

## DO YOU NEED A TRUST?

By Joseph A. Bollhofer, Esq.

What do you do when you want to leave money or other property to someone, but you are concerned that he or she might not be capable of managing it? The answer is: create a trust. How about when you want to make sure your spouse will be taken care of, but also want to provide for your children or grandchildren after your spouse's death? A trust is the answer here too. Provide for someone who is receiving government benefits? Plan for your own long term health care? Reduce your capital gains or your taxable estate? You got it; a trust is often the best answer.

A trust is simply an arrangement where someone (a "trustee") manages property of any kind for the benefit of another (a "beneficiary"). There are many different types of trusts. They can be complex or rather simple. They can be in Wills or stand on their own. They can be revocable or irrevocable.

There are many reasons to create trusts, in addition to protecting beneficiaries from their own foolishness, spendthrift ways, creditors or estranged spouses. Trusts are often created for tax reasons, financial reasons, charitable reasons and to maintain control. Eligibility to receive or continue receiving Medicaid and other governmental benefits are also primary reasons to create a trust.

Part of the beauty of a trust is that you can set it up virtually however you want to, as long as it is legal. The specific desires of a trust creator, and the needs of the creator and proposed beneficiaries, must be taken into consideration.

Often, property put into a trust creates income, and that income is used for the benefit of certain persons during their lifetimes. After their deaths, the remainder (principal and unspent income) either is paid to the "remainder beneficiaries" or continues to be held in trust until they reach a certain age or some other event occurs, as stated in the trust.

The trustee's authority and discretion are sometimes carefully limited and sometimes not so. The creator of a trust can give a trustee authority to pay all or part of the property of a trust to beneficiaries equally or otherwise. Sometimes a trustee is not permitted to pay anything but income to a beneficiary. Sometimes a trustee has authority to end the trust before it would otherwise end.

The reason or reasons for creating a trust will determine the type of trust and the language to be included. A trust structure that works for one person may have adverse unforeseen consequences for another. For example, transferring property into a Medicaid asset protection trust might be a good idea for a person or married couple who are relatively healthy, but not for someone, single or married, who it appears will need care in a skilled nursing facility in the near future. Then again, such a trust might be just the right option for that person.

Persons in second marriages and unmarried persons in long term relationships have circumstances that call for many questions to be asked and scenarios to be explored.

The length of their relationship, their relative financial situations, whether they keep their assets separate, how they feel about their children and whether they have a prenuptial agreement are just some of the factors to be considered in determining how to proceed. A trust of some sort is usually wise, even if it is a simple trust contained in a Will.

The goals and circumstances of those considering trusts vary greatly. It is important when creating your plan to get good advice so that you know what you are doing is right for you, both in the short term and in the long term.

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***Editor's Note:***

*Joseph A. Bollhofer, Esq., is an attorney who practices law in the areas of elder law, Medicaid, estate and business planning and administration, and real estate. He is a member of the Elder Law, Real Property, and Surrogate's Court Committees of the Suffolk County Bar Association and of the Elder Law and Real Property Law Sections of the New York State Bar Association. He has been serving area residents since 1985 and is admitted to practice law in New York and New Jersey. His office is located at 291 Lake Ave., St. James, NY. (584-0100). For reprints of this article and others concerning Medicaid, Elder Law and Estate Planning, send a request to [info@bollhoferlaw.com](mailto:info@bollhoferlaw.com) or visit [www.bollhoferlaw.com](http://www.bollhoferlaw.com).*