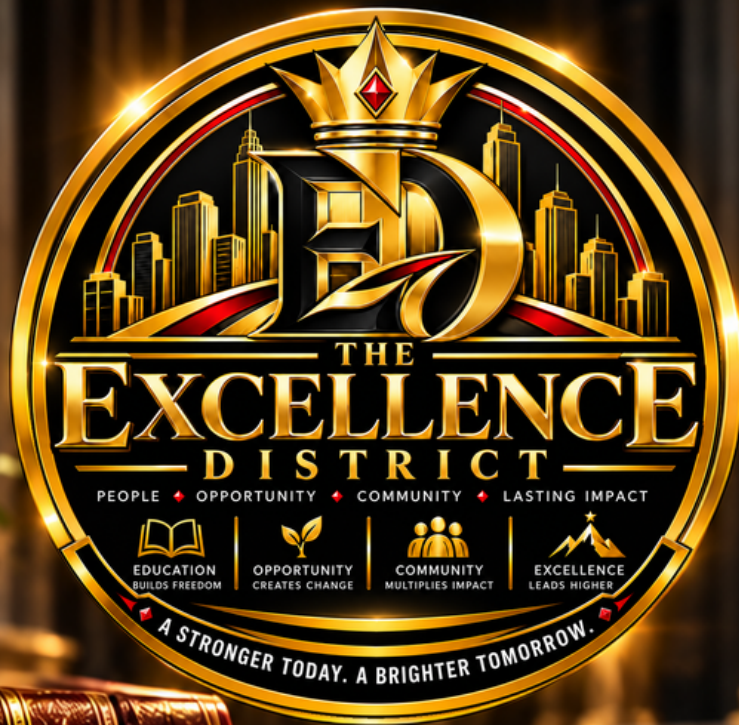




What Trusts Do – and What They Do Not

A plain-language guide to trusts, asset protection,
and the myths around them

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What Trusts Do — and What They Do Not

A plain-language guide to trusts, companies and asset protection: what these tools legitimately accomplish, where the law draws hard lines, and how to recognize the "secret structure" sales pitches that put families at risk.

The short version. Trusts and companies are powerful, lawful tools for organizing property, planning for incapacity, avoiding probate and passing wealth to the next generation. They do not make a person invisible, place anyone outside the reach of the courts, or turn personal living costs into tax deductions. Plans built on those promises fail when they are tested — usually at the worst possible time.

I. What a trust is

A trust is a legal relationship in which one party holds property for the benefit of others. Three roles are always present:

Role	Who it is	What the role means
Settlor (grantor)	The person who creates and funds the trust	Sets the terms in a written trust document.
Trustee	A person or institution that holds legal title and manages the property	Owes strict fiduciary duties: loyalty, prudence, impartiality, keeping records and informing beneficiaries.
Beneficiary	The people or causes the trust serves	Holds enforceable rights; can ask a court to hold the trustee accountable.

In Georgia, trusts are governed by the Revised Georgia Trust Code (O.C.G.A. Title 53, Chapter 12). A trust is only as effective as its document and its funding: property that was never transferred into the trust is not controlled by it.

2. Revocable and irrevocable trusts

	Revocable (living) trust	Irrevocable trust
Can the settlor change it?	Yes, at any time	Generally no, except as the document or state law allows
Avoids probate?	Yes, for property properly titled to the trust	Yes, for property properly titled to the trust
Protects against the settlor's own creditors?	No. Because the settlor keeps control, the property is still reachable.	Sometimes, if the settlor truly gave up control and benefit, and the transfer was not made to avoid existing or foreseeable creditors.
Income tax	Taxed to the settlor (a "grantor trust")	May be a grantor trust or a separate taxpayer, depending on the terms (Internal Revenue Code §§ 671–679)

3. What trusts legitimately do well

- **Avoid probate** for assets titled in the trust, which can save time, cost and publicity.
- **Plan for incapacity** by naming a successor trustee who can manage property without a court guardianship.
- **Protect beneficiaries from themselves and their creditors.** A spendthrift clause can generally keep a beneficiary's creditors from reaching trust property before it is distributed — for property someone *else* put in trust.
- **Stage inheritances** over time, by age or milestone, rather than all at once.
- **Provide for special circumstances**, such as a beneficiary with a disability, through properly drafted special-needs trusts.
- **Support charitable and family-governance goals** with clear written rules, records and successor plans.

4. Where the law draws hard lines

You cannot hide from creditors you already have

Georgia's Uniform Voidable Transactions Act (O.C.G.A. § 18-2-70 et seq.) lets creditors undo transfers made to hinder, delay or defraud them, or made for too little value while insolvent. Moving property into a trust or company after a claim arises — or when one is reasonably foreseeable — invites a court to reverse it.

Self-settled trusts are generally not a shield in Georgia

A trust you create for your own benefit generally does not protect that property from your own creditors. Some states have special "domestic asset protection trust" laws; Georgia does not, and even those laws have exceptions and long look-back periods.

Offshore does not mean out of reach

U.S. courts can order a person to bring property back and can hold them in contempt — including jail — if they claim they cannot. In *FTC v. Affordable Media, LLC*, 179 F.3d 1228 (9th Cir. 1999), a couple who moved money to a Cook Islands trust was jailed for contempt when they claimed it was out of their control. Foreign arrangements also carry heavy reporting duties (see Section 6).

Companies protect, but not without rules

An LLC or corporation can limit owner liability for business debts. Courts can "pierce the veil" when owners mix personal and business money, ignore formalities, or use the entity to commit fraud. A company does not shield a person from their own wrongful acts.

5. Common roles and tools, explained honestly

Trust protector

Some trusts name a protector who may, for example, remove and replace a trustee or adjust administrative terms. The protector's powers come only from the trust document and state law, and protectors may owe fiduciary duties. A protector is a safeguard for beneficiaries — not a hidden owner who makes the trust "invisible."

Decanting

Decanting means a trustee moves property from an existing irrevocable trust into a new trust with updated terms, when the document or state law allows it. Georgia law permits decanting in defined circumstances. It is a trustee's fiduciary act with notice and limits — not a secret way to rewrite beneficiaries.

Layered structures

Holding property in a company that is owned by a trust can be sensible for management, liability and succession. It does not create "zero visibility": ownership is reported to tax authorities and banks, and courts can require disclosure in litigation.

6. Taxes: the rules that do not bend

- **U.S. persons are taxed on worldwide income.** Using a foreign trust or company does not remove that obligation.
- **A U.S. person who funds a foreign trust with a U.S. beneficiary is generally taxed on its income** as its owner (IRC § 679).
- **Foreign trusts and accounts must be reported** — for example IRS Forms 3520 and 3520-A, FinCEN Form 114 (FBAR) and Form 8938 — and the penalties for missing them are severe.
- **Personal living expenses are not deductible** (IRC § 262). Business expenses are deductible only when ordinary and necessary for a real trade or business (IRC § 162) and properly documented. Calling meals, clothing or vacations "corporate representation" does not change this.
- **"Trade or business includes the functions of a public office"** (IRC § 7701(a)(26)) is a narrow definition used in specific tax provisions. It does not convert a person's life into a business.
- **The IRS specifically warns against "abusive trust" schemes** that promise to eliminate tax or hide ownership (IRS Notice 97-24), and promoters of such plans face penalties (IRC § 6700).

7. Red flags in trust and "wealth structure" pitches

Walk away from any plan that promises to make you a "ghost," take you "off record," "lock out the courts," move you from "taxpayer" to "sovereign," turn your lifestyle into deductions, or make a lawsuit "inert." These are marketing claims, not legal outcomes.

- The seller is not a licensed attorney in your state and will not put advice in writing.
- The plan is sold as a packaged template or seminar "system" rather than drafted for your situation.
- You are told to keep full control and full benefit while also being fully protected.
- You are encouraged to move assets after a lawsuit, debt or tax issue has already appeared.
- Reporting duties, tax returns or trustee duties are described as optional.

8. A responsible planning checklist

1. **Start with goals:** who should benefit, when, and what problem you are solving (probate, incapacity, a beneficiary's needs, business succession).
2. **Inventory what you own** and how it is titled, including beneficiary designations on retirement accounts and insurance.
3. **Use a licensed estate-planning attorney** in your state to draft documents, and a CPA for tax questions.
4. **Fund the trust** — retitle property and update designations as advised.
5. **Choose trustees carefully** and name successors; document their duties.
6. **Keep records** — trust accounts, receipts, minutes and annual statements.
7. **Review every few years** and after births, deaths, marriages, divorces, moves or major changes in wealth.

Teach it in the family. The most durable protection is knowledge: heirs who understand how the plan works, what each role must do, and why the rules exist.

Free official resources

Need	Where to go
Georgia statutes (trusts, wills, probate)	Georgia General Assembly — legis.ga.gov
Probate court information	Georgia Courts — georgiacourts.gov
Find a licensed Georgia attorney	State Bar of Georgia — gabar.org
Free civil legal help (metro Atlanta)	Atlanta Legal Aid — atlantalegalaid.org
Find legal aid nationwide	Legal Services Corporation — lsc.gov
Federal tax law and IRS guidance	irs.gov and law.cornell.edu (U.S. Code)
Foreign account reporting (FBAR)	FinCEN — fincen.gov

Key terms

Term	Plain meaning
Fiduciary duty	A legal duty to act in another person's best interest with care and loyalty.
Spendthrift clause	A trust term that limits a beneficiary's ability to transfer, and creditors' ability to reach, their interest before distribution.
Grantor trust	A trust whose income is taxed to the person who created or controls it.
Voidable transfer	A transfer a court can undo because it was made to avoid creditors or for too little value while insolvent.
Veil piercing	When a court holds owners personally liable because they did not respect the company as separate.

General education only — not legal, tax or financial advice, and no attorney-client relationship is created. Trust and tax law vary by state and change over time; confirm current law and your options with a licensed attorney and a qualified tax professional. Reviewed October 12, 2026.