

061110 Protect Your Trust

By Gary Case

Many folks use a living trust as a primary estate planning document. There are also life insurance, grantor, dynasty and other types of trusts that can play a crucial role in carrying out one's desire to manage assets and bequests. Trusts provide a great deal of flexibility, privacy and protection for assets from taxes, judgments, and other unwanted intrusions into one's affairs.

There are three parties to a trust: trust maker or grantor-the person or persons who establish the trust to meet their needs and desires; trustee(s) who have the duty to manage the affairs of the trust; and beneficiaries who benefit from the trust by receiving distributions of income and assets from the trust. Sometimes the same person fills more than one of these roles.

Recently I have been working with a family who is using several trusts to help manage and distribute assets in the most private and tax-efficient manner possible. However, due to changes in their family situation, as well as changes the political and governmental environment (i.e. estate tax uncertainty and potential changes in income and other tax rates), and economic conditions, there are questions as to how to best manage the trusts to effectively meet their desires.

Further, in this case, some of the children are to act as successor trustees to their father and all of the children are beneficiaries of the trust, creating a need to protect both trustees and beneficiaries should adverse circumstances occur (such as unforeseen tax law changes or the incapacity of one or more of the trustees).

One feature that I suggest be part of nearly every trust is to provide for the role of a "trust protector", whose responsibility is to see that the intentions of the trust maker are followed regardless of circumstances that develop after a trust is in place.

Such circumstances might include the disability or death of the trust makers. A trust protector could remove or add trustees or change provisions in the trust to avoid negative tax consequences.

In my opinion, a trust protector should not be a family member or a professional involved in administering the affairs of the family (financial advisor, CPA or attorney), as these advisors can assist the trust protector in understanding the intent of the trust maker. The protector should have a deep knowledge of the law and a strong understanding of the trust. I also favor a "springing" appointment of the trust protector which means that a provision in the trust exists to appoint a trust protector but one is not appointed unless it becomes necessary.

As always, using a team of advisors (CFP, CPA, and Attorney) provides the best odds of successfully carrying out the intent of the trust maker.

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