

Publications

Non-Tax Reasons For Using Trusts

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Trusts, Estates and Wealth Transfer

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The following article was featured in the March 2015 edition of *Legacy*, the Vorys newsletter focused on wealth planning.

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For decades, estate planners have been using trusts to help their clients save estate taxes. However, there are also numerous non-tax reasons for utilizing trusts in your estate plan. Below are several examples of non-tax reasons for using trusts.

- **Young Beneficiaries.** After a beneficiary reaches the age of majority (18 in many states), he or she would typically have unfettered access to an outright inheritance in the absence of a trust that provides otherwise. Many parents and grandparents feel that their beneficiaries may not have the experience or maturity to manage large sums of money at such a young age. Thus, these parents and grandparents often structure a beneficiary's inheritance through a trust that specifies the age(s) of distribution they determine appropriate.
- **Beneficiaries with Special Needs.** A beneficiary with special needs may never be in a position to effectively manage his or her property. Thus, trusts are often created to manage assets for the benefit of a person with special needs for the duration of the beneficiary's life. Additionally, a gift or inheritance received outright by a beneficiary with special needs may disqualify the beneficiary from receiving certain need-based public benefits. A properly-drafted trust may allow a beneficiary with special needs to continue to receive such public assistance.
- **Blended Families.** Trusts are commonly used in blended families. With a trust, a spouse is able to provide for his or her surviving spouse, while specifying that any remaining amounts held in the trust at the death of the surviving spouse pass for the benefit of the children of the spouse who created the trust. If a spouse were to leave his or her estate outright to the surviving spouse, then the surviving spouse would be free to divert all of those assets away from the children of the first spouse to die.

- **Property Settlement in a Divorce.** Trusts may be helpful in segregating family wealth so that it is protected from a beneficiary's ex-spouse in the event of a divorce. Assets received by gift or inheritance are typically not considered "marital property." However, if assets received outright through gift or inheritance are commingled with marital property, it is often more difficult for the person who received the gift or inheritance to prove that such assets should be treated as separate property. Such a lack of proof may increase the risk of a court equitably dividing assets that are inherited outright among both spouses in a divorce proceeding.
- **Asset Protection.** Properly-drafted trusts can protect a beneficiary's interest from the claims of creditors. If a beneficiary has known creditor issues or if a beneficiary may have creditor issues in the future for reasons such as the beneficiary being in a high-risk occupation (e.g., a doctor), then arranging the beneficiary's inheritance through a properly-drafted trust reduces the chances of a beneficiary's creditors reaching the inherited assets.
- **Control of Special Assets.** Trusts are useful in facilitating ownership and control of special assets. Such assets include closely-held business interests and vacation homes. For example, a trust may provide an orderly structure for the use and enjoyment of vacation homes by multiple beneficiaries.

Tax Update

- Based on new legislation taking effect in 2015, it is now possible for a person with a home in another state to spend approximately seven months (up from approximately six months) in Ohio without being subject to Ohio state income tax. There are other legal rules and reporting requirements that must be followed in order to take advantage of this law. Please contact your Vorys attorney for a more detailed discussion of these legal requirements.
- For 2015, the exemption equivalent for the federal estate, gift, and generation-skipping transfer taxes has increased from \$5,340,000 to \$5,430,000. This results in additional wealth transfer opportunities for high net worth individuals.
- For 2015, the gift tax annual exclusion (the aggregate amount that an individual can gift to any one person in a calendar year without any gift tax consequences) remains at \$14,000.

If you would like to learn more about the non-tax benefits that a trust can provide, the tax matters discussed above, or any other tax or estate planning matter, please contact your Vorys attorney.