



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.

## Settling Estates with Trusts – An Overview

There are a myriad of reasons a trust is a practical estate planning tool. For many people, a resounding reason is avoiding probate in the process of distributing assets after the grantor's death. While probate could be considered a useful alternative in unique cases or in certain jurisdictions, a trust commonly offers a high degree of privacy with quicker execution at lower costs. In addition, rather than having only an Attorney-In-Fact under a Power of Attorney possess the authority to immediately deal with financial issues when the grantor becomes incapacitated, which can often be problematic, a trustee has the full authority, at the instant of incapacity, to manage the assets in a trust.

### *Planning for a Trust*

Planning is key to using a trust versus a will as the primary dispositive instrument. In order to place assets in a trust, and thereby reap the benefits of doing so, they must be titled in the name of the trust by the grantor. There are exceptions to the avoidance of probate, such as assets on which the grantor has named a beneficiary (life insurance policy for example). These assets will pass neither through a trust or a will. They pass probate free to the beneficiary, by operation of law.

### *The Proof is in the Trust*

Another common practical advantage of trusts is privacy, because you can avoid the direct court supervision and public scrutiny that could exist in the probate process of many states. Private settlement allows the critical work to proceed undeterred by court oversight and away from prying eyes. A key distinction in trust settlements is that no court hearing is required to "prove" the trust to be valid. A trust properly created, executed and funded during life should be valid and operating, which enables the settlement of the estate to begin without formalities required by probate laws. The probate process can cause much delay and unnecessary family friction. For example, probate requires that all persons who could receive a share are contacted, even when there are heirs who are not beneficiaries according to the will. In a trust, only the parties to the trust are notified. There is no public hearing.

### *The Role of Trustee*

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 thoughtfully consider the acceptance of the role. Many grantors choose a family member to act as trustee. However, more frequently grantors are choosing a corporate trustee who has the knowledge and experience to manage the trust duties, in order to avoid burdening a family member with such a complex role. As part of the duties, the

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Advisors:

- Michael F. Fleming, Esq.
- Sean S. Mohammadi

trustee will explain the document to the family and begin helping them understand the steps and setting expectations on the timing of the estate settlement. It is worth noting that there is no set timeframe for a funded trust to begin operating after incapacity or death. It is immediate, unlike a trust that is established under a will. Before such a trust is funded and operating, several steps in the probate process must have occurred, often taking around six months. Depending on size and complexity, a year or two is not unusual. Complexities that increase the scope of time include legal matters uncovered, creditor claims, will contests, unforeseen tax implications, and real estate or other asset management issues.

### *Death and Taxes*

Once the assets are gathered, the trustee must consider two potential forms of taxation. Every estate or irrevocable trust is treated as a taxpayer and files an annual income tax return. In addition, the trustee may have to prepare the decedent's final income tax return if income was earned during the year of death. Estate taxes affect a small percentage of the population, but a trustee will determine whether the decedent's net worth at death requires an estate tax return. Financial advisors can help examine tax elections that should be considered in an effort to reduce the income or estate tax burden. For example, dependent upon on a beneficiary's tax situation, one may decide to decline their inheritance and disclaim their interest in favor of the next named beneficiary in the trust, often their children.

No one can dispute the legal and financial implications of settling an estate through either probate or a trust. State and federal laws pertaining to the custody, recordkeeping, taxation, accounting, and investment of the assets subject to administration must be followed. But if time, expense, and privacy are important considerations as you discuss estate planning with your advisor, the most practical solution is to avoid probate and start the trust conversation.

*This publication contains general information only, and National Advisors Trust Company is not, by this publication, rendering accounting, financial, investment, legal, tax or other professional advice or services.*

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