

WEBINAR

DEATH OF A SPOUSE OR PARENT- PITFALLS OF A TRUST ADMINISTRATION

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- 1) File Original Will- Notice to State.
- 2) Obtain Certification and Affidavit of Trust.
 - A. Authority under California Probate Code to act as Trustee
- 3) Statutory Notice to Beneficiaries/Heirs-
 - A. Gives notice of rights to obtain copy of Trust and all Amendments plus Will and Codicils;
 - B. Right to file a contest within 120 days of receipt of Notice;
 - *C. **Solution**: Avoid sending your private amendments and changes to your heirs and beneficiaries
 - Sign Restatement (Restate your Trust in its Entirety)

- 4) EIN- Obtain new Tax I.D. number for Trust.

- 5) Clear Title to real property (Places title in name of the Successor Trustee).

- 6) A-B Trust: Surviving Spouse as Trustee must divide the Trust estate based on the formula in the Trust-
 - A. Trust A: Survivor's Trust;
 1. Survivor's Separate Property;
 2. One-half (1/2) of the Community Property;

6) (Continued from previous page)

B. Trust B: Decedent's Trust;

1. Remainder of the property up to the amount of the federal estate tax (FET) exemption.

C. Add provisions to continue as Survivor's Trust for flexibility;

D. Document above as required by Trust by signing Action by Trustee

7) Protective Inheritance Trust (PIT) Provisions-

- A. Obtain written statements from beneficiaries → Free of legal proceedings.
- B. Discretionary distributions by Trustee.

8) Special Needs Trust (SNT)-

- A. Special requirements for Trustees;
- B. Must give notice to State of existence of SNT;

8) (Continued from previous page)

C. Provide copy of SNT to State on request;

D. Document all purchases of assets;

E. DO NOT GIVE FUNDS TO SNT BENEFICIARY.

9) Keep good records of all Deposits/Withdrawals/Expenses-

10) IRA/Retirement Fund/Annuities/Requirements

A. Inherited IRA Requirements

HOT LEGAL ISSUES REGARDING LAWSUITS AGAINST THE TRUSTEE – MAJOR PROBLEM AREAS:

A. Problem: Discretionary Authority by Trustee and Ascertainable Standards-

1) Health, education, support and maintenance

*Courts have held that “support” includes the beneficiary’s spouse and any minor/dependent children of the couple.

*2) Requires an Amendment to A-B Trusts-

a) To ensure authority of surviving spouse to obtain the Trust B principal funds:

- 1) Must surviving spouse exhaust Trust A as a condition?
- 2) Must Trustee consider all other resources of surviving spouse?

*b) Avoid conflicts with children/step-children:

- 1) Include Priority of Beneficiaries

*2) (Continued from previous page)

Because of Trustee's "Duty of Impartiality": Trustor must clearly state any priority among beneficiaries- surviving spouse or children/remainder beneficiaries if you are giving priority to the surviving spouse;

Example: "It is not my intention that the assets of any Trust created hereunder be conserved for the remainder beneficiaries. On the contrary, my primary purpose in creating this Trust is for my surviving spouse's support in reasonable comfort and the interests of the remainder beneficiaries are subordinate to the that purpose."

3) Life Estates for Surviving Spouses/other Beneficiaries (Residence)

- a) Provide who pays maintenance, insurance, taxes
- b) Re-marriage by surviving spouse considerations
- c) Nursing Home required of beneficiary
- d) Rental of residence- who gets proceeds

4) Sub-Trusts for Minors/Children/Grandchildren Education:

- a) Education provisions need to be detailed
 - 1) Consideration of other resources available to beneficiary?

Example: Parents' resources

4) (Continued from previous page)

b) Time Limitations

Example: No provisions after age 30

c) Grade point requirements

Example: 3 point average required on 4 point system of a “B” average.

d) Study Abroad

1) Limits

Example: 1 year

*B. Accounting Problem - **Solution:** Amend your Trust to provide that your Successor Trustee can satisfy accounting requirements with Summary Letter of Trustee Action (Summary of deposits, withdrawals, expenses);

*C. Trustee Fees Problem- **Solution:** Amend your Trust and state in detail how Trustee fees are to be paid –

- 1) Percentage of net assets; (When valued?)
- 2) Hourly and how much;
- 3) “Reasonable fees” is too questionable;

*D. Personal property- Objects of Specific Bequests

- 1) Photographs;
- 2) Jewelry;
- 3) Coin Collections;
- 4) Furniture;
- 5) Wall Paintings;
- 6) Guns;
- 7) Silverware;
- 8) Etc.

Solution: Utilize Specific Bequest Format and either

a) Designate beneficiaries for such personal items

OR

b) Provide a lottery type drawing if all children desire a particular item

OR

c) Select by Age

***E. Incentive Trust Provisions**

A. Positive or Negative Effects:

- 1) Use Trust language to Enhance the lives of beneficiaries
- 2) Money Talks- If a beneficiary (child, grandchild, godchild, niece, nephew, etc) has to achieve for an inheritance, Incentive Trust provisions will do the following:

E. (Continued from previous page)

- a) Promote his/her life toward achievement
- b) Build character and appreciation
- c) Cause respect for the inheritance
- d) Provide a substantial reason to avoid bad habits of
 - 1) Substance abuse
 - 2) Gambling
 - 3) **WAYLOW** (Wasting A Young Life On Waiting)

3) Problem of **IGNITE** (Ignoring Idle Trustee Endeavors) - like throwing gasoline on a fire

- a) Remove such child as Trustee and replace with a responsible Fiduciary
- b) Include Incentives to break the barriers of:
 - 1) Failure of Family commitment;
 - 2) Dependency on alcohol/drugs;
 - 3) Lack of education goals;
 - 4) Unemployment.

Courts are guided by a Trustor's intentions MAKE YOUR INTENTIONS KNOWN AND UNDERSTOOD

Letter of Wishes (Each client needs to prepare and email or mail to my office): A written communication from you (the Trustor) to your Successor Trustee designed to offer the Successor Trustee some guidance as to your intentions in his or her exercise of managing and distributing the Trust regarding the foregoing issues.

- A. Trust B provisions for Surviving Spouse- Who is to be given greater consideration- the Surviving Spouse or the remainder beneficiaries (children, grandchildren)?;
- B. Minimum Age Provisions for outright distribution for minors;
 - 1) Detail when and on what conditions such beneficiaries receive the funds.

Courts are guided by a Trustor's intentions MAKE YOUR INTENTIONS KNOWN AND UNDERSTOOD

- C. Sub-Trusts for children who need assistance with conserving an inheritance
 - 1) Limitations;
 - 2) Conditions (See Incentive Trust Provisions).

- D. Protective Inheritance Trust Provisions;
 - 1) If child is involved in legal proceedings at your death, his/her inheritance will be retained.

 - 2) Detail options for the Trustee to benefit such beneficiary with payments to providers during the legal proceedings.

Q: Will the Letter of Wishes become a part of the terms of the Trust? If it becomes part of the Trust, it becomes binding on the Trustee and enforceable by the beneficiaries.

Q: Can it be changed? Yes, until your death or incapacity.

***Attorney Opinion: I must see your Letter of Wishes to determine if it should become a part of your Trust.**