



A trust representative office of National Advisors Trust Company, FSB

Monthly Update for Administration of Trusts from a Trust Administrator's Perspective.

It is our hope that our Monthly Update will be helpful to you and your clients to better understand the administration of trusts from a Trustee's viewpoint.

December, 2017

BLENDING FAMILIES ("YOU'RE NOT MY KID!")

Last month's newsletter discussed issues that frequently arise between a surviving spouse's right to income and the residual rights of the decedent's children from a prior marriage.

This month's newsletter discusses concerns that arise when both the husband and wife have children prior to their current marriage.

ADDITIONAL, BUT TYPICAL ESTATE PLANNING ERRORS

From our Trustee's perspective, it is common to see trusts of a husband and wife, (both of whom had children from prior marriages, but who do not have children of the current marriage), to use the same trust agreement for both the husband and wife.

Many times there is a tendency for a husband and wife to simplify their estate planning by use of one "family trust", which is one trust agreement for both the husband and wife, and which typically distributes the trust assets to both of their respective children upon the second death of the husband and wife.

THE PROBLEMS

Unfortunately, when the trust remains revocable or amendable after the first death by the surviving spouse, frequently the surviving spouse's "fondness" of the deceased spouse's children can dwindle. Over time, the surviving spouse's relationship with the children of the deceased spouse can decrease to such an extent that the surviving spouse amends the trust to effectively disinherit the children from the deceased spouse's prior marriage.

Even if the trust is not amendable after the first death, having the surviving spouse serve as the sole Trustee can also lead to problems. In those instances when the trust prohibits amendments to the trust agreement after the first death, surviving spouses can simply remove the trust assets from the trust and the surviving spouse will create his or her own trust and fund the new trust with all of the assets removed from the original family trust, all to the exclusion of the children of the deceased spouse.

SOLUTIONS

From a Trustee's perspective, care should be taken to determine whether or not the trust should be amendable or revocable after the first death.

Serious consideration should also be given regarding whether or not to keep a surviving spouse as the sole Trustee of the trust, which would enable the surviving spouse to circumvent the terms of the trust agreement by removing the assets from the trust.

The trust agreement could provide that upon the first death or incapacity, that a corporate Trustee serve as the sole Trustee, or as a Co-Trustee with the surviving spouse, of the trust. By having an independent, neutral Trustee or Co-Trustee, all parties would be assured that the original terms of the family trust made by the husband and wife will be followed and not circumvented by a surviving spouse.

Having an independent, corporate Trustee serve as the Trustee or Co-Trustee of the family trust will provide comfort to both the husband and wife and to their respective

children with the knowledge that no matter who may become deceased first, that the original intent and agreement of the parties will remain in place.

RECOMMENDATION

We recommend that you review the terms of your trust regarding how, when and under what circumstances the trust assets are to be distributed to your beneficiaries. While reviewing your trust, consider who you have appointed to be your Successor Trustee and whether or not the appointment of that person(s) is the best choice you can make for you and your family. As a courtesy to those with trusts, and while we do not offer legal advice, at no cost or obligation to you, we would be happy to review your trust with you to give you a trustee's perspective of how your trust would be administered upon your death.

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WealthTrust Oklahoma is the Oklahoma Trust representative office of National Advisors Trust Company, FSB, which currently has more than \$10 billion under administration. We hold a federal charter and are independent.

WealthTrust Oklahoma

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