

## Top five reasons for a trust



Katherine Esshaki Wensink | Tuesday, October 6, 2020

Many wonder whether trusts are necessary for families with total assets under \$10 million. The answer is maybe. Leaving everything by will to the surviving spouse and then to children may be exactly what is needed for some to quickly and efficiently transfer assets upon death. For others, however, there are still some very important reasons to have a trust with assets under \$10 million. Below are the top five reasons that a trust may still be helpful.

- 1. Children under age 25** - A trust is important for parents with children under the age of 25 to keep assets out of probate court and to allow the children to be treated the same as though their parents were alive. If assets are left by will to minor children, those assets remain in probate court. A guardian must report to probate court every year requesting distributions. Further, the child is given the assets outright at age 18, when most children are not yet ready to receive an outright distribution. The use of a trust allows the guardian to work with the trustee (the guardian and the trustee may be the same person) to properly care for the children without the time and expense of court proceedings. Further, different children require different amounts of support. By transferring money by will, the assets are distributed in equal shares upon the death of both parents. By transferring them in trust, the assets may remain as one pot until the youngest child attains age 25 or any other age determined by the parents. This allows the trustee to use the funds however necessary, for health, support, maintenance, and education of a child, possibly giving one child more than another. For example, one child may require less financial support for their education due to having received scholarships while another may require more for health care. A trust gives the trustee the flexibility to care for the children according to need, rather than keeping everything even. Once all children have reached the age of 25, the trustee can then split the assets into equal shares and distribute the assets to the beneficiaries. The trustee may also make partial distributions to each of the beneficiaries, ensuring there is still some money left if the beneficiary mishandles their initial distribution.
- 2. Privacy** - Assets transferred to trust prior to death do not pass through probate. Assets that pass through probate are public record. A funded trust provides privacy in that all of a grantor's assets are not on display by a search of the public records. Further, it keeps private the distribution of assets, whether to family, friends, or charity, the public cannot search the total money in a trust or where it is distributed.
- 3. Second marriages** - The use of a trust allows a grantor to care for a surviving spouse and upon the death of the surviving spouse any remaining funds will be used for the benefit of children from a first marriage. The grantor could also provide for both the surviving spouse and children from the first marriage at the same time, without worrying that one beneficiary received less than was truly needed.

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4. **Protection from beneficiaries' creditors** - Assets remaining in trust upon the death of the grantor are protected from the beneficiaries' creditors. Therefore, beneficiaries with at-risk jobs such as doctors or businessmen who have a high probability of getting sued and beneficiaries with significant credit problems or a history of substance abuse issues allow the beneficiary to still receive an inheritance, but it will be better protected than if it were distributed outright. By placing the assets in trust for the beneficiary, a creditor may not reach those assets. Further, the trustee may use the assets for the benefit of the beneficiary.
5. **Property in other states and counties** - If a decedent owns property in other states and counties and it's titled in their own name, it must pass through probate in the county where it is located. Without a trust, an Ohio resident with a winter home in Florida, would be required to file an Ohio estate in the county where they lived as well as what is called an ancillary estate in the county where they lived in Florida. By transferring the property to trust before death, the necessity of an ancillary estate is removed and the trustee may simply manage the property. This not only reduces the cost of the estate administration, but it may provide a quicker administration as proceedings in two or more courts are not required.



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