



Beneficiary-Controlled Descendants' Trusts

JIM VOELLER (San Antonio, Texas)



The majority of people who set up wills and revocable trusts leave their assets outright in equal shares to their children when they die. What most people don't realize is that many times by leaving the inheritance outright, they may be unintentionally disinheriting their grandchildren! Suppose you die leaving assets to your son, and shortly after your death, he passes away too. It is likely his will leaves everything to his spouse — who may spend the inheritance on herself, or worse yet, give it to a new spouse — leaving your grandchildren with no part of the inheritance!

Instead of leaving your assets outright to your children, consider the potential advantages of leaving your assets to trusts for the benefit of your children, which you can design and create during your lifetime.

A descendant's trust is created by you, today, within your revocable trust, naming your child as trustee and beneficiary when you die. For example, if your daughter is named Mary Smith, the trust would read "Mary Smith, as Trustee of the Mary Smith Trust."

There are a number of good reasons to leave assets in descendants' trusts you create as a part of your overall estate plan for each of your children. These include the following benefits:

- The assets will be protected from your child's spouse in the event of divorce.
- The assets can be protected from your child's creditors in the event of financial hardship.
- The assets are sheltered from lawsuits of which your child may become a party.
- The assets will not be part of your child's probate estate in the event of the child's incapacity or upon his or her death.
- The assets can be removed from your child's estate so that no further estate taxes will be due when the property passes to the next generation.
- Upon your child's death, the unused assets will go to your blood relatives

(such as grandchildren) instead of in-laws or others who are not a part of your plan.

The reality of a descendant's trust is that it is much easier for your child to keep assets separate from a spouse when the assets have been left to the child in trust. At the time of your death, all of your assets are re-titled directly from your trust to your child's trust. There is a world of difference between a child saying to a spouse "my parents left this money to me in a trust" and the alternative of having the child receive the inheritance "in hand," and needing to take active steps to keep those assets separate from a spouse, or trying to shelter them from an unexpected lawsuit.

A descendant's trust may be drafted to provide that during your child's lifetime he or she has complete access to the income and the principal of the trust — so that you are not necessarily giving a "gift with strings attached" or "ruling from the grave." (If circumstances are warranted, however, you may elect to impose tighter control over the assets.) But when your child dies, you can ensure that the unused portion of the inheritance goes to your grandchildren or to a charity you would like to support. The trust can provide that until your grandchild reaches the age where he or she will likely be more responsible, say age 30, someone else will manage the assets, distributing so much of the assets as may be needed for the grandchild's health, education, maintenance, and support. Once the grandchild reaches age 30, you may want the grandchild to be the trustee of his or her own trust. If one of your children dies without leaving children, the assets of that child's trust could go to the trust created for your other children.

The time to design these trusts for your children is now — when you are preparing your own estate plan. Upon your death, your plan will provide this important protection for your children. In the overwhelming number of states, once your children have inherited assets from you, it is too late for them to create their own protective trusts.

If you are going to leave it all to them anyway, consider leaving your children's inheritance to them in a protected trust by doing some additional planning for them today. Your children will greatly appreciate what you have done to put them on the right track to plan for themselves and their families. Talk to your estate planning attorney about how to incorporate these ideas into your trust.

Jim Voeller focuses his practice on helping families structure their affairs to protect their assets from lawsuits and government intervention, and helping families save millions of dollars in estate taxes and probate costs.