



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.

November, 2017

BLENDED FAMILIES ("YOU'RE MARRYING WHO?")

In this day and age, there are more "blended families" than ever before. The focus of this month's newsletter is with respect to a decedent who has a surviving spouse, but who also has children from a prior marriage.

TYPICAL ESTATE PLANNING ERRORS

From our Trustee's perspective, it is common to see trusts of a decedent who provided in his or her trust something to the following effect: "Pay all income earned to my spouse for the remainder of his/her lifetime, then upon my spouse's death, distribute all of the assets to my children of my prior marriage".

THE PROBLEM

Unfortunately, it is very common that a surviving spouse and the children from a former marriage do not always see "eye-to-eye" on the management or investment of the decedent's trust assets. Because the surviving spouse knows that he/she will only get income for lifetime, the surviving spouse wants the trustee to invest all of the assets in income-producing investments, without regard to growth of those same investments.

On the other hand, the children of the decedent, (and who are not children of the surviving spouse), want the investments to grow in value, with minimal income. Experience has taught that these two polar opposite positions regarding investments are particularly true when the relationship between the surviving spouse and the children of the decedent was at best only cordial prior to the decedent's death.

ONE SOLUTION

While every family's circumstances are unique, one possible solution is

converting the decedent's trust to a "Unitrust".

A Unitrust operates in the following manner: The value of the income-producing assets that the Trustee manages is valued. All parties then agree to a fixed amount, usually a percentage, that the surviving spouse should be paid on an annualized basis. The parties can also take into consideration increases for cost of living expenses, etc.

The Trustee then distributes to the surviving spouse that agreed amount throughout the calendar year. If the actual income realized from the investments is less than the amount to be paid to the surviving spouse, then the Trustee pays the deficit out of principal. If the income earned throughout the year exceeds the amount paid to the spouse, then that excess becomes part of the principal and is retained in trust.

REFORMATION OF TRUST AGREEMENT BY COURT ORDER

Because the trust agreement originally required the Trustee to pay all income, and no principal, to the surviving spouse, and with the parties' agreement to pay a fixed amount to the surviving spouse, which can result in either the Trustee paying some principal to the surviving spouse, and can also result in some income being retained in trust and added to the principal, the original terms of the trust are not being followed.

To protect all parties, an agreed proceeding should be filed with the District Court to obtain the Judge's approval and Order reforming and modifying the terms of the trust as originally written to conform to the spouse and children's current agreements.

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.

"BLENDED KIDS"

Next month's newsletter will discuss when there are surviving children from prior marriages for both the husband and wife.

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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.