



Welcome to *Trust Connection*, our monthly newsletter highlighting Trust news and information. Each month we will feature timely articles of interest.

## About Us

At Halliday Private Trust, it is our mission to assist our clients in the process of providing solutions, specifically through a wide range of financial advice.

Since 1982, we have utilized a full spectrum of financial services to help our clients navigate every major hurdle in their financial lives. Because we are an independent financial services firm, we utilize an open architecture approach to locating the most suitable investment options for our clients.

Our role is to help clients make smart decisions about their money. We understand that each client has unique needs and requires personalized solutions based on their goals, objectives and concerns.

## Negate Probate: Settling an Estate Using a Trust

Probate is a hassle in many states. Trusts provide an alternative, more private manner in which to distribute the assets of a decedent. Here is a chronological walk through of the estate settlement process and the critical elements of state law and document language that need to be addressed. Estates are controlled by state law, yet the fundamental responsibilities are universal.

Probate is not necessarily a bad thing and may even be sought after for some people, in certain states, with respect to some assets. But in general, avoiding probate ensures more privacy, costs less and is faster compared to estate settlement through probate.

To be clear, this is not a choice at settlement; it is a choice in planning. Using a trust as opposed to a will as a primary dispositive instrument is not just a matter of writing the document; it is an issue of how assets are titled at the time of death. Generally, wills handle assets in individual name and trusts handle assets titled in the name of a trust. There are a number of other forms of ownership, such as joint tenancy, or assets on which a beneficiary can be named that also pass probate free, passing neither through the will nor trust. The titling of assets must be properly coordinated with the plan.

Assuming the trust is the vehicle of choice and it was drafted by an experienced estate planning attorney, and the trust was properly funded by titling the desired assets in the trust, here's what happens at death. Trusts are a form of private settlement, as opposed to wills and the probate process, which is a form of public settlement, so the first distinction is the lack of a court hearing to prove the will to be valid. A trust should be created and funded during life so that it is already valid and operating, which enables the settlement of the estate to begin right away and without formalities required by probate laws, such as contacting all of the people who would receive a share if there was no will. These steps in probate can slow down the process and cause unnecessary family friction when there are heirs who are not beneficiaries. In a trust only the parties to the trust are notified and there is no public hearing. The trustee, or successor trustee when the trustee is the one who passed away (typical in a revocable trust that becomes irrevocable at death), must consider the acceptance of the role. Being named does not make you the trustee; it effectively nominates you as the trustee. The trustee should quickly assess the documents, assets, and people involved and determine whether he or she can properly fulfill the trustee function.

Once accepted, the trustee can begin right away explaining the document to the family and helping them understand the steps and timing of the estate settlement. There is no set timeframe, but assuming the trust terminates at death and distributes all assets, as in the case of a will, one can expect it will take at least six months and, depending on size and complexity, a year or two is not unusual. The team of professionals involved should be defined and roles clarified so there are no misunderstandings. There can be complex legal work and decisions,

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## A LOCAL TRUST SOLUTION

Call us today at (800) 786-1598 to learn more about working with Halliday Private Trust.

For information and assistance, please feel free to contact one of our Trust Advisors:

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there are always tax matters to address, and of course the assets including real estate and investments need to be managed.

Creating a full inventory of the assets is the first step. Next is identifying and getting the date of death values of every asset owned by the trust. For example, Jane may know of everything she owns, where it is, and whether or not she has a centralized, up-to-date list of account numbers and locations. Now imagine Jane is no longer with us. What would someone walking into that scene experience in having to piece together the full picture? Often family members can be helpful, as well as professional advisors, but this can be a big job. Investment accounts, bank accounts, real estate, retirement plans (although they generally pass to a named beneficiary; likewise with life insurance and annuities), business ownership, even personal property, as well as debts and credit cards balances. The trustee must create a complete picture of the assets and liabilities of the deceased so they can address the debts and then figure out the net worth at death available to distribute after estate taxes are considered. The trustee must keep detailed records, provide statements to the beneficiaries and use an unusual form of accounting to do so.

Once the assets are gathered the trustee must consider two forms of taxation. Every estate or trust is treated as a taxpayer, so an annual income tax return must be filed. In addition, the decedent would have at least a final income tax return to file for income earned until death. Estate taxes affect a very small percentage of the population, but the trustee must determine whether the decedent's net worth at death exceeds that number and, if so, file an estate tax return. The trust document should provide special language to determine the source of those taxes, whether from the residue of the estate or proportionate from each beneficiaries' share. There are many tax elections to be considered that may reduce the income or estate tax burden. Tax professionals can be of great value here. There are even choices the beneficiaries can make, such as whether to accept their inheritance. In some cases the beneficiary might disclaim their interest in favor of the next named beneficiary in the trust, often their children.

During this estate settlement period, the trustee must also comply with all applicable laws, both state and federal, that pertain to the custody, recordkeeping, taxation, accounting, and investment of the assets subject to administration. Professional trustees deal with these matters every day and have all of the systems and checklists in place to make sure things are done right and done efficiently. Keep in mind that anything not done correctly is the personal responsibility of the trustee.

To recap, there are seven areas to address in settling an estate: review and acceptance, setting expectations, the roles of the team involved, marshaling and managing the assets, handling the income and estate tax reporting, complying with the law, and carrying out the document terms notably distributing the assets to the desired beneficiaries. Using a trust makes the process more efficient and private.

### Summary

In summary, the complexity of the assets as well as legal and tax compliance still exist in settling an estate using a trust, yet the direct court supervision and public scrutiny that can exist in the probate process of many states are avoided. Private settlement allows the important and challenging work of estate settlement to begin rapidly and proceed undeterred by court oversight. Discuss with your advisors whether trust settlement may be right for you.

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