Estate Planning
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Trusts to Protect Family Wealth Through Generations

Why Creating a Dynastic Trust May Be a Sound Estate Planning Tactic for Your Family

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Individuals, regardless of their net worth, are often quick to shun trusts in favor of a simple outright inheritance. However, passing wealth from generation to generation through a trust is an excellent means of transfer tax avoidance, and may serve to protect against the claims of creditors including an ex-spouse in a divorce proceeding. For individuals seeking to preserve their wealth for their family (or for charity) and maintain a shield from creditors, it is easy to justify placing assets in trust and keeping them there on a long-term basis, rather than creating a mandatory pay-out provision for beneficiaries who attain a certain age, or on specific dates.


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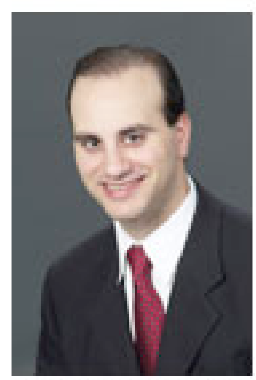
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Beneficiaries are often most pleased when they are allowed to wield a large degree of control and enjoyment over the Trust assets. This control, while alluring in many cases, is not appropriate in all instances, particularly if the beneficiary has not yet attained a certain level of maturity or fiscal responsibility. Supposing that the beneficiary is sufficiently responsible, however, it is possible for the beneficiary to enjoy the level of control he or she typically would have if the assets were not held in trust, but ensuring that an independent trustee has tax sensitive powers to avoid estate taxation at the beneficiary's death and sole discretion over distributions to retain the desired creditor protection. This need for an independent trustee is imperative, because if the beneficiary/trustee has certain powers and control over the trust, adverse tax consequences or creditor exposure could result.

Another feature in a dynastic, “beneficiary controlled” trust, is the granting of a special power of appointment to the primary beneficiary, allowing him or her to amend the Trust. This power gives the beneficiary the ability to “re-write” the Trust and will not cause adverse tax consequences, provided that some limitations are imposed. For example, the beneficiary/ power-holder may not use this special power to benefit his or her own estate, but may utilize it for the beneficiaries of a different trust, or for the beneficiaries of his or her own estate. This ability to amend the Trust allows the primary beneficiary of the Trust to make necessary adjustments for a change in family circumstances, a change in the law, or most other matters which may reveal themselves much later than when the Trust is first created and not considered by the settlor (i.e., the person who originally created the Trust).

Trusts which last for several generations, referred to as “dynasty trusts”, often result in considerable tax savings. While this type of trust is often funded with an individual’s federal estate tax exemption (currently $2 million per individual and increasing to $3.5 million in 2009), the assets placed in the Trust may accumulate free from federal gift and estate taxes for the duration of the Trust. In other words, distributions to the settlor’s descendants from the Trust will not be subject to gift or estate tax, nor will any distributions made upon the descendants’ death be subject to federal estate tax. Compared with the alternative—a bequest left to one’s descendants outright and free of trust - the assets will be subject to federal estate tax at each generation, and depending on the nature of the assets, a large estate tax burden may ensue.

Many with substantial wealth also appreciate the ability to leave a lasting legacy to future generations of the family. The settlor’s children are typically the primary beneficiaries of the Trust, but grandchildren and more remote lineal descendants may also enjoy the benefits of the Trust.

Because each family has its own unique personalities and dynamic, a dynasty trust may not be an appropriate estate planning vehicle. However, the benefits are apparent, and creating a dynasty trust where the beneficiaries retain a large degree of control and enjoyment of the trust may make them and future generations of your family very happy.

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