

WHEN TO USE A TRUST IN YOUR ESTATE PLAN

By David W. Steffensen
448 East 6400 South, Suite 450
Salt Lake City, Utah 84107
801-263-1122
email: dave@dwslaw.net

A **Will** is an essential part of every estate plan. In it, you address final affairs and name the person you wish to serve as your personal representative. If you have children who are minors, a **Will** performs the most important function of all, naming the person you wish to act as the guardian to raise your children for you.

As to the disposition of property, the hallmark of a **Will** is the immediate and outright distribution of property to your designated heirs. In some cases, where your children are older, the immediate and outright distribution of property to such grown children is just fine. When you have children you are minors, however, the immediate and outright distribution of property creates an obvious problem. What happens is that after your probate estate has been opened, conservatorship estates must be set up for each minor child. Then the personal representative of your probate estate conveys each minor child's share of your probate estate to that minor child's conservator. That minor child's conservator then holds and administers that conservatorship estate for the minor child's benefit until the child reaches the age of 18 years, whereupon whatever is left in the conservatorship estate is distributed outright to the child.

The questions I therefore ask my clients with minor children are first, do you want your minor children's estates managed by conservators, and second, do you want your children to get their share of your estate when they reach age 18. If the answers to those questions are "yes," then a **Will** works just fine. If the answer to either of those questions is "no," then a **Trust** is the appropriate tool used to delay the distribution of such assets to such children until a later date.

A **Trust**, in the simplest of terms, is an agreement to convey assets to a third party with a list of instructions which tells the Trustee to use the assets to take care of a third person (the beneficiary). The most basic purpose of a **Trust** is to do something other than conveying assets outright and immediately to a recipient.

With children, or a spouse, the purpose of the **Trust** is to place assets in the hands of a Trustee to then hold and take care of those children or a spouse until that time that you determine is appropriate. There is great flexibility in terms of how you can structure the way in which your family will be taken care of. A **Trust** is therefore a most important and flexible tool in taking care of your family and often is the only way to effectuate your desires in terms of implementing how you want your family taken care of.

There are other important reasons for employing a **Trust** as a part of your estate plan. For example, a **Trust**, properly funded, can allow you to avoid the time, hassle and financial cost of having your estate probated. In addition, if you are married and have an estate in excess of \$1,500,000 (2005) (\$2,000,000 in 2006-2008), a **Trust**, properly funded, can save literally

hundreds of thousands of dollars in estate taxes, thereby maximizing the amount of your estate for those you care most about, your family. Moreover, an irrevocable **Trust** holding life insurance can provide in many cases an attractive way to leverage your gifting to your children and provide much needed funds at your death. Also, an irrevocable **Trust** established in certain states (such as Alaska and Nevada) can have important asset protection functions.

These are just a few of the beneficial reasons for choosing to make a **Trust** an integral part of your estate plan.

When you come in to our law office to discuss your estate plan, we carefully review and explain all of the relevant factors in determining whether a **Trust** should be a part of your estate plan. Thereby you can make an educated decision about whether you would like to use a **Trust** in your estate plan.