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NOVEMBER/DECEMBER 2003

# TRUST A TRUST: THE BENEFITS OF USING BENEFICIARY-CONTROLLED TRUSTS

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A common estate-planning mistake is failing to take full advantage of trusts. Substantial amounts of family wealth are too often unnecessarily and irretrievably eroded away because trusts are not being used with the frequency and duration that they should be.

This may occur because the donor fails to recognize the potential exposure and risks of outright ownership — an "in trust" gift or inheritance could avoid those risks. Another common reason for the underutilization of trusts is lack of understanding about the flexibility of the trust vehicle and the availability of control mechanisms that can enable beneficiaries to enjoy the trust property in a manner virtually tantamount to ownership.

## Better than Inheriting Outright

Donors who believe their children are or will be capable of owning the property outright but who don't wish to use a traditional trust, can use a beneficiary-controlled trust. The primary characteristics of a beneficiary-controlled trust are as follows:

- Distributions of income and principal are totally discretionary, rather than being mandated.
- The child would be given a power to "re-write" (a special power of appointment) the trust for future generations.
- The trust continues perpetually for the child's lifetime and then to successive generations without diminishment from exposure to the IRS or other claimants.
- When the ages of projected maturity are attained, instead of receiving mandated outright distributions, the child or other future descendant is put in control of the trust.
- Rather than making distributions to the beneficiary who would then acquire the assets, it is recommended that assets be acquired (including a business) as an investment of the trust.

## Management and Control

Because the creator of a trust can dictate its terms, a trust can be designed in a way that is attractive to the beneficiary via a beneficiary-controlled trust — with broad investment powers and unrestricted use and enjoyment of the trust. The key concept is that the transferor can literally dictate the rules — for example, imposing limitations if warranted or granting virtually unlimited control and enjoyment to the child or other beneficiary, with either selection being subject to adjustment.

In addition, a beneficiary may be given a broad special power of appointment to amend the trust to adapt to changing circumstances such as family situations or tax or other laws. Thus, contrary to the general belief that a trust is a tight, inflexible, and restricted undertaking, there is great flexibility in the beneficiary-controlled trust arrangement because the primary beneficiary can have virtually unlimited amendment power.

Most traditional trusts distribute the assets when the beneficiary reaches a certain age or ages, with the last distribution terminating the trust. According to modern trust theory, assets held in a trust are far more advantageous and greater in value than if those same assets were held outside a trust because of the protection they enjoy against creditors. Thus, instead of terminating at certain ages, or upon a beneficiary's death, the beneficiary-controlled trust continues perpetually with the next succeeding primary beneficiary being placed in full control at the proper time.

## Tax Savings

As a general rule, the earlier the trust is created in the life cycle of an asset or investment, the greater the benefits in tax savings. Creating a beneficiary-controlled trust early also enables the benefactor to place the initial seed money for funding a favorable business or investment opportunity into a trust rather than have an individual own it. Nowhere is this opportunity shifting more productive than with new ventures or startup businesses.

Remember that the dual benefits of creditor protection and tax savings are available only if someone else, such as a parent or grandparent, sets up the trust. To place the philosophy and utility of the properly designed trust in perspective, if the parents of a venture capitalist had the foresight and desire to create a trust for him or her with the initial seed money used to acquire his or her interest in a successful company, his or her entire holdings in that company would be outside of the transfer tax system and thus inaccessible to creditors and divorce judgments. With proper drafting, the foregoing may be accomplished even if he or she is a trustee of the trust, manages the trust assets, and is in control of the trust.

Contrary to the common belief of many estate owners that an "in trust" gift or bequest is restrictive and undesirable, a properly designed and implemented trust is a substantial improvement over outright ownership. A beneficiary-controlled trust will maximize the benefits that an "in trust" inheritance can provide with full control, at the proper time, being placed in the hands of the inheritor. The inheritor gives up nothing and obtains for himself or herself many benefits he or she would otherwise be unable to create.

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