

BOTTOM LINE PERSONAL

www.BottomLineInc.com

3 Landmark Square, Suite 201,
Stamford, CT 06901-3229
203-973-5900

Gideon Rothschild, Esq. ■ Moses & Singer LLP

CAN YOU TRUST YOUR TRUST?

To Protect Your Family Avoid These 4 Big Traps

Whether you are wealthy or not, a well-designed trust can make your financial planning much more successful. Trusts can ensure that your assets will go to your intended beneficiaries rather than giving unnecessarily to creditors, former spouses, estate taxes, long-term-care bills or other threats.

Unfortunately, many trust documents contain language that limits their ability to protect assets—and no one notices the problem until it is too late. If you don't have a trust, there's a good chance that you should have one. And if you do have a trust, make sure that it does not include certain terrible mistakes...

MISTAKE: Ignoring trusts altogether because of today's high federal estate-tax exemption. Keeping assets safe from estate taxes has long been one of the major reasons to create a trust. But with the federal estate-tax exemption now at \$5.45 million (and twice that for couples), very few families have to worry about this threat.

What some people still don't realize is that federal estate taxes were never the only reason to create a trust. Trusts also can safeguard assets until heirs are old enough to manage money responsibly. They can protect assets from state estate

taxes—some states still have relatively low estate-tax exemptions, as low as \$1 million in some cases (and just \$675,000 in New Jersey), although several states are raising their low exemption levels. And failing to use a trust to protect assets from various potential costs can end up being a very expensive mistake.

Example: A New York man left a \$1 million estate to his wife. She later required a lengthy stay in a nursing home, which ate up virtually all of those assets. Had the man instead left his money to an "irrevocable" trust that named the wife as beneficiary, Medicaid would have paid most of her nursing home bills, keeping the money in the family.

Better: Speak with an estate-planning attorney about the possibility of setting up a trust to protect potentially vulnerable assets...not just if you have enough assets to trigger federal estate taxes.

MISTAKE: The trust terminates when beneficiaries reach a predetermined age or at some other specified date. It is very common for trusts to terminate when beneficiaries reach a particular birthday—often 18, 21, 25 or 30—with all remaining assets distributed to beneficiaries then. That's because when people set up trusts, their primary goal often is to ensure that assets remain safe until young

heirs are old enough to handle money maturely. But a trust set up this way does nothing to protect the assets from other threats and could dump a large sum of money into a beneficiary's lap at an inopportune moment, such as when a spouse is about to file for divorce or when a lawsuit or bankruptcy looms.

Better: Ask your estate-planning attorney to not include a termination date in your trust. Instead, grant the trust's beneficiaries broad powers to replace the trustee when those beneficiaries reach an age when they are likely to be responsible—perhaps 25 or 30. That way, beneficiaries continue to receive the asset protection provided by the trust but also have some ability to manage and utilize the assets as they see fit, including selecting a new trustee whose thinking is in line with their own if necessary.

MISTAKE: Using the word "shall" in trustee directions. Trusts often contain language dictating that the trustee "shall" distribute assets to beneficiaries in particular amounts at particular times. Trouble is, the word "shall" ties the trustee's hands—it means that he/she must distribute the assets as directed even if it is obvious that doing so would be foolish, perhaps because the beneficiary expects to soon declare bankruptcy and the money would just end up in the hands of creditors. (If a trustee tried to not make a distribution under these cir-

Bottom Line Personal interviewed Gideon Rothschild, Esq., chair of trusts, estates and asset-protection practices with the New York City-based law firm Moses & Singer LLP. He is immediate past chair of the American Bar Association's real property trust & estate law section and a vice-chair of the Society of Trust & Estate Practitioners (STEP)-US Region. MosesSinger.com/attorneys/gideon-rothschild

Copyright © 2016 by Bottom Line Inc., 3 Landmark Square, Suite 201, Stamford, Connecticut 06901-3229. www.BottomLinePersonal.com

