Reasons to Consider a Trust

Written by:
Phillip L. Clark, RFC

If you haven't stopped to consider how a trust can help you successfully pass your legacy, you could be missing a huge opportunity. For those with substantial assets, protecting wealth should be top of mind. Nonetheless, individuals, couples and families often go through the process of planning for their estate without fully appreciating the advantages of using a trust. These legal documents are flexible and powerful tools which provide greater control and precision when passing wealth to future generations. There are many types of trusts available; each designed to achieve specific goals based on your unique circumstances. Working with a qualified Wealth Advisor and Attorney, you and your beneficiaries will be well on the way to benefiting from a trust as described below.

1. Pass wealth efficiently and privately to your clients' heirs.
Perhaps the most powerful and straightforward way to use a trust is to ensure timely access to transferred wealth. When you transfer assets to beneficiaries through a will, your estate is settled through probate. However, probate is a public, legal process that can create several potential problems for your heirs, including:

Delays: In some cases, probate can encumber assets for more than a year.
Costs: Probate can cost up to 5% (regulations differ from state to state) of the estate's value.
Publicity: Transferring assets by Last Will and Testament becomes a public record. Such transparency can create unwanted scrutiny and may expose your heirs to targeted solicitation.

The aforementioned and the entire probate process may be avoided if your estate is settled through a "funded" revocable trust. A word of caution here: many revocable trusts are deemed worthless because the trustee failed to transfer assets to the trust. Nonetheless, a revocable trust can be altered or amended during your lifetime and assets may be added as necessary. Equally, assets can be removed and the trust may be dissolved during your lifetime. After your death, the trust acts as a will substitute and enables the trustee to privately and quickly settle the estate without going through the probate process. Furthermore, you can give your trustee the power to take immediate control of your assets should you become incapacitated. Otherwise, heirs may find themselves in a conservatorship battle. Revocable trusts are flexible and provide for changes at any point during your lifetime.

2. Preserve assets for heirs and favorite charities.
Assuming you have substantial assets, funding an irrevocable trust may be warranted. Because the trust is irrevocable, it may not be amended following execution. In its simplest form, the grantor would gift assets to the trust, the trustee would administer the trust for the trust beneficiaries based on your terms and ultimately dissolve the trust when appropriate. Depending on the size of your gifts to the trust, their value could use some or all of your lifetime gift tax exemption. However, once in the trust, any growth on these assets will not be subject to federal estate taxes at the grantor's death. This feature is of particular Importance under current law because the individual lifetime federal gift tax exemption is set at $5.25M. Starting in 2014, the *basic exclusion* will go up to $5.34 million per person. This exemption was scheduled to return to $1 million in 2013 but for the time being, Congress has extended the large exemption. In addition, irrevocable trusts can serve several specialized functions, including:

Life Insurance - Proceeds from a life insurance policy are generally received by beneficiaries as a tax-free benefit. Often overlooked, however, is the fact that personally owned life insurance is included in the owners estate for purposes of calculating estate tax; potentially causing significant and unintended taxes. This potential estate tax could be avoided if the policy is purchased by an independent trustee and held in an irrevocable life insurance trust that is created and funded during the insured's lifetime. Furthermore, the life insurance proceeds received by their irrevocable life insurance trust can be made available to pay any estate taxes due. This is made possible by having the insurance trust make loans to, or

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purchase assets from, the deceased's estate. Such loans or purchases can provide needed liquidity to your estate without either increasing the estate tax liability or changing the ultimate disposition of assets, so long as the life insurance trust benefits the same beneficiaries as estate. Utilizing an Irrevocable Life Insurance Trust can create tax-free liquidity and serve as a highly efficient preservation tool.

Protection from creditors — Irrevocable trusts, whether created during your lifetime or at death, can include language that protects the trust's assets from creditors or a legal judgment against a trust beneficiary. In particular, assets that remain in the irrevocable trust are generally not considered marital property. Consequently, your assets can be protected should a beneficiary be subject to division of property due to divorce. Keep in mind that irrevocable trusts are permanent. Because "the trust dictates how the funds are distributed" be sure to fund this type of trust with assets that you wish to be distributed by "the rules of the trust".

3. Reduce estate taxes for married couples.
In the case of married couples, the use of a revocable trust may provide additional estate tax protection. Under current law, both spouses are given certain exemptions to offset assets transferred at death. However, the use of "sweetheart wills" would transfer all assets to the surviving spouse. Conversely, upon the death of the first spouse, the assets in a revocable trust can be used to fund a family trust—also known as a credit shelter or B Trust—up to the amount of that spouse's federal or state estate tax exemption (currently $5.25M.) Assets held in the family trust can grow free from further estate taxation at the death of the surviving spouse.

The estate-tax-free growth potential for funds in a family trust can be significant. Consider the following example: let's say you and your spouse live in Florida, which has no state estate tax, and have a net worth of $12 million. If one of you dies in 2013, that spouse's revocable trust can fund the family trust with $5.25 million without paying any federal estate tax. Over the following 20 years, this $5.25 million could grow to $9 million or more, based on a 6% growth rate, compounded monthly, all of which would remain outside the surviving spouse's taxable estate. The balance of the assets can be transferred into a marital trust or outright to their surviving spouse. When the second spouse passes, they would pass the remaining assets, up to the current exempted amount, without estate tax. Assets in the Credit Shelter Trust (B Trust) would also pass to named beneficiaries free from federal estate tax.

4. Gain control over distribution of assets.
A properly drafted trust enables you to structure asset distributions to beneficiaries. In fact, these provisions can give you a great deal of comfort knowing that your wishes will be carried out after death. This can be a very important planning consideration for families where beneficiaries have varying degrees of maturity and financial competence. Some common provisions include:

Distributions for specific purposes. For example, you can stipulate that a trust will make money available to their children or grandchildren only for college tuition or perhaps future health care expenses.

Age-based terminations, which stipulate that the trust's assets are distributed to your children at periodic Intervals—for example, 30% when they turn 35, 30% when they turn 45, and so on. If you want to make gifts to charity, a charitable remainder trust may provide lifetime income to the grantor and possibly their spouse and children. The balance of the trust would transfer to the named charity when the trust terminates. As an added bonus, the use of a Charitable Remainder Trust may provide an income tax charitable deduction long before the charity receives your gift.

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5. Ensure retirement assets are distributed as planned.
Many of our clients are concerned that a beneficiary will liquidate a retirement account and incur a large income-tax obligation as a result. Depending on the beneficiary's tax rate, such a move could see the retirement account assets reduced by half. However, naming a properly executed trust as the beneficiary of a retirement account at the account owner's death, the trustee can limit withdrawals to the retirement account's required minimum distributions (RMDs), based on the life expectancy of the oldest named beneficiary in the trust document. This technique preserves the asset and allows the continuation of tax deferred growth during the beneficiary's lifetime.

6. Keep assets in your family.
Surviving spouses often remarry. Because of this, you may be concerned that your assets could end up benefiting the new family rather than your own. Don't be concerned, there is a trust for that, too. Referred to as a qualified terminable interest property (QTIP) trust, assets can be used to provide for the surviving spouse. Upon the surviving spouse's death, the trust's assets are transferred to the beneficiaries of your choice.

Building a legacy
Utilizing a Trust can provide manifold benefits depending on your goals and objectives. Ultimately, the use of trust planning can help you better realize a vision for your estate and, in turn, your legacy. Trusts come in many forms and serve numerous purpose's, therefore, it's important to fully discuss your goals and objectives for estate planning in order to determine what kind of trust planning will best meet your needs. Even more important is having the trust properly drafted and funded, so that your clients and their beneficiaries can reap the intended benefits.

The next step in trust planning is selecting the right trustee. This should be carefully considered; trustee selection can give you peace of mind that your vision will become reality. For the revocable trust, you may choose to serve as trustee or co-trustee. However, for various reasons, it may not be wise to serve as trustee or co-trustee of other trusts that you are considering.

When it comes to choosing a trustee, you should determine who will serve when you are no longer willing or able. Also, try to avoid the temptation of choosing a friend or relative to serve as trustee based on the idea that this individual knows the beneficiaries and is best equipped to make distributions accordingly. The fallacy in this kind of planning is ignoring the fact that emotions often supplant good judgment. In spite of your intentions and directions, friends and relatives can have a hard time separating emotion from prudence. Moreover, the trustee should be versant in things like investments, preparing accountings and tax filings. Remember, this person will be responsible for effectively investing the trust assets in a manner best suited to benefit the trust's beneficiaries.

Managing your wealth is anything but simple. This reinforces the use of an independent trustee with professional experience on both fronts–investment management and trust administration. Admittedly there is some cost for this service but it provides a predictable means of management without concern that your wishes may not be honored. Another option that might serve your needs is having co-trustees, one independent and one related.