WHEN LIFE GETS LEGAL

Trusts & Smart Planning Tools

June 10, 2026
12pm - 1pm

LEGAL RESOURCES®

Session Notes

Below is a summary of the topics and items discussed on the June 10, 2026 session of **When Life Gets Legal: Trusts and Smart Planning Tools**, presented by John Alexander, Esq.

SESSION TOPICS

Trust Fundamentals | Revocable Living Trusts | Supporting Documents | Funding the Trust
Irrevocable Trusts | Specialized Trusts | Incapacity Planning | Common Misconceptions

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TRUST FUNDAMENTALS

- A trust is a legal arrangement — effectively a contract — that directs how your estate is handled both upon death and during incapacity, making it a dual-purpose planning tool.
- Unlike a will, a trust avoids probate court. A will must be filed publicly and approved by a judge, a process that often takes a year or longer and typically requires hiring an attorney.
- A trust remains private; a will becomes public record once filed with the court.
- Three key roles: the **grantor** creates and funds the trust, the **trustee** controls and manages it, and the **beneficiary** receives the property. With a revocable trust, you initially hold all three roles, with backup trustees and alternate beneficiaries named to take over.

REVOCABLE TRUSTS

- Revocable trusts — the most common type — can be modified at any time. Property can move in and out, and terms can be changed as circumstances evolve.
- Married couples typically create a joint trust; upon the death or incapacity of one spouse, the survivor takes over automatically with no court involvement.
- Distribution instructions can be highly detailed. A HEMS clause (healthcare, education, maintenance, and support) restricts distributions to children's necessities until a chosen age — commonly 25.
- A spendthrift provision keeps principal inside the trust and provides a level of liability protection for beneficiaries, though protection is stronger when children are not named as trustees.

SUPPORTING DOCUMENTS

- A **pour-over** will accompanies the trust and transfers any property still in your name at death into the trust.
- A **financial power of attorney** names an agent to manage financial affairs during incapacity; a **healthcare directive** covers medical decisions and end-of-life wishes.
- HIPAA clauses control who may access your medical records and are usually built into the power of attorney documents.

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FUNDING METHODS

- Real estate is transferred by signing a new deed into the trust and recording it with the county.
- Financial accounts are most often funded by naming the trust as a beneficiary — commonly the alternate beneficiary behind a spouse.
- Personal property (furnishings, jewelry, vehicles, boats) transfers through a one-page global assignment document; retitling vehicles at the DMV is not required and is not recommended.

IRREVOCABLE TRUSTS

- Irrevocable trusts are rare. Once signed, the terms generally cannot be changed, and property placed inside usually cannot come out.
- The grantor cannot serve as trustee or beneficiary — you give up control and benefit in exchange for asset and liability protection.
- They can be useful for lawsuit exposure, tax planning, or long-term care planning, though Medicaid's five-year look-back rule requires careful timing.

SPECIALIZED TRUSTS

- A special needs trust holds property for a loved one receiving government benefits, preserving eligibility by keeping assets out of their name.
- A minor's trust functions similarly for children, though most families address minors through the family trust's HEMS clause.
- Charitable, testamentary, and pet trusts round out the options — each directing funds toward a specific purpose with tailored instructions.
- Transfer-on-death deeds and joint ownership are lower-cost alternatives, but they carry limitations that can still land an estate in probate.

INCAPACITY PLANNING

- The trust, financial power of attorney, and healthcare directive all contain incapacity provisions so a trustee or agent can step in immediately.
- Without documents in place, state law — not your wishes — controls, often requiring court involvement and guardianship proceedings.
- Name guardians carefully for minor or special needs children. If your chosen guardian lives abroad, name a local temporary guardian who can act immediately while the permanent guardian travels to the United States.

COMMON MISCONCEPTIONS

- Trusts are not just for the wealthy — avoiding probate benefits estates of any size.
- A spouse cannot automatically handle everything without a plan; absent a joint trust, the estate goes through court.
- Children will not simply know your wishes; written instructions are what guide your trustee.
- You are never too young to plan — clients range from 18 to their 70s.

COMMON MISCONCEPTIONS

- The primary advantages of a trust over a will are avoiding probate court, privacy, incapacity planning, and detailed distribution instructions.

- A trust must be funded to be effective — through deeds, beneficiary designations, and a personal property assignment.
- Real property passed through a trust transfers at a stepped-up basis, typically eliminating capital gains tax for beneficiaries.
- Trustees are fiduciaries held to the highest legal standard, providing accountability and peace of mind.
- Trusts are complex documents with many state-specific nuances — work with an attorney rather than do-it-yourself tools.

Q&A HIGHLIGHTS

1. Can I put my home into a trust if I still have a mortgage?

Yes. Your primary residence is protected by law and can be transferred into the trust even with a mortgage in place — you simply sign and record the new deed, then notify the mortgage company and insurance carrier afterward. Rental and investment properties are different: no law protects those transfers, so you should sign the deed but obtain the mortgage company's approval before recording it.

2. Can I put my 401(k) into a trust?

You can, but you probably shouldn't. Qualified retirement accounts like 401(k)s and Roth IRAs already carry tax benefits and liability protection, and routing them into a trust can disqualify those benefits. Name a person directly instead — a spouse as primary beneficiary, children as alternates. The exception is minor children, who must receive the account through the trust until age 18. Consult a CPA on the tax implications.

3. Can my niece or nephew be a beneficiary, or does it have to be my spouse or children?

Anyone can be a beneficiary. If you are skipping a spouse or children who would otherwise be entitled by law, the trust should include a disinheritance clause acknowledging they are intentionally not receiving property, so there is no question about your intent.

4. If I've been named in a trust, how would I find out? Is it public information?

No — trusts are private and not filed with any state record or database. The person creating the trust needs to tell their trustees and beneficiaries that it exists and where to find it. Many people share a certification of trust, a short summary listingthe trust's name, date, trustees, and ID number, rather than the full document.

ABOUT OUR SPEAKER:

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John Alexander is a Georgia-based attorney with 25 years of legal experience. He holds degrees from Georgia State University, an MBA from Mercer University, and a JD from Texas A&M School of Law. After beginning his career in litigation, he shifted to estate planning as his primary focus, drawn to the one-on-one client interaction the practice area provides. Approximately 80–90% of his current practice involves estate planning. He also serves in the Judge Advocate General corps with the Georgia State Defense Force.

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