

Trusts

Estate Planning is a process designed to help secure the continued growth of your hard-earned assets and to enhance your family's future. Merely working hard to accumulate assets doesn't ensure that those assets will be preserved for your heirs. You will need to plan ahead so that your heirs can enjoy the full benefits of your efforts.

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Establishing a Trust

A Will is the vehicle that usually collects instructions to distribute property and belongings. However, the job of passing substantial financial assets should be left to a Trust

Trusts combine investment and possible tax-saving opportunities to provide for your heirs after death. They can be used to ensure that your assets will be used exactly as you intended. Further, Trusts can make certain your heirs are not forced to liquidate assets to pay estate taxes.

Trust Benefits

A Trust may provide many benefits for your estate planning. These benefits include:

- Managing Estate Taxes
- Bypassing Probate
- Protecting Family Assets
- Minimizing Expenses
- Avoid Publicity
- Planning for Incapacity

Using trusts in a gift or estate plan can provide significant tax savings while preserving some control over what happens to the transferred assets.

Leaving Property to Children

Under most states' laws, In order to make a gift of more than nominal amount to a minor, you must take one of five steps: (1) Set up a Uniform Gifts to Minors Act Account or a Uniform Transfers to Minors Act Account, (2) Create a Savings Account Trust, (3) Establish a Totten Trust, (4) Fund a Living Trust Created for the Benefit of the Minor Beneficiary, or (5) Petition the Local Court, Usually the Probate Court, to Authorize a Custodial Relationship.

Uniform Gifts to Minors Act Account or a Uniform Transfers to Minors Act Account

Under the newer version of the law, nearly all types of property, including real estate, can be titled in the name of a custodian on behalf of a minor.

Create a Savings Account Trust

These accounts can be established in the name of a minor, and they can make deposits and withdrawals unchecked.

Establish a Totten Trust

This type of account can be established with a commercial bank. The account should be registered, "James Brown in trust for Mary Brown." The account belongs to the adult trustee. On the death of the trustee, the account proceeds belong to the minor beneficiary but are controlled by the local probate court on behalf of the minor until he or she reaches adulthood.

Fund a Living Trust Created for the Benefit of the Minor Beneficiary

A living trust that is used to give property to minors is called a 2503(c) trust. It is named after the Internal Revenue Code section that allows the income from the trust to be taxed to the minor beneficiaries. The lower tax brackets make the potential savings attractive in some cases, though no income tax benefit at all for children less than fourteen years of age.

Petition the Local Court, Usually the Probate Court, to Authorize a Custodial Relationship

The court will name an adult custodian who will manage the property under the court's direction and supervision until the minor becomes an adult.

If your Will leaves property directly to minors or if your insurance proceeds are to be paid directly to minors, the probate judge will appoint a custodian to administer your children's property. The custodian who is selected may be an adult person or a licensed institutional trustee. He or she will be responsible to the court on an ongoing basis for all acts with respect to the children's property. The custodian may or may not be the same person who has been named as the children's guardian. Further, the following drawbacks are results of a court-appointed conservatorship: all property and the conservator's actions are public; the court will require a bond (approximately 1 percent of the property value) be posted for each year of the conservatorship and that it be paid for from the children's funds; the conservator must keep and report each of his or her actions on documents that rival the length and depth of a multi-schedule income tax filing; the conservator gets paid from the children's funds; the conservator can utilize the services of attorneys, accountants and other consultants, the fees of which will be paid out of the children's funds; the conservator may not have the best interests of the child in mind.

By using a trust, you can spell out in great detail precisely how you wish your children to be taken care of and when you wish them to receive the balance of your property. You can also name the individuals or institutions you would like to have manage the property for the benefit of your children. The trustees or financial guardians can and will work closely with the personal guardians in following your instructions to provide for your children's well-being.

You can give what you want to your children in the way you prescribe and when you want your children receive it; you can control the disposition of your estate and create unique planning solutions to accommodate unique planning objectives.

Generally, the term of such a trust will provide for your child's health, support, maintenance, education, and general welfare. The choice of actual terms is limited only by your imagination.

Types of Trusts

The type of Trust you select will, of course, depend upon your personal financial situation and future objectives. Some Trust alternatives include Revocable Living Trusts and Irrevocable Trusts. The term "living trust" is generally used to describe a trust (a) which you can create during your lifetime, and (b) which you

can revoke or amend whenever you wish to do so. You can also create an "irrevocable" living trust, but that is permanent and unchangeable and is almost exclusively done to produce certain tax results beyond the scope of this summary.

Revocable Living Trusts

A "living trust" is legally in existence during your life, has a trustee who is currently serving, and owns property which (generally) you have transferred to it during your life. While you are living, the trustee is generally responsible for managing the property as you direct for your benefit. Upon your death, the trustee is generally directed to either distribute the trust property to your beneficiaries, or to continue to hold it and manage it for the benefit of your beneficiaries. Like a Will, a living trust can provide for the distribution of property upon your death. Unlike a Will, it can also (a) provide you with a vehicle for managing your property during your life, and (b) authorize the trustee to manage the property and use it for your benefit (and your family) if you should become incapacitated, thereby avoiding the appointment of a guardian for that purpose. Therefore, a revocable living trust is a flexible estate-planning tool that can be used under a variety of circumstances: while you're still living; in the event you are incapacitated; and when you die.

Under the terms you stipulate as grantor of a revocable living trust, you can retain a corporate trustee to provide investment management services, collect income from the trust, and reinvest or distribute the income according to your wishes. The trustee can also pay bills from the trust and assume responsibility for record-keeping.

You may serve as your own trustee, but a corporate trustee can relieve you of responsibilities you have neither the time or desire, or, perhaps, the ability to handle. You retain full control over the assets in the trust, as well as the right to amend or revoke the trust document at any time.

Irrevocable Trusts

With an irrevocable trust, the grantor cannot alter the terms or recover the assets during the trust's existence. Some of the more common types of trusts include:

- **Testamentary Trusts**

This type of trust is created by a provision in your Will.

- **Credit Shelter Trusts**

Credit Shelter Trusts, also known as the By-Pass Trust, are structured to provide the surviving spouse with annual income and access to principal.

- **Charitable Remainder Trusts**

Many individuals use the Charitable Remainder Trust as a vehicle to enable them to sell a highly appreciated asset without paying immediate capital gains taxes, reinvest the full amount and increase their lifetime income.

- **Irrevocable Life Insurance Trusts**

With a Life Insurance Trust, you can reduce your taxable estate. You simply place or purchase a life insurance policy inside of a Trust and pay premiums in the form of annual gifts to your beneficiaries.

- **Trusts For Minors**

A Minor's Trust is an irrevocable trust that can serve as an alternative to a Uniform Gifts to Minor's Account (UGMA)

Trust Planning

Most people today know that a revocable living trust is a substitute for a Will but, unlike a Will, the trust does not need to be probated at death, avoiding a potentially costly and/or lengthy court proceeding. Less well known is that since the trust takes effect while you're living, it allows you to state who your successor or back-up trustee will be in the event of incapacity. Since about half of all people today are expected to have a period of disability during their lifetimes, it is of the utmost importance to have a lifetime plan. Without a plan, you risk a court appointed guardian or conservator who may be a stranger or, even though related, someone whom you would not have chosen to act for you. Additionally, in a long-term care situation, a legal guardian may be required to use all of the assets for the incapacitated person's care instead of taking advantage of Medicaid rules allowing significant transfers to children and other beneficiaries. The well drafted revocable living trust provides that, in the event of incapacity, the back-up trustee is authorized to transfer out of the ill person's name whatever assets the Medicaid law allows. This will allow at least one-half of the assets to be protected through a technique known as "half-a-loaf" planning.

A relatively new concept, known as the Heritage or Dynasty Trust, solves a relatively new set of planning problems — namely, the fact that middle-class people today are leaving gifts of hundreds of thousands of dollars to their children.

Long-range Trust Planning

With the greatly increased size of estates today, in order to protect assets and keep them in the family, many are setting up trusts for their children that (1) protect the assets in the event of a divorce (2) may provide creditor protection, if desired, and (3) while giving the son or daughter lifetime access to income and principal, pass whatever's left by blood (usually to your grandchildren) instead of by marriage.

I hope this helps in your decision whether to establish a trust.

Regards,
Lisa G. McCurdy, Esq.