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ESTATE PLANNING LIBRARY

Number Thirteen

Balancing Benefits to the Children with a Common Trust

AN OVERVIEW

1. What client might need this technique?

Typically, a common trust benefits clients who are planning for children or grandchildren who are minors. The reason for the creation of a common trust is, much like its name, family assets are generally made available to whatever child needs them. If one child is ill, all assets owned by the trust will cover the ill child's health care costs. It is not as though the available assets will simply be divided by the number of children and the ill child receives only that child's fractional share.

2. How does a common trust work?

The best example is probably education. Assume a family has children aged 18, 12 and 7. When the 18 year old applies to college, the expenses are paid from the family assets as needed for tuition, room and board, etc. Assume the costs of that child's education were \$25,000. Further assume that the parents both died when the second oldest child was 17. The parents likely wanted to ensure that each of their children received an equal education paid for by the family's assets. To make sure that happened, the parents created a living trust that provided that if their youngest child had not graduated from college at the death of the surviving spouse, a **common trust** would be created.

The common trust would hold all of the parents' estate for the benefit of all of their children. The terms of the trust would provide that the trustee was authorized to make expenditures for the health or education of any of the children. What this type of planning does is make

the entire estate property available to each child as that child goes to college. When the 12-year-old and the 7 year old have finished college or vocational school, or other educational activity approved by the parents, the remaining property is generally divided evenly between the children when and in the manner the parents decide.

3. What if one of the children does not go to college or vocational school?

Good question. The trust may provide that when the youngest child has attained age 25 (or some other age set by the parents) graduated from a college or other approved educational activity, the trust is divided into shares for each child in accordance with the parents' wishes.

How does the client benefit from the common trust?

The benefit to the clients, the parents, is that they know that each of their children will have an equal opportunity to improve their lives with an education paid for by the parents. Even if the parents do not survive to see the graduations, they know that their estate plan has been designed to accommodate their desire to provide an equal educational opportunity to each of their children.

4. What does the estate planner do in a common pot trust engagement?

Generally, the estate planner will inform the client of the potential of a series of untimely deaths and that there is a technique, the common trust, which will ensure overall fairness to the children. Then the clients will provide the estate planner with the details of the desired design of the common trust and the estate planner will prepare the proper documentation to ensure the desires of the clients are met.

5. What are the clients' responsibilities?

Once informed of the issue and of the value of a common pot trust, the clients consult with the estate planner to develop the design they believe best satisfies their desires for their children.