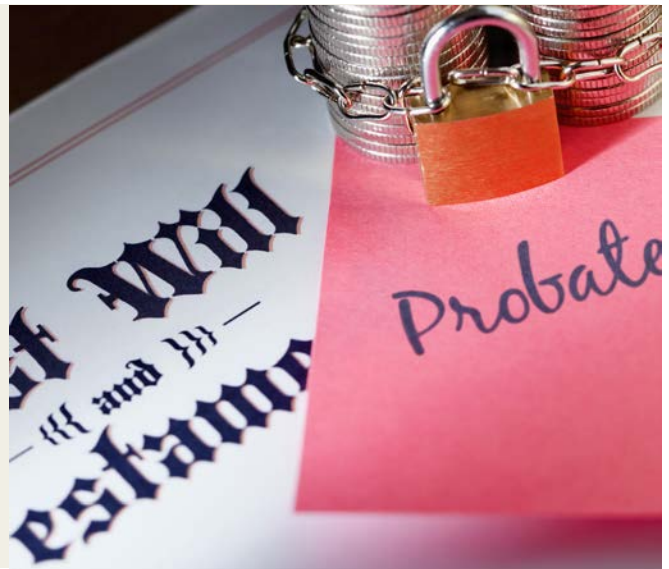


Consider trust planning to avoid probate while achieving your legacy goals

You've heard of a will and probably a trust. However, you may have associated trusts as something people use for estate planning only if there is a larger estate, or if there is a beneficiary with spendthrift concerns. While trusts are helpful for those situations, using trust planning as a primary estate planning tool also has many other uses, including the ability to avoid probate.



To better understand the benefits of trusts as a probate avoidance technique, it's important to understand the purpose of a will and the probate process. A will provides instructions for distributing your assets upon your death to the probate court. It also can contain other important instructions such as listing the guardian for any minor children or dependents.

Everyone should have a will, especially because wills are the only place to name a guardian for minor children. Wills do, however, involve probate courts. Probate is a public court process whereby the court oversees the administration of your estate, including how to distribute your assets.

Probate courts can be slow, costly and public. Because of this, many people try to use "probate avoidance" techniques to pass their wealth.

Some common techniques are transfer on death accounts and beneficiary designations on things like retirement accounts and insurance contracts. While these techniques may help you avoid probate, they provide little control over the assets upon your death.

Trusts can also be used to avoid the probate process and also provide control. There are

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generally two types of trusts, those created during your lifetime (usually called a “living”, “grantor” or “revocable” trust) and those created at your death, called a testamentary trust. A testamentary trust is one that is created by the terms of your will. Therefore, assets would have to pass through probate and then the trust would be created per your direction.

With living trusts, on the other hand, you can create and fund the trust today. You do so by first creating a trust and then changing the title of your assets from your name to the name of your trust. This change in title generally has no effect on you, your tax liabilities or your exposure to creditors. By changing title to your trust, when you pass away the terms of the trust control where the assets pass, not the probate process. Because of this probate avoidance, living trust planning is becoming a common estate planning tool many should consider as they establish their legacy goals.

Use Trusts to Control Your Legacy

Trusts do more than avoid probate, though. Primarily, trust planning can provide you with some control of your legacy. As long as your intentions are legal, and as long as an attorney can draft language to represent your intentions, you can do almost anything with trust planning. You can limit distributions or make them to your beneficiaries based on their attaining a certain age, their completion of some milestone like graduating college, or even allow the trust to make payments based on some proportion of earned income (e.g., the trust will match any W2 earnings). The possibilities are nearly as limitless as your imagination and desires.

While control is a driving force for many trusts, asset protection can also motivate the need for trust planning.

Moreover, trusts can go on for a long time. You can keep assets in trust for your beneficiaries for their entire lifetime. It’s even possible to have assets stay in trust for multiple generations. There are tax and legal limits and consequences to long term trust planning. Work with your estate planning attorney and tax professionals to see what may work for you if you desire this type of long term control.

While control is a driving force for many trusts, asset protection can also motivate the need for trust planning. You can leave assets to your beneficiaries in a trust that would be protected from those beneficiaries’ creditors. In other words, a divorcing spouse or someone suing for a car wreck would not be able to access your beneficiaries’ trust funds to satisfy their claims. That said, if the trust makes a distribution to your beneficiary, paying income out to them for example, the protection ends. Once the assets are received by your beneficiary they would then become subject to potential creditors. In today’s litigious society many feel this asset protection feature makes trusts an attractive legacy technique.

Lastly, trusts can provide incapacity protection as well. Trusts can be drafted to stipulate how you would like the trust assets managed on your behalf if you become unable to manage the assets yourself due to some sort of incapacity. Planning with a will

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cannot provide incapacity protection, as wills only go into effect upon death. A power of attorney may be able to address many of the issues associated with incapacity planning, but many institutions have issues with powers of attorney and whether the power of attorney document applies to the assets held by the institution.

Alternatively, when you have trust planning, assets are titled in the trust. It's clear to an institution that the trust document controls those assets. Furthermore, your trust can provide the appropriate steps for transition from you to your successor trustee (doctor's letter declaring incapacity, etc.). By using trust planning, it can be a relatively seamless transition from you as trustee to your successor trustee taking over trust responsibility in an incapacity situation.

Trust planning may not be for everyone. However, if you have any desire to control your legacy, to help protect assets from your beneficiaries' creditors, if you'd prefer to avoid probate or if you have incapacity concerns, you may want to consider it.

For more general details on these issues, talk with your Benjamin F. Edwards & Co. financial advisor. We have several informational pieces available to help you understand available strategies. Benjamin F. Edwards & Co. does not offer legal or tax guidance, so it is important to consult with your tax or legal advisor regarding your specific situation.

We're happy to work with you and your estate planning attorney and tax professionals to help implement a plan that's appropriate for you. ■

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