



How Lifetime Discretionary Trusts Can Protect Your Assets

The ever-changing economic spectrum muddies the transparency of future economics, decisions, and overall lifestyles. With the ever-changing political landscape, we have seen adjustments to federal estate taxes and accept the uncertainty of what a new Congress may do with the federal estate tax. Taking the time now to set up safeguards to protect your assets and how your assets are used will ensure future generations will continue to thrive. Whether you have substantial assets or not, trusts afford you the greatest control to manage and dictate (if you are inclined) how your assets are passed to future generations.

Outright Gifts and Associated Perils

Gifts are fun. They are exciting. They bring instant gratification to the beneficiary and gift giver. However, outright gifts may bring unnecessary headaches and hardships.

In today's risk versus reward society, beneficiaries, especially those in business, are forced to make decisions that could easily lead to credit problems or bankruptcy. If your beneficiary faces the perilous situation of dealing with creditors or bankruptcy, judgment creditors may be able to seize your beneficiary's inheritance to satisfy the beneficiary's outstanding debts.

The risks of engaging in business today are not the only threat to your beneficiary's inheritance. In 2022, divorce statistics indicated that divorces were estimated to occur in between 40 and 50 percent of marriages. Outright gifts afford no protection to your beneficiary, who co-mingles the gifted funds. Your soon-to-be ex-child-in-law may very well pocket half of any assets you gifted to your child or that you left to your child outright

upon your passing.

Almost all of us enjoy some quality retail therapy. In moderation, spending is healthy. Unfortunately, many beneficiaries are guilty of blurring the line between moderation and excessive. Outright gifts and inheritances become the property of the beneficiary. If your beneficiary plays it fast and loose with their money, the inheritance you gifted may not last as long or be used in ways you may have wanted it to.

Outright gifts have their time and place. Trusts, however, offer options that allow you to combat the issues we have spotlighted.

Trusts and the Associated Benefits

Lifetime discretionary trusts offer an ideal solution to any issues arising from outright gifts. Lifetime discretionary trusts are, as the name implies, trusts established by you during your lifetime. The terms of the trust are not necessarily fixed but are subject to the criteria that you, as the settlor, set forth. They are discretionary because after your passing, the trustee, or person in charge of distributing the assets from the trust, is given the discretion to alter the stipulations of timing, distribution, and percentage of asset distribution within the reasonable limits of your criteria. This provides the trustee with the flexibility to modify distributions to address unforeseen challenges or contingencies.

Here are six benefits a lifetime discretionary trust offers:

Privacy

Trusts are not public record. By creating a trust, you are creating a web of information protection.

You can keep your financial situation and future generations strictly within the family. Failure to establish a trust may result in your estate going through the probate court. Probate estates are public record. Most clients desire to keep their financial situations a private affair. Trusts allow you to keep those affairs private.

Control

As mentioned above, a lifetime discretionary trust is managed and distributed by the trustee you appoint to manage the trust. This allows you to put minimal or rigid stipulations on how and when the trust is distributed. The trustee must follow those stipulations as best they can. This control combats frivolous spending. It also assures that your beneficiary will be cared for over their lifetime and beyond because you can control the distribution in percentages when they meet ages, thresholds, or other conditions.

Protection

As mentioned earlier, divorce impacts nearly 50% of married couples. In divorce proceedings, the soon-to-be ex-spouse of your beneficiary cannot assert a claim over the assets in the trust until those assets are physically received by your beneficiary (distributed from the trust). Anything that hasn't been distributed to your beneficiary from the trust cannot be considered an asset subject to the divorce proceedings. Similarly, a creditor or bankruptcy court cannot go after your beneficiary's trust as long as the funds are not distributed to the beneficiary. In many instances, the money you leave to your beneficiaries is the product of your hard work, and you have every right to maintain some control over who benefits from your hard work.

Failure to Plan

If you were to pass away without organizing your estate, assets that don't transfer through a specified beneficiary designation or to a surviving joint owner would undergo the probate process. Probating an estate in Ohio takes at least six months due to the creditor claim period. A lifetime discretionary trust could allow your heirs to avoid probate.

Charity Lifetime

Discretionary trusts are valuable tools in estate planning, allowing individuals to support charitable causes even after passing. The trustee can distribute to charities based on the grantor's wishes expressed in the trust document, or in the case of CPM clients, Nevin Demmitt and his wife, Vickie, allow them the flexibility to sell their farming equipment to finance their retirement. Check out "SUCCESS STORIES: Using a Charitable Trust for Tax Savings While Creating a Charitable Legacy" to learn more.

Peace of Mind

Knowing your beneficiary and the generation after are taken care of is priceless. Trusts clearly delineate how assets are divided and distributed. This eliminates wasteful court proceedings and inter-family conflicts that may arise when assets are up for grabs. Finally, trusts allow transparency in difficult to divide assets by clearly stating who gets what.

You do not need to be a Carnegie or Rockefeller to establish a trust. Whether you have millions to pass on or several hundred thousand, lifetime discretionary trusts protect assets. If you have questions about lifetime discretionary trusts, give your attorney or any member of our Family Wealth & Estate Planning team at CPM.