

## **WARNING! The 7 Most Common Problems With Trusts (and Trusts Under Wills) That Can Undo Your Planning And Cost Your Heirs Dearly**

There are many types of trusts... but not all are created equal. For today's purposes we'll talk about two kinds of trusts. Those created during your lifetime (which can be revocable or irrevocable), and those created for a spouse, children or others under your will (which are called "testamentary trusts").

We draft quite a few trusts each week and we review quite a few more. And while we're doing this, we've noticed that there are a number of very important clauses that are often missing from living trusts AND from trusts created under wills OR are not well designed for the particular client. They were missing, "mass produced" OR the client's circumstances or the law have changed with the passage of time. In any case, we need the trust to do more and better things.

And, in our experience, a document that doesn't address these issues (customized to your specific needs) can pose real but avoidable problems. In fact, the failure to have these provisions in a trust can really undo much of what you've been planning.

Now it's true that even after you're gone, many problems can be solved by a trip to the probate court. But, that costs time and money and there's no guarantee that the problem will be resolved quickly OR in the way you'd like. **So have your will or trust reviewed to make sure that it's not missing these essential terms:**

**1. TAX ISSUES RELATED TO IRAs and 401(k)s** - Most trusts we see lack the appropriate "conduit trust" or "accumulation trust" language. Without these provisions, an IRA account payable to a trust will be taxed in full and immediately rather than over the lifetime of the beneficiary. That's a bad result that can often be avoided.

**2. MISSING PROVISIONS FOR BENEFICIARY SPECIAL NEEDS** - Have a beneficiary with special needs? That requires very specific language and many specific provisions in your will or trust. These are missing in many mass produced trusts. But, if you have a child, grandchild or heir who is receiving benefits or disability, then these provisions are essential. Don't leave them out, get your trust or will updated.

**3. MISSING OR INADEQUATE PROVISIONS FOR YOUR INCAPACITY** - Does your living trust have clarity about who is to serve as trustee if you're incapacitated? Most don't. So you need to make sure that it's clear who takes care of YOU. And, you need to specify what they can do about gifting, investments and more. And, these provisions should also coordinate with provisions in a well drafted power of attorney so that there is no conflict between the people taking care of you and your assets OUTSIDE of the trust and those within the trust.

**4. INSUFFICIENTLY BROAD TRUSTEE POWERS** - Both during your lifetime (if you're incapacitated) and after your death (if you have trusts for a spouse or other heirs), you should give trustees all of the powers that they might need to handle your affairs. Without them, they might need to go to the probate court to try to get a

transaction approved. Have real estate? Give them to power to retain, sell or refinance it. Have a business? Give them the powers to keep it, run it, borrow money for it etc.

**5. LACK OF CLEAR SUCCESSOR TRUSTEE RULES** - I know... picking one trustee is hard enough. Picking two or three sounds impossible. Who do you trust to do this job? Well, if you don't pick, somebody else will do it for you. So, in a perfect world you'd have two or three people (at various levels of youthfulness) who you could name in order. But, whether or not you have multiple trustees, think about provisions that let the last trustee appoint a successor or to allow a trust protector so you don't run out of trustees. That brings us to the next problem and solution.

**6. FAILURE TO HAVE A PROBLEM SOLVER OR MEDIATOR** - Many trusts lack a TRUST PROTECTOR provision. Trust protectors (unlike trustees) don't actually manage the trust. Instead, they can do things like remove and replace trustees, fill a gap if there is no substitute, mediate problems between trustees and heirs, and can move the location of a trust or authorize larger transactions so that there is a "check and balance." In short, be sure to talk to us about a trust protector if you don't have one. These provisions are very important where you have created trusts to protect a spouse from remarriage and or children or heirs from a marriage and divorce. Which brings us to...

**7. TRUSTS THAT END TOO SOON TO PROTECT FROM DIVORCE** - Many clients tell us that they want the trusts for children and grandchildren to end at a certain age (often 25 or 30). But what if that's too soon? What if the heir gets married and then divorced after the asset has been distributed to your son, daughter, or grandchild? At that point they can be taken away in a divorce. That's why, when you're leaving each heir more than a few hundred thousand dollars, you should at least consider a BCT trust that can protect your heirs' inheritance from lawsuits and divorce. These trusts can be customized to allow adult children to largely manage their own assets AND still get the benefits of divorce and lawsuit protection.

Of course, there are many more problems that we spot and many more provisions that are required to deal with changes in the law. But these are a few of the essentials.

**WHAT SHOULD YOU DO? If you haven't updated your will or trust since 2012, you have two opportunities...**

1) Whether you have a living trust, or trusts under your will, and whether those trusts are to protect a spouse or other heirs, if it's been more than four years since your last check up, you can have a complimentary client will or trust review. **Just call Lisa or Tammy at 610-933-8069 to schedule it.**

2) Want to get your affairs way more organized and save your heirs even more? Consider going from a will to a living trust and pour over will. To see if that's for you call Lisa or Tammy for a phone consult with one of the lawyers. **If we think you're a good candidate to save money for your heirs, we can schedule an appointment to take you from the will to a trust.**

If you've had a will or trust review within the last three years (since the big changes in the law) you're probably already OK. But we love staying in touch so if you've had an inheritance, bought more insurance, had a child or grandchild...a remarriage, marriage or divorce...and you're wondering if you should change anything...please feel free to call. That's why we're here.

Enjoy the fall.  
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