

FREQUENTLY ASKED QUESTIONS FOR TRUSTS

Questions can arise while you are looking for the content that you need. The following are common questions that have often been posed to our office.

WHAT IS A TRUST?

A trust is the right to the beneficial enjoyment of property of which legal title is in another. Its distinguishing feature concerns the fiduciary relationship created under the trust, in which one person (the trustee) is the holder of the legal title to the property held by the trust, where the trustee is bound to keep or use the property for the benefit of another (the beneficiary). The person who creates the trust is called the settlor, grantor, donor, or trustor. There are many different kinds of trusts that may have many different purposes such as providing income to a spouse, protecting a beneficiary from creditors, or benefiting a charity or the public good. If a trust is established in the probate court, the trustee must file an inventory and also an accounting of the trust's administration every two years.

WHAT IS A TESTAMENTARY TRUST?

If the trust becomes effective after the death of the settlor, the trust is called a testamentary trust. Ohio law gives the Probate Court the exclusive power to direct and control the conduct of testamentary trustees.

WHAT IS A LIVING / INTER VIVOS TRUST?

If the trust becomes effective during the lifetime of the settlor, it is called an inter vivos trust. An inter vivos trust is also known as a living trust. A Probate Court also has concurrent power with the other Courts to hear any action involving an inter vivos trust. In Hamilton County, if the Probate Court appoints an inter vivos trustee, the Court retains jurisdiction of the inter vivos trust and the trustee is obligated to report to the Court.



A CITIZEN'S GUIDE TO COMMUNICATING WITH THE JUDGE AND MAGISTRATES

Why can't I communicate directly with the judge or magistrate on my case?

If the matters are contested, judges and magistrates are not allowed to communicate with individual parties. This is what the law calls an *ex-parte* communication (this is when a judge or magistrate only communicates with an individual party, on their own, without the knowledge of all parties to a case). In order to keep the court process as fair, equal and as transparent as possible, *ex-parte* communication is strictly forbidden. It is unfair for the court to share information without all of the parties present.

You cannot email the judge or magistrate, as the email is considered an *ex-parte* communication. In addition, emails are not pleadings (motions.) You cannot write a personal letter to the judge or magistrate as this may be considered an *ex-parte* communication.

How can I speak to the judge or magistrate on my case?

Typically, to speak to the judge or magistrate on your case, you must file a written motion with the court explaining what you want the court to do and all motions become part of the public record. You also have to send a copy of whatever you file to the other parties, or their attorney if they are represented by an attorney (this is called "service"). A motion is not considered an *ex-parte* communication because all parties are officially notified. You may be required to pay a filing fee when you file your written motion. Please note, there is no fee if you wish to speak to the magistrate in an uncontested matter, on their assigned walk-in days.

I've heard there's always a magistrate on duty to hear arguments immediately – what does that mean?

There is a magistrate on duty every business day. The on-duty magistrate may answer generic procedural questions. The on-duty magistrate may also discuss matters in an uncontested case. For all other matters, the on-duty magistrate is prohibited from speaking with you. To address the court for these matters, you must file a written motion. The on-duty magistrate will set the matter for hearing before the magistrate assigned on your case or the judge.

What if I need to tell the judge or magistrate something I don't want the other party to know about?

Unfortunately, you cannot withhold information from another party to your case. In order to keep the case fair to everyone involved, as soon as you tell the judge or magistrate something, you must also tell the other parties. All sides must have an opportunity to respond to the information that you have shared with the court.