Smart Ways to Take Control of a Trust

Many successful families use trusts to minimize taxes, transfer wealth and protect assets from creditors and others. You may have already set up a trust, or you may hold an inheritance you received in a trust that was created decades ago.

Trouble is, too many families relinquish more control over their trusts than they need to, basically hoping that the trustees they have put in charge will serve them well. They take a passive role in their trusts rather than an active or proactive role.

The result: Families can potentially put their goals at risk. Yes, trustees have a legal obligation to serve you and your family. But they also have a duty to serve their owners and shareholders! These corporate trustees have a real financial interest in retaining control over your trust. They also try to avoid controversy: If a dispute among beneficiaries breaks out, they often become passive and look to a court to instruct them.

Clearly, relying on a third party to think and act solely in your best interests at all times is rarely the smart move. The good news: You don't have to put your faith entirely in someone else when it comes to your trust. Over the years, trust law has evolved significantly.

Today, there are more options than ever that allow for greater family control—options that didn't exist or that weren't commonly used back when many current trusts were established. By thinking and acting more like an asset owner than a trust grantor or trust beneficiary, you can potentially set yourself up for better results down the road.

There are three ways to ensure you take the reins when it comes to a trust.

The upshot

Don't be passive when it comes to your role as a trust grantor or trust beneficiary. Think like an owner and use the power available to you. That way, you'll maximize your trust's effectiveness and ensure that your trust—and the people involved in it—is behaving as it should based on your needs, goals and wishes.

Don't assume a trustee overseeing your trust has only your best interests in mind. Get set up to have control over the trust as much as possible.

Trustees will be attuned to your wishes and needs if they understand they can be removed for any reason.

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THREE WAYS TO CONTROL YOUR TRUST

Option 1: Retain the power to remove a trustee

The person or entity serving as your trustee will have a large impact on how the trust assets perform and how they are distributed—so it's crucial to serve as a check and balance to a trustee. A simple trust provision providing that a beneficiary (perhaps a surviving spouse) has the power to remove the trustee for any reason can act as an important control over your trust. This power incentivizes the trustee to manage the assets well and make distributions appropriately. No matter what other interests the trustee may have or what his or her preferences may be for managing the trust, if you have the power to remove the trustee, the trustee needs to listen.

Option 2: Be a non-independent trustee

If you're a beneficiary of an "absolute discretion" trust and appoint yourself as trustee with distribution power, the trust's assets will be taxed in your estate and creditor protection benefits will be undone. But making distributions is just one of the trustee's functions. There's also the vital matter of how the trust's assets are managed to preserve and grow family wealth—and in this area, you can exert some power and control.

Specifically, you and your spouse and children (or any other beneficiary) can serve alongside another independent trustee and have all powers of a trustee except for the power to make distributions. Combining the ability to serve as a "family" or "non-independent" trustee with the ability to remove the independent trustee who has distribution powers gives you control over and flexibility in the management and performance of your trust.

Option 3: Direct your trustee

There are two significant benefits that an institutional trustee can provide that cannot be obtained with individual trustees (such as your old college roommate).

- Institutional trustees have a great deal of experience and capability in managing trusts and in keeping detailed, accurate records of a trust's property and transactions. This makes accounting and tax return preparation easier, as well as institutionalizes knowledge in a way that is not possible with an individual trustee.

- The grantor, with an institutional trustee, can establish the trust in a state of his or her choosing—even if the grantor, beneficiaries and trust assets otherwise have no contact with the preferred state. Just like a corporation or a partnership (or similar legal entity), a trust must be formed under the laws of a single state. While it is possible to establish a trust in any state, some are better than others.

What differentiates a directed trustee from a traditional trustee is right in the name—the trustee is "directed." Instead of making distribution or investment decisions, the trustee is directed by appointed advisors to take such actions.

Having a directed trustee can provide great benefits at a modest cost. By having a directed trustee, you can establish a trust or possibly move an existing trust to a jurisdiction that provides additional benefits to you, your family and your trust. You, or another person, could have the power to remove the directed trustee at some future point if the arrangement is no longer beneficial.