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## ESTATE PLANNING LIBRARY

Number Eleven

### Using the Legacy trust

#### AN OVERVIEW

#### 1. What is a Legacy Trust?

A Legacy Trust is an estate or gift tax planning technique where parents leave property to their children in a trust rather than outright. As the name implies, the child-beneficiary is the trustee of the trust. Thus, the Legacy Trust.

#### 2. Why are estate planners and their clients increasingly using Legacy Trusts?

It is easier to explain why, if we first understand that there are essentially two methods to leave property to the typical child, excluding those that are irresponsible, etc., they are:

- **Outright to the child**
- **In a trust for the child where the child is a trustee**

As we are assuming that there are only two methods to leave the property, we need to compare them against one another.

#### 3. What are the factors used in the comparison?

We start by listing the things that a beneficiary can do when the property is left outright and free of trust verses what a beneficiary can do when those same things are included in a Legacy Trust.

#### 4. What can an owner of property do with the property?

There is actually a fairly limited number of things they can do. They are:

- **Give the property away**
- **Leave the property to anyone they want**
- **Use the property without paying for the use**
- **Sell the property**
- **Destroy the property**
- **Lose the property to a creditor**
- **Lose the property to a divorcing spouse**

5. **Do I understand correctly that you are now going to compare the ability of the beneficiary-trustee of a Legacy Trust to do the same things that an outright beneficiary could do?**

Yes, that is exactly correct. Let's see what the comparison shows:

- **Give the property away:** The beneficiary-trustee of a Legacy Trust may be given the power to make gifts of the property in the trust to anyone other than the beneficiary or the creditors of the beneficiary. In essence, the Legacy Trust is identical to the outright bequest free of trust. We'll give this an **Equal Power** rating.
- **Leave the Property to anyone they want:** The beneficiary-trustee may be given the power to leave the property to anyone other than the beneficiary's estate, creditors of the beneficiary, or the creditors of the beneficiary's estate. In essence, the Legacy Trust is identical to the outright bequest free of trust. We'll give this an **Equal Power** rating.
- **Use the property without paying for the use:** The beneficiary-trustee of the Legacy Trust may be authorized to use the property of the trust without paying for the use. In essence, the Legacy Trust is identical to the outright bequest free of trust. We'll give this an **Equal Power** rating.
- **Sell the property:** The beneficiary-trustee may be given the power to sell the property and reinvest the proceeds. In essence, the Legacy Trust is identical to the outright bequest free of trust. We'll give this an **Equal Power** rating.
- **Destroy the property:** The beneficiary-trustee may not be given the power to destroy the property. The Legacy Trust provides more property protection than an outright bequest. We'll give this a **Superior Protection** rating.
- **Lose the property to a creditor:** The Legacy Trust may be prepared in such a manner that creditors of the beneficiary-trustee may not attach assets held in the Legacy Trust. The Legacy Trust provides better creditor protection. We'll give this a **Superior Protection** rating.
- **Lose the property to a divorcing spouse:** The Legacy Trust can be prepared such that a divorcing spouse has little or no rights to the Legacy Trust's property. The Legacy Trust provides better asset protection. We'll give this a **Superior Protection** rating.

Now, let's see how the Legacy Trust did in the item by item comparison:

- **Give the property away: EQUAL RATING**
- **Leave the property to anyone they want: EQUAL RATING**
- **Use the property without paying for the use: EQUAL RATING**
- **Sell the property:  
EQUAL RATING**

- **Destroy the property: SUPERIOR PROTECTION**
- **Lose the property to a creditor: SUPERIOR PROTECTION**
- **Lose the property to a divorcing spouse:  
SUPERIOR PROTECTION**

**6. Since the Legacy Trust is so far superior to outright bequests, why don't all clients use them?**

The primary reason is many estate planning practitioners are simply not familiar with the technique. Many people have never been informed of the benefits of a Beneficiary Controlled Trust. In addition, a few clients who do know of the benefits simply do not want, what they perceive to be, "complicated estate plans."

**7. Are Legacy Trusts complicated?**

No, they are not. An easy comparison is the Family or Credit Shelter Trust that holds the estate tax free amount for the first spouse to die. An annual tax return is due and accounting and monitoring must be done. However, it seems to us that the benefits provided by the Legacy Trust far outweigh any additional costs after the surviving spouse has died.