HLF

HAYES LAW FIRM

FAMILY WEALTH TRUST

Calculating the Benefits

AMERICAN ACADEMY of Estate Planning Attorneys

FAMILY WEALTH TRUST

Chances are, you've already heard a lot about the attributes of Living Trusts and how important it is to avoid probate and legal quagmires, even lowering estate and/or income taxes and protecting privacy. Our firm has found that looking after these financial assets is only a part of planning for passing on your legacy. Typically speaking, non-financial assets are more valued and often omitted when passing an estate to future generations. Focusing on complete "legacy planning" causes something more than a simple or bare bones Living Trust to be needed by most families. We put this special report together to further delve into what a Family Wealth Trust can do for you and your family.

WHY CHOOSE A FAMILY WEALTH TRUST?

Providing for and protecting your heirs, along with passing on your values and your wisdom… are the most common reasons for creating a Family Wealth Trust. In the case of minors, a trust allows a parent to provide for a child without giving the child control over the property. The parent can also mandate how, or even *when*, the property is to be distributed and for what purposes.

A trust is also a useful tool for taking care of heirs who have mental impairments or lack investment experience. The trust document can establish that all money is controlled by a trustee with sound investment experience and judgment. Likewise, a trust preserves the integrity of funds when the recipient has a history of extravagance. It can protect the property from an heir's spendthrift nature as well as from his or her creditors.

This is also true of persons who may feel pressure from friends, con artists, financial advisors and others who want a slice of the pie. A Family Wealth Trust can make it extremely difficult for a recipient to direct property to one of these uses.

A "spendthrift" provision in a Family Wealth Trust is often used to further preserve the integrity of assets. It prohibits the heir from transferring his or her interest and also bars creditors from reaching into the trust. Family Wealth Trusts are relatively easy to update, modify or revoke in most cases. A will, however, is difficult to change, and establishing one requires many formalities.

SHORT-CIRCUITING THE ORDEAL OF PROBATE

One popular benefit of a Family Wealth Trust is the avoidance of probate. Because property in the trust is not considered part of an estate, it does not have to undergo this sometimes lengthy process. The property is instead administered and distributed by the trustee, according to the specific terms of the trust.

Probate expenses can be significant. Costs vary according to the size of the estate and what it includes. It also varies by state. Some have very expensive and onerous procedures, while others offer a streamlined version of probate.

Avoiding probate means not only avoiding hassle and expense, but also saving time. Probate can extend the amount of time before an heir receives an inheritance by months, years – even longer if the will is contested. Not only can this create hardship among the heirs, but the property in the estate may also suffer. Many assets must be carefully managed to preserve and enhance their value. Losses may easily occur during this interim period.

There is an emotional price to pay, too. Survivors may be continually reminded of the loss of a loved one as the process drags on.

Probate can also lead to loss of privacy. Wills and probate are public matters, whereas a Family Wealth Trust keeps the estate private. Typical probate documents list all assets, appraised value and names of new owners. This information becomes available to marketers, media, creditors and con artists.

If the estate includes real property in more than one state, the process becomes even more complex. An ancillary administration is required to probate out-of-state real estate. As you can imagine, “double probate” is even more time-consuming, expensive and emotionally taxing than a single probate process.

Probate also allows the original owner’s creditors a shot at the property. Although there is still some controversy about the extent of its creditor-shielding benefits, a Family Wealth Trust generally makes it much more difficult for an estate to be consumed by creditor claims.

MAINTAINING CONTROL

Family Wealth Trusts are harder to contest than wills. Part of the reason is that trusts usually involve ongoing contacts with bank officials, trustees and others who can later provide solid evidence of the owner’s intentions and mental state. A Family Wealth Trust that has been in place a long period of time is less likely to be challenged as having been subjected to undue influence or fraud. And because it is a very private document, the terms of the trust might not even be revealed to family members, allowing less opportunity for challenges to its provisions.

A Family Wealth Trust also avoids the painful ordeal of “living probate.” That’s what happens when a person is no longer competent to manage property, whether because of illness or other causes. Without a Family Wealth Trust, a judge must examine whether you are in fact incompetent, and all of the embarrassing details of your incompetence will be dragged out in court. The judge will appoint a guardian – perhaps someone you would not want to manage your

affairs. Guardians act under court supervision and often must submit detailed reports, meaning that the process can become quite expensive.

With a Family Wealth Trust, your designated trustee takes over management of trust property and must manage it according to your explicit instructions in the trust document. The terms typically set standards for determining whether you are incompetent or not. For example, you may specify that your doctor must declare you can no longer manage your financial and business affairs.

MANAGING ASSETS, EASING TAX BURDENS

Family Wealth Trusts also provide a way for beneficiaries to receive the guidance of professional asset managers. A bank may be named as a Successor Trustee or Co-Trustee, allowing an experienced trust department to manage the assets.

Of course, eliminating or reducing taxes is one of the primary goals of estate planning. Trusts allow for a highly flexible approach to taxes. Income taxes can be slashed by transferring income-producing assets to a recipient in a lower tax bracket. Through the use of trusts, the state and federal government's estate tax exclusions can be doubled, without the filing of an estate tax return unless the decedent had more than the respective state or federal applicable exclusion. And some trusts are a prudent destination for annual gifts that fall within the government's tax-free gift allowance.

ARE THERE DISADVANTAGES TO A FAMILY WEALTH TRUST?

A trust may not be needed by all individuals and families. Depending on the terms, trusts can result in some loss of control.

Also, it is important to transfer all titled property into the trust on a regular basis to keep it current. Property outside the trust is part of the individual's estate, and will trigger the probate process you hoped to avoid by creating the Family Wealth Trust. Formal transfers of property into the trust are required even when you and the trustee are the same individual.

A Family Wealth Trust costs more than a will to create, although it saves large amounts later through its probate-avoidance feature. Deeds will be necessary for transferring real property into the trust, and that will also involve some additional expense. Also, attention must be paid to keeping the trust current. That means making sure all property is in the trust, and adjusting it for changed circumstances; for example, after the birth of a child or the dissolution of a marriage.

If these seem like minor disadvantages, you're right. For most people, the attention and initial expense involved in a Family Wealth Trust is worth the significant benefits for family and other

heirs: the avoidance of probate, the tax advantages, and the preservation of privacy and independence.

For current estate tax, gift tax, & income tax figures, please visit our website at _____ or contact our office at (###)###-####.

ABOUT THE ACADEMY

This report reflects the opinion of the American Academy of Estate Planning Attorneys. It is based on our understanding of national trends and procedures, and is intended only as a simple overview of the basic estate planning issues. We recommend you do not base your own estate planning on the contents of this Academy Report alone. Review your estate planning goals with a qualified estate planning attorney.

The Academy is a national organization dedicated to promoting excellence in estate planning by providing its exclusive Membership of attorneys with up-to-date research on estate and tax planning, educational materials, and other important resources to empower them to provide superior estate planning services.

The Academy expects Members to have at least 36 hours of legal education each year specifically in estate, tax, probate and/or elder law subjects. To ensure this goal is met, the Academy provides over 40 hours of continuing legal education each year. The Academy has also been recognized as a consumer legal source by *Money Magazine, Consumer Reports Money Adviser* and Suze Orman in her book, *9 Steps to Financial Freedom*.