



NEXCESS
BUSINESS ADVISORS



Nexcess Trust

Executive Summary

Asset Protection. Tax Strategy. Legacy Planning



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Nexcess Trust Executive Summary

Introduction

The **Nexcess Trust** is a premier fiduciary entity, designed as an **irrevocable, non-grantor, complex, discretionary spendthrift trust**. It is engineered to provide exceptional **asset protection, lawful tax deferral, and long-term financial autonomy** through a structure that operates independently of the trust creator and remains insulated from outside interference.

Unlike traditional living or revocable trusts—which primarily serve as probate avoidance tools with limited legal or tax advantages—the Nexcess Trust is purpose-built for robust **inter vivos (lifetime)** benefits. It empowers clients to **shield wealth from lawsuits, retain full control over distributions, and strategically defer taxes**—while maintaining privacy and enforceable legal separation from beneficiaries, creditors, and courts.

This trust is not merely a document; it is a comprehensive legal strategy, supported by statutory authority and constitutional protections, designed to **hold, grow, and transfer assets** over multiple generations with clarity, compliance, and confidence.

Who Is It For?



Entrepreneurs and private business owners



Real estate investors with passive income



Families seeking to preserve generational wealth without court interference



High-net-worth individuals protecting assets from lawsuits or divorce



Professionals needing a secure legal vessel for royalties, IP, and equity interests

Core Legal & Strategic Advantages

- ▶ **Irrevocable & Non-Grantor** – Once assets are sold into the trust and the grantor resigns, there is complete legal separation. This protects against claims of ownership, reversion, and “alter ego” designation in litigation or IRS interpretation.
- ▶ **Discretionary Authority** – The trustee holds sole and absolute power over trust distributions. Beneficiaries have no enforceable rights to demand assets, and no court can compel the trustee to act.
- ▶ **Complex Trust** – Under IRC §643, the Nexcess Trust may lawfully retain income. Passive income can be allocated to corpus and deferred—not subject to taxation unless distributed.
- ▶ **Spendthrift Protection** – Embedded clauses ensure that trust assets, including post-distribution proceeds, remain protected from creditor claims, judgments, or turnover orders. Case law, such as *Burns v. Miller* (TX App. 1997), affirms this shield.
- ▶ **Multi-Generational Design** – With a lifespan of up to 100 years or more, the Nexcess Trust enables long-term capital accumulation, tax deferral, and intergenerational planning without forced liquidation or probate.

Legal Compliance and Constitutional Authority

The Nexcess Trust is grounded in over eight foundational legal doctrines, including the Internal Revenue Code, Uniform Trust Code, Uniform Prudent Investor Act, Uniform Commercial Code, the Restatement of Trusts, and Scott on Trust Law. Its structure is further protected by Article I, Section 10 of the U.S. Constitution, which prohibits any state from impairing the obligation of contracts. The trust is not a statutory entity—it is a private contractual agreement, immune to legislative overreach.

Tax Strategy Under IRC §643

The trust’s governing instrument explicitly authorizes the trustee to designate specific categories of passive income as allocable to corpus—thereby lawfully deferring taxation. This authority is rooted in **IRC §643(a)(3) and (4)**, which allows for the exclusion of certain types of income from the trust’s **distributable net income (DNI)** when that income is:

- ▶ Not distributed to any beneficiary during the taxable year,
- ▶ Not paid or set aside for charitable purposes under IRC §642(c),
- ▶ And is properly classified as **extraordinary dividends or taxable stock dividends**, or income **allocated to corpus under the terms of the governing instrument and applicable local law**.

Qualifying Passive Income Categories

Eligible income includes, but is not limited to:

- ▶ **Capital Gains**
- ▶ **Rental Income (Rents)**
- ▶ **Royalty Income**
- ▶ **Dividend Income**
- ▶ **Interest Income**
- ▶ **Passive K-1 Allocations from Partnerships or S-Corps**

These types of income are considered *non-anticipated*, *non-guaranteed*, and *passively received*, which aligns them with the statutory definitions that permit allocation to corpus when exercised in good faith by the trustee.

Proven and Audited Structure

More than 150,000 trust returns have been filed by Nexcess-affiliated professionals over three decades. Multiple IRS audits have resulted in “no-change” letters. The IRS has not challenged this structure when correctly implemented, documented, and operated in compliance with federal tax law.

A Legacy of Control and Protection

The Nexcess Trust is not a tax shelter or a loophole—it is a lawful legal structure that leverages centuries of trust law, modern tax code, and constitutional rights. It provides a legally sound way to defer taxes, shield assets, and pass wealth through generations with absolute control. When operated correctly, it offers one of the most powerful combinations of tax optimization, legal separation, and fiduciary protection available today.

