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*"for your peace of mind"*SM
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Asset Protection Planning With Personal Asset Trusts™
How to "Bulletproof" Your Children's Inheritance

In the past, a lot of people (even us) believed that once assets had by-passed Probate and Estate Taxes, then it was okay if the Trust distributed assets directly to our beneficiaries. However, after handling estates of hundreds of clients who have passed on, we have found that what happens after beneficiaries receive their inheritance, is just as important as what happened before they received it. In other words, beneficiaries often run into a rocky marriage, greedy spouse, bogus lawsuit, creditors, personal injury claim, a government that is trying to reduce benefits and even estate taxes. If your beneficiaries have these problems or could possibly have them in the future, a distribution of trust assets directly to them, might be dead wrong!

In the event a child does not survive you, a large sum could pass to a grandchild. The old method had the trust distribute to grandchildren at age 21 or 25, without regard to pursuit of education or career. With the huge increase in real estate values and values of estates in general, do you really want $100,000, $200,000, or more in the hands of someone that young? Today, we design distributions in stages going out as far as age 40 or 50. We also build in "education incentives." If they maintain a "B" average in legitimate college courses (not basket weaving), their education will be paid for. If they graduate early, they might receive the first stage of the distribution at an earlier age.

What if a beneficiary is elderly, ill, has drug or alcohol problems? Clearly, they should not be managing assets themselves. For them, the Trustee can hold assets in Trust during his or her life and have a broad standard to distribute assets to the person as necessary for his or her reasonable support and health.

Then there is the beneficiary who has problems with money. You know...he earns five dollars and spends ten. For him, we use a spendthrift Trust. If he wants money from the Trust, then he must show the Trustee that he needs it. To the greatest extent possible, the Trustee will pay the expense or the bill for him and will not put money directly in his hands. The Trustee will pay the mortgage or doctor's bill and makes sure that your beneficiary is provided for.

What if you have created a trust which provides that the money is not distributed to a child until age 35 or 40? After you're gone, this child does well in business and runs his own very successful company. What about the child who had an alcohol problem but went through rehab and has been sober for years? Do you still need these restrictions in place for these children? What about your child who has a stroke at age 75 and is required to live in a costly nursing home? We now build in the power for a trust to adapt and provide the Trustee with flexibility...to allow distribution at an earlier age if it would be prudent or to allow direct distributions to the reformed alcoholic if he can prove that he has remained sober. The beneficiary that couldn't manage his money, for whom we created a restrictive spendthrift Trust may have changed his bad habits. Perhaps he or she married, settled down, matured, and became more responsible with money. The child who is living in a nursing home can have the "Trust Protector" (defined later) convert his PAT Trust into a "supplemental needs trust" which will allow him to be eligible for government benefit programs like Medicaid, without requiring the use of the PAT trust monies. Those funds can now be used by the Trustee for your child's needs and comforts that Medicaid will not pay for and the remaining funds will pass down to the grandchildren rather than be exhausted by nursing home expenses or reimbursing the state. Will your current Trust adapt to any of these situations after you are gone?

There are always those clients who say they have the "perfect beneficiary." She is not too young, is good with money and has a good marriage. He has no disabilities and receives no government benefits. It sounds fairly simple, but there are always possible problems that may occur in the future. The most common problem we have seen after Mom and Dad are gone, is divorce. Once your child receives money directly, if they are married, it usually ends up in the bank account, investment account or new house owned jointly with their spouse. Once the funds are co-mingled, they can be divided in a divorce action. We have also seen the receipt of an inheritance as a driving force for the in-law to initiate a divorce, if there have already been some marital problems. Money creates greed. Even if your child remains happily married, after his death where will the inherited money go...right to his or her spouse. Wouldn't you rather see it stay in your blood-line and pass to your surviving children or grandchildren?

Another problem that has arisen is lawsuits, both legitimate and bogus. There is the real possibility that your beneficiary could cause an auto accident with serious injuries. Often, standard liability insurance policies are not adequate to pay the damages. Personal assets, including inheritances are being used to pay for injury claims. Our children who are professionals, may be subject to lawsuits for medical or legal malpractice. Also, in our society everyone is suing everyone else (you've probably heard I'm gonna sue you"). Many of these claims are phony and have little or no merit. However, the cost of attorney's fees to defend these claims, the aggravation and sleepless nights because of the legal proceedings and just the possibility of losing at trial, is causing many folks to settle these claims, just to make them go away. Some of these settlements are substantial.

Lastly, we often see beneficiaries do very well financially, (because they are successful doctors, lawyers, dentists, real estate developers, business owners, executives, etc.). Now they invest the inheritance you gave them, over their remaining lives,for 20,30 or 40 years. Their own substantial assets plus the money you left them, grows into a HUGE estate. When they pass it to their surviving siblings or children (your grandchildren), there is a second estate tax! That estate tax can be larger than yours. As you can see, outright, direct distributions are no longer the best type of estate plan.

To resolve these problems, we have created an "asset protection trust"that we call the PERSONAL ASSET TRUST™ (PAT). You've heard about wealthy people who have placed assets in trust so that they can't be reached by lawsuits. We have taken that asset protection technology and built it into our Living Trusts.

This is how it works. If your trust had 3 beneficiaries, John , Bill, and Mary, instead of John receiving his inheritance directly in his name, now he gets a special continuing trust (so do Bill and Mary). John can even be the Trustee of his continuing PAT trust, control the trust, have liberal use of the money, and (if you allow), even decide where it will go after his death. But here's the secret. Does John own the money? No, the trust does. We build walls of protection into this trust. These walls protect against divorce, creditors, lawsuits, loss of government benefits, and the second estate tax. There is however, a possible problem. If John runs his trust alone, someone could get a court order to break open the trust, requiring him to release the money. To avoid that possibility, we provide him with a 'toggle switch'that he can "turn on"if he needs to, allowing him to appoint someone of his choice as a "Trust Protector". The Trust Protector can be anyone except a sibling, spouse, child or grandchild. Commonly, nephews, nieces, aunts, uncles, cousins, accountants, close friends, financial planners, or lawyers are appointed as the Trust Protector. Even with a court order against John, the Trust Protector will not sign-off to release the money and can "lock down"the trust. This is done merely by postponing the distributions of cash and income from the Trust. It can be re-opened when the threat is over and then the Trust Protector must resign. Then your child or beneficiary resumes control over his or her own trust again.

What about the ability to adapt the trust to a change in circumstances after you are gone? We cannot give John the power to amend the trust you have created. If we did that, the creditor protection and the estate tax protection would be voided. Instead, he would again flip on the "toggle switch"to the "on"position and appoint the Trust Protector to amend the trust to adapt it for the beneficiary who no longer needs the restrictive trust, or has become sober, to make a trust more restrictive for the "spendthrift"beneficiary or to simply comply with a change in the tax, estate planning or asset protection laws that could occur in the future.

Could any one of these scenarios affect your beneficiaries? It is not only possible, it is likely. If you would like to find out more about the PERSONAL ASSET TRUST™ (PAT) and how it can protect your beneficiaries, call us at (408) 985-9918 and ask us about our next free PAT seminar.

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