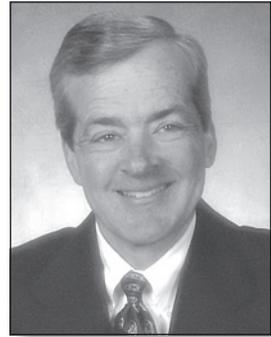




Revocable Living Trusts – Independent Trustees and Trust Protectors

DENNIS SULLIVAN (Wellesley, Massachusetts)

If you have a Revocable Living Trust in place to avoid probate and control your family legacy, have you considered how that Trust will be administered after you are gone? We find that many families have a plan in place to minimize taxes and maximize children's and grandchildren's inheritances, but have little idea of the next steps they should take to make those inheritances last for the long term. Independent Trustees and Trust Protectors can join with your family team to guide them to create a lasting family legacy.



WHY AN INDEPENDENT TRUSTEE?

If you have a Revocable Living Trust, you very likely have chosen a family member as a successor Trustee to manage and distribute assets for you if you are incapacitated, or for your family when you pass away. A family member is an excellent choice for responsive management and for understanding family dynamics and circumstances, but most people know very little about the asset protection, investment, tax, accounting, and the fiduciary duties of a Trustee.

A family member Trustee who is inexperienced with legal, tax, and financial matters may inadvertently make mistakes or omissions that can create personal liability for himself or herself, or for the beneficiaries of the trust. Family conflicts and lower investment returns can destroy a hard-earned family legacy.

ASSET PROTECTION

A Trust that continues to operate after you are gone can provide significant advantages to your children and grandchildren. As the trust was created by you with your money, the assets in the trust are significantly less vulnerable to your children's or grandchildren's creditors (including lawsuit creditors and divorcing spouses). However, to utilize the benefits of an ongoing Trust for children or grandchildren, all but a few jurisdictions require that an Independent Trustee serve as Trustee of the Trust.

If there is no Independent Trustee, one of the primary benefits of an ongoing Trust — the opportunity to retain enormous flexibility, along with protection from divorce, lawsuits, and other creditors, will be lost.

INVESTMENT MANAGEMENT

One of the least understood duties of a Trustee is that the Trustee acts as a fiduciary, overseeing all the Trust assets and investments to ensure they remain productive and available for the beneficiaries as required by the terms of the Trust. Few Trusts have specific instructions about how a Trustee should manage assets.

While a fiduciary does not have to personally oversee each aspect of the investment process, the fiduciary is the overall manager of the process. It is the fiduciary who may be personally liable if the Trust's investments are too risky and funds are lost or if the Trust's investments are too conservative and the income stream provided by the Trust does not keep up with inflation.

An Independent Trustee with a solid understanding of the process is a resource to guide the family member Trustee in the investment process, as well as a way to ensure the Trustee's fiduciary duties are fulfilled.

TAXES AND ACCOUNTING

Trust accounting is another area that even most bright, educated family member Trustees may know little about. Once you pass away, your Revocable Living Trust will become irrevocable and will be required to file its own annual income tax returns. An Independent Trustee should have the knowledge and experience to make the appropriate distributions to income and principal beneficiaries and then be able to file the Federal Form 1041 income tax return correctly.

AUTHORIZING DISTRIBUTIONS

Beyond the usual health, education, maintenance, and support standard

In order for your trust to provide effective asset protection for your beneficiaries, the role of Interested Trustees, that is Trustees who are also beneficiaries, must be limited. The most common way to limit them is to restrict distributions of income and principal that Interested Trustees can make to an ascertainable standard, most commonly for the health, education, maintenance, and support of the beneficiary.

However, an Independent Trustee is not similarly limited to these standards. If you wish, you can allow an independent Trustee complete discretion in distributing assets to the beneficiaries, allowing safe access to the Trust funds for the beneficiary under nearly any circumstances.

TRUST PROTECTORS:

Facilitating a productive trust for a lasting legacy

What is a Trust Protector?

A Trust Protector may be an individual, a group of individuals, or a corporation, and can include your attorney, accountant, or a Trust company. Trust Protectors are appointed in advance as a part of your Revocable Living Trust and they do their

work after the Trust becomes irrevocable due to your death or disability. The Trust Protector is usually authorized to monitor and then fire or replace non-family member Trustees if they become ineffective, and to amend a Trust that is otherwise irrevocable if legal changes, IRS opinions, or scriveners' error have made it impossible for the Trustees' to fulfill your original wishes and intent.

Why a Trust Protector?

When you pass away, your Trust becomes irrevocable and the provisions cannot be changed. However that does not mean there will be no changes in tax law or family circumstances. By naming a Trust Protector in your Revocable Living Trust you take steps to preserve your original intent, minimize the impact of taxes, particularly the generation-skipping transfer tax as assets pass from your children to your grandchildren, and allow your family the flexibility it needs.

EXAMPLE 1: If you drafted your original Trust while your children were childless or unmarried, but when you pass away they would like to use the Trust funds to pay for their own children's college or other education, there may be significant tax and asset protection implications by using funds from the Trust if there has not been prior planning for this contingency.

This is where a Trust Protector can step in to amend your Trust to provide for the proper generation-skipping transfer tax allocations.

EXAMPLE 2: If you have young children, you probably do not want them to have direct access to or responsibility for funds until they have reached the age where they understand and are comfortable with tax and legal decisions. In this situation, many people will choose both a family member and a professional Trustee, together, to help their children until they are of age. However, in the current age of rapidly merging banks and Trust Companies, it is critical to have a third party available to monitor the Trust and Trustees. A Trust Protector can ensure the Trustees comply with their responsibilities, provide your children with the funds they need without allowing them to waste their inheritance, and step in to find a new Trustee if your previous Trustees cannot or will not be viable choices.

SO WHAT SHOULD YOU THINK ABOUT AS YOU DRAFT OR REVIEW YOUR REVOCABLE LIVING TRUST?

Consider your family's personal and financial circumstances and experience when determining who will serve as Trustee upon the death or disability of you and your spouse. You want to provide for your family, not leave them with a potential lawsuit or a tax and accounting nightmare. A good Independent Trustee, working with a solid, well-informed Trust Protector, can take most of the burden off your family's

shoulders and allow them to concentrate on the things that are most important to you and to them.

Dennis Sullivan & Associates is a team dedicated to helping people concerned with losing their assets to increasing medical and nursing home costs, taxes, and the costs and delays of probate.