Trusts Play An Important Role In Estate Planning

THEY ARE NOT JUST FOR THE RICH AND FAMOUS

By Thomas M. O'Diam
O'Diam & Stecker Law Group, Inc.

Mention the word "trust" in the context of estate planning and many people envision something reserved for people like the Kennedy's, Rockefellers or Bill Gates. This is a common misconception that comes from years of emphasis on trusts as a way to reduce or avoid estate taxes. Now that federal law allows each person to exclude $2 million from estate tax, the number of people who need trusts purely for estate tax purposes is dwindling. The perception of trusts as tax tools ignores the many other planning benefits that trusts offer.

A trust is a written agreement that provides for the management, use and eventual distribution of a person's assets. It is like a book of instructions written to address your unique circumstances in order to achieve the goals and desires that you have for your family. You can control how the trust assets are managed, and then direct how, when and to whom your assets will be distributed.

There are many different types of trusts. Each type has a particular use in estate planning. The most basic kind of trust is commonly called a "revocable living trust," meaning that you create it during your lifetime and can change or terminate it at any time. An "irrevocable" trust is one that you cannot change or terminate after you establish it. Irrevocable trusts are often used for a variety of more sophisticated income, estate and gift tax planning.

One of the main differences between a trust and a last will and testament is the point in time when it actually works. A will becomes effective after your death and only functions during that relatively short period when your estate is being administered. It does nothing for you during your lifetime, and cannot guide what beneficiaries do with their inheritance after they receive it. A trust, on the other hand, is effective during your lifetime, provides for the management of the trust assets if you become incompetent or die, and can continue for the benefit of your spouse, children or other beneficiaries for as long as you want.

A common use of trusts is to avoid probate. Usually, revocable trusts are the tool of choice for this purpose. If assets are correctly titled in the trust's name, they are not subject to probate court proceedings. Skipping probate can save significant time and legal expense. Probate proceedings are also open to public inspection, but trust administration maintains your privacy. If probate avoidance is a goal, it is essential to be sure that all of your assets are properly titled to work through your trust.

Some believe that there are much easier ways to avoid probate, and that is true to a point. Joint and survivorship property, payable on death designations and naming beneficiaries to certain types of property does cause the property to pass to the surviving beneficiary without the need to go through probate. The limitation, however, is that now the asset is in the beneficiary's name alone, and must go through probate if the beneficiary becomes incompetent or dies. A trust avoids probate for the surviving beneficiary, too, if the assets remain in the trust.

The big advantage of trusts is flexibility. The options available for customizing the terms of a trust are virtually unlimited. This provides a mechanism to tailor your estate plan to meet your particular goals and objectives to suit your family. Everyone has a different situation. Trusts enable you to address those differences more thoroughly.

This flexibility is a powerful advantage in structuring provisions for distributions to your children and grandchildren. Your trust can assure the proper management and use of your assets for minor children without the need for a probate guardianship. Even when the children are adults, they may not necessarily have the financial maturity to deal with an inheritance wisely. Some statistics indicate that the average inheritance is completely gone within eighteen months. A trust can provide for more responsible oversight of the funds until the beneficiaries are better equipped to make good financial decisions on their own.

Asset protection is another potential benefit of planning with trusts. Although it requires specialized trusts to insulate your own assets, an ordinary revocable living trust can be structured to protect your children's inheritance from creditors. In the same manner, you can use a trust to assure that the inheritance you intend for your child will not later get split-up if your child divorces.

Trusts are also good vehicles for managing funds for beneficiaries who may not have the ability to do so on their own. A trust can protect children with addictive behaviors, such as alcohol, drug or gambling abuse, from their own destructive actions without disinheriting them completely. Likewise, persons with special needs due to mental or physical disabilities can enjoy extra opportunities in life through a properly drafted trust without jeopardizing their eligibility for public assistance. The same can be accomplished for elderly parents who may otherwise lose public benefits if they inherit anything directly.

Trusts are particularly useful in estate planning for couples in second marriages. Blended families create planning challenges, and lack of planning can result in disaster. Trusts can provide protection for the new spouse, while assuring that your assets will eventually go to your own children. A well-drafted trust plan in this situation can minimize potential family conflicts and avoid unintended results.

Many people have discovered that trusts are useful in carrying out their charitable giving objectives. Because the options in trust planning are broad, it is not difficult to custom tailor your charitable planning to accomplish exactly what you want. There are many forms of special trusts that are used just for charitable planning. Some of these special trusts are structured to minimize taxes. Many others, however, are simply in place to provide more control over the use and disposition of the charitable funds.

There is more to estate planning than taxes, and more to trusts than just tax planning. As you can see, even if Congress eventually repeals federal estate taxes, there are still plenty of good reasons to consider a trust as part of your estate plan. It would be a mistake to discount the possibility that you could benefit from a trust just because your name is not Kennedy, Rockefeller or Gates.

Thomas M. O'Diam is an estate planning attorney and is certified as a specialist in estate planning, trust and probate law by the Ohio State Bar Association. He is a shareholder in the law firm of O'Diam & Stecker Law Group, Inc., in Beavercreek, Ohio.