

Now that you have it, how do you keep it?

“Put Not Your Trust in Money; Put Your Money in Trust.” Various attributed to Benjamin Franklin and Justice Oliver Wendell Holmes, it is an effective philosophy in today’s complicated management environment. Much of the wealth in this country is held in trust for reasons of continuity, probate avoidance, succession planning, and for those using irrevocable trusts, there are tax planning advantages as well. Whether the trust is one of the popular living trusts or a more complex trust like an irrevocable life insurance trust (ILIT) or charitable remainder trust (CRT), there are basic questions that the trustmaker (grantor or trustor) needs to answer in order for the trust to work as planned.

Preservation and Management

The trustee, as manager, must establish realistic investment goals and policies, paying particular attention to restrictions that might cause problems. For example, inside a charitable remainder trust, investing in participating partnerships or assets with debt can cause the trust to lose its tax-exempt status. Trustees must also decide how much volatility and risk they are willing to tolerate as they position the trust assets for maximum return on their investments. Given recent market performance, trustees especially need to address the time horizon for which they have to manage trust property, and in some states, there's a "prudent man" or "prudent investor" rule that may limit decision making to conservative assets. Not only does the trustee have to manage the trust to address risk management concerns and beneficiary needs, there is also the tax efficiency angle that further complicates administration.

Why use a revocable living trust?

- Trusts, unlike wills admitted to probate, are not public documents, so there should be more privacy as it avoids the publicity of court accountings. For clients with real property in more than one state, a trust avoids multi-state probate proceedings and expenses.
- Wills only take effect at death. Of greater concern to many clients is the possibility of disability or incompetence; and a trust should avoid court appointed conservators or guardians.
- A well-drafted trust should protect unprepared heirs from making mistakes by providing guidance and a mechanism for both long-term and short-term money management.
- A living trust should offer a quick, smooth transition and continuity as assets are quickly distributed, and debts and expenses paid.

- Non-resident trustees are allowed, and the trust creator has the ability to select either a corporate or an individual fiduciary to act as trustee in his/her place. For some families, a corporate trustee offers permanence and continuity, as trust companies are held to a higher standard for financial accountability and investment expertise. If family disharmony is likely, an independent and impartial third party trustee should not succumb to heirs and their pressures to set aside the trust provisions. On the other hand, individual fiduciaries may have a more personal interest in the family, and possess special investment or business expertise that will help family businesses transition to the next generation.

Living Trusts Don’t Solve All the Problems

- Trust language only protects assets held by the trust. Too often, trust creators fail to fund the trust, and if probate avoidance is the primary motivation for the trust, it failed.
- Legal fees for drafting and funding a living trust are often higher than for a simple will since the expenses are front-loaded.
- Creditors may not be eliminated as quickly with a trust. Probate is not always a process that should be avoided; in some states the process isn’t expensive or time consuming, and the six to twelve month claims period shuts off estate creditors.
- Revocable living trusts are “tax neutral”. By itself, there is no income or estate tax savings in a living trust.
- There are too many “cookie cutter” trusts and trust mills out there confusing clients; seek competent legal counsel and properly establish these plans.
- Without court supervision, there is no oversight and trustees are occasionally guilty of fiduciary lapses.

Estate and financial plans are dynamic, and should evolve to reflect changes in the economy, tax law, family needs, and personal circumstances. Don’t count on any trust to address the needs for a family’s plan without occasional reviews and updates.

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