

## IF YOU WILL<sup>®</sup>: *Short Takes on Estates, Taxes and Trusts*

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*"IF YOU WILL<sup>®</sup>: Short Takes on Estates, Taxes and Trusts" is a quarterly glance through an informal lens at selected news items, court decisions, legislative changes and/or important issues pertinent to estate planning. It is primarily intended to inform and entertain you. But if it causes you to pick up the phone and call us with a legal question, we won't complain; and if it inspires you to examine our more in-depth legal updates, you can view them in the "Publications" section of our website at [burnslev.com](http://burnslev.com).*

### SHOULD YOU "TRUST" YOUR FAMILY LEGACY?

There is a popular misconception that trusts and trust funds are only for the ultra-wealthy, the people who can afford teams of lawyers and advisers to captain the ships of long-standing family empires. But the fact is that trusts are usually not difficult to set up, can be administered affordably, and can serve many different purposes that fit the needs of many kinds of families, including:

- Sheltering your family legacy from state or federal estate taxes;
- Protecting your family legacy from creditors or predators;
- Protecting family members from their own spendthrift ways;
- Funding special needs care in the future; and
- Avoiding the fees, delays and public records associated with probate.

This edition of "If You Will" provides a brief overview of some of the most commonly valued benefits associated with family trusts, as well as some suggestions for naming a responsible trustee.

#### The Benefits of "Trusting" a Family Legacy

**1. Tax Sheltering:** While the federal estate tax exemption is currently set at \$5.25 million, the exemptions for various state taxes are generally much lower. Massachusetts estate tax, for instance, applies to all estates with more than just \$1 million in assets, and the Rhode Island exemption is just \$910,725. Furthermore, unlike the federal estate tax, the Massachusetts tax is imposed on the entire value of the estate if the exemption is exceeded, and can range as high as 16 percent. When planning how to leave your assets to future generations, you should also consider that the federal debt is rapidly rising (it now exceeds \$16 trillion), and it would not be surprising to see Congress change the federal exemption amount or the applicable tax rates in the future to raise revenue (the current federal estate tax rate is 40 percent on any estate value in excess of the exemption). For a married couple, revocable trusts can be used to make sure each spouse takes advantage of the full estate tax exemption. And there are many types of irrevocable gifting trusts which shelter other specific assets, such as life insurance or highly appreciating investments.

**2. Protection from Creditors and Predators:** A properly drafted and funded trust can protect your family legacy from the creditors of your spouse and descendants, from the spendthrift behaviors of the beneficiaries themselves, and from opportunistic "gold diggers" who may prey on an aging spouse or other relative. More sophisticated irrevocable trust planning may also be able, in some instances, to shelter your assets from potential creditors of your own. Thus, if you are concerned about future creditors, either because of occupational issues or your family business, you might want to consider setting up a trust sooner rather than later to shelter accumulated wealth. You might also want to consider this if you have one or more young heirs who will need income, but will also need a professional trustee to manage and preserve their inheritance because of their inability to manage money.

**3. Funding of Special Needs Care:** If you have reason to be concerned about the future disability or incapacitation of yourself or your spouse, or if you have a child or other beneficiary with special needs, then you might want to consider the creation and funding of a trust that will provide distributions for special needs care as and when they become necessary.

**4. Avoiding Probate:** No matter what your situation is, the assets included in your probate estate must pass through your state's probate process. In recent years, budget cutting has rendered the already lengthy probate process even more difficult. Assets placed in a trust during life (even a revocable trust) will, on the other hand, bypass probate. By avoiding probate, you can avoid probate fees, the beneficiaries of your trust can avoid the delays in distribution commonly associated with probate, and your trust funds will be kept out of the public records of probate as well.

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**5. Preserving Property for Heirs.** You also might want to consider the use of special trusts to preserve property for specific purposes. For example, a Qualified Personal Residence Trust can preserve and protect a vacation home or special property that you want to keep in the family for generations, or a Qualified Terminable Interest Property Trust can be used to provide income from specified property for the benefit of a surviving spouse (perhaps from a second marriage) while leaving the underlying principal/property to any children from a first marriage after the spouse dies.

## Naming Trustees

If you go through the effort of setting up a trust for the benefit and protection of your heirs, then you should certainly make the effort to find a professional trustee who will administer the trust responsibly in accordance with your wishes and with all applicable laws. “Professional trustees” can be individuals, banks, or dedicated corporate trust companies. Often a professional will agree to serve with a family member who will be the “eyes and ears” with respect to personal issues.

Often, effective trust administration requires some mix of tax, accounting and legal expertise, so you might want to consider a trustee or co-trustees who have the requisite blend of professional experience that will ensure your legacy is well-preserved and protected.

If you name just one trustee, you will want to be sure that he or she is someone you can trust implicitly as a fiduciary, and someone who also has the professional expertise necessary to manage the trust properly, or knows how to access that expertise as needed.

Your trustee will have many important responsibilities with regard to your trust, including:

- Record-keeping, especially as to principal and income from the trust;
- Tax preparation in accord with federal and state laws;
- Distribution of assets or income from the trust in accord with the purpose of the trust; and
- Investment management of the trust assets.

The law permits a trustee to delegate or hire experts to perform these tasks, but the personal monitoring of such experts is still required. So make sure you choose someone who will administer the trust according to its terms and its purpose, deal impartially with beneficiaries, keep the beneficiaries informed as necessary, and avoid conflicts of interest and self-dealing while preserving, protecting and managing the assets.

## Who Needs Estate Planning and When?

For many people, the value of an estate plan will far exceed its cost due to tax savings. Furthermore, estate planning is not just for individuals who have a net worth in excess of state or federal exemptions (currently set at \$1 million and \$5.25 million respectively, but subject to change). The following people can greatly benefit from estate planning with experienced legal counsel

- Individuals or couples who have dependents or beneficiaries with special needs;
- Adoptive parents who need to make special provisions for inheritance that differ from state law provisions that apply to those without a legally enforceable plan;
- Other non-traditional families, such as those of unmarried couples or domestic partners;
- Married persons who have previous spouses or children from a prior marriage;
- Those who have special charitable goals; and
- Those who have ownership shares in a closely held business that could suffer grave disruption from an inheritance battle or significant death taxes on their estates (such people can benefit from a well-structured agreement providing for life insurance on key owners in amounts adequate to fund the purchase of a decedent’s shares, according to valuations set in advance by agreement).

*NOTE: This newsletter is not intended to constitute legal advice, which always must be given based on the facts of a particular case. If you have any questions, do not hesitate to call us for additional information.*

*For more information, please contact your Burns & Levinson attorney. To learn more about our Trusts & Estates practice, visit [www.burnslev.com/our-practices/trusts-estates](http://www.burnslev.com/our-practices/trusts-estates).*