
TRUST AMENDMENTS AND RESTATEMENTS

Most living trusts can be amended when circumstances dictate doing so. An amendment is typically several pages of text which change one or more trust terms. If you are considering changes to your trust, you should carefully consider the advantages and disadvantages of amending the trust versus restating the trust.

What is a Trust Restatement? When a trust has been amended multiple times or in a manner which is unclear, then a complete “*rewrite*” of the entire trust document may be appropriate. A trust restatement may also be appropriate if your life circumstances have changed significantly or if your original trust does not take full advantage of new state or federal estate tax or administration laws adopted since your trust was first written. Finally, in many cases, a restatement is a good idea if the trust was originally drafted by one of the uninsured, non-lawyer trust mills.

Can I Amend My Trust Myself? In the age of cheap computers and readily available wordprocessors, it is certainly possible to amend your trust yourself. However, be careful to assure that your “*do it yourself*” amendment accomplishes what you intend and only what you intend. Trusts are complex documents and often an apparently simple change to one section will have multiple effects on other sections in the document. Also, each time a trust is amended, the accompanying pour-over-wills should be amended to take into account the trust revisions. In light of the technicalities associated with trust and will drafting, KIRK & SIMAS routinely discourages clients from drafting their own trust amendments and pour-over-wills.

How Many Times can I Amend My Trust Before It Should Be Restated? There is no black and white test as to when you should have your trust restated rather than amended. Often times multiple changes can be made to the trust in a concise and orderly manner. Other times, a single complex amendment can warrant a restatement. The key test is how easy it is for you to read and understand the documents. If piecing together an original trust declaration and two or three amendments confuses you, then it is likely you are a candidate for a restatement to pull together all of the changes into one document.

What is the Cost of an Amendment versus a Restatement? Work performed by KIRK & SIMAS on estate plan reviews and trust amendments (and the related pour-over-will amendments) typically is done on an hourly rate basis for the amount of attorney and paralegal time involved. When meeting with a KIRK & SIMAS attorney regarding your estate plan review, you will be provided with an estimate of the charges based upon the then prevailing hourly rates. Restatements usually are prepared on a flat fee basis using the same fee schedule as new trusts. You may wish to consult the fee schedule included in our estate planning brochures.