

How to Leave Money But Keep Control

With a family trust, you can see that your legacy is spent how you want

IF YOU HOPE TO LEAVE AN INHERITANCE TO children and grandchildren—but want a say in how that money is used—a family trust can let you exert control from beyond the grave. But your choice of who serves as trustee after you're gone can dramatically influence how closely your wishes are carried out, as well as whether your descendants end up feeling grateful for your generosity and foresight—or squabbling over how the funds are spent.

“How assets are distributed becomes a touchy subject,” says Zaneilia Harris, a financial planner based in Upper Marlboro, Md. “Setting up the trust right can avoid your heirs going to court or having fights among themselves.”

Unlike the executor of your estate, whose job begins at your death and ends when assets are distributed, the trustee of a family trust has ongoing responsibilities to oversee distributions, handle reporting requirements, manage investments and pay taxes each year. They must communicate with all the beneficiaries of the trust, ensure everyone understands the purpose of the trust and their own responsibilities and handle any disputes or questions that arise. Not everyone is well suited to—or ready to shoulder the burden of—these duties.

“Being a trustee can be a large and thankless job where even the simplest things can run off the rails,” says John M. Goralka, an attorney in Sacramento, Calif.

One of his clients agreed to serve as a trustee—declining payment—for his ailing, elderly neighbor because relatives from out of state had moved into the neighbor's house and started pilfering belongings. But after the neighbor's death, things really got bad. The house went to two siblings equally, but one of them moved in and started acting oddly in addition to dealing drugs in the neighborhood.

The trustee “was on speed dial with the police,” Goralka

recalls. “The brother was walking around the neighborhood with a bathrobe on, talking to the mop.”

To avoid a nightmare scenario like this, you can take a few key steps.

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Pick the Right Trustee(s)

Typically, you're the trustee for a revocable trust as long as you're capable. You also name a successor trustee who becomes trustee after your death and, at that point, the trust becomes irrevocable. When choosing a successor trustee, the primary options are a family member, friend, professional trustee or a bank trustee. Regardless of the type, any trustee acts as a fiduciary and is subject to government oversight and rules.

The three most important character traits for a trustee, according to Goralka, are honesty, ability to follow through on many details in a timely way and communication skills. If you decide to have two co-trustees, add a professional trustee as a third vote in case of ties.

A family member or friend will likely know you and the trust beneficiaries best and be able to handle delicate situations. Warning: You might alienate other family members, especially if you choose someone unexpected—such as putting a younger sibling in charge of older siblings.

Candice, 54, a preschool teacher in Potomac, Md., and



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youngest of four, disapproves of her mother choosing the next oldest sibling, her brother, to serve as trustee. “She knows we don’t get along, which is why I’m like, ‘How can you choose him?’” says Candice, who asked to be referred to by one name to avoid harming family bonds. “It has not helped our relationship.”

To avoid this kind of friction, a bank or professional trust might be a better option. A professional can be a more affordable and flexible choice than a bank trustee, which typically costs thousands of dollars a year or up to 1.5% of assets under management. You can find a professional trustee at many nonprofit organizations that provide services around disability or elder care. Availability and cost depends on your state and the services needed, but can be as low as a few hundred dollars a year.

Communicate about Assets and Your Wishes

Once you’ve chosen a trustee, you can make things easier for that person by listing all the assets you want in the trust and making sure the trust is properly named as the beneficiary for those accounts. A trust and estate lawyer should draw up the trust documents so that your wishes are clear and the purpose of the trust aligns with state law. Make sure everyone knows where the trust documents are, and that each person—and your estate attorney—has a backup.

It can help to write a letter explaining your goals and values so that your trustee has more information with which to make decisions about circumstances that you didn’t foresee. For example, perhaps the trust is intended to pay for your descendants’ educational expenses and career training, but one of your grandchildren decides to start a small business instead of attending a traditional four-year college. If your trustee knows that you value entrepreneurship as long as the individual has a solid business plan, they can be more comfortable distributing trust money for that purpose.

Mindy Greiling, 76, an author and retired state legislator in Roseville, Minn., and her husband Roger, 80, named their daughter Angela, 49, as successor trustee for a trust to benefit their son Jim, 48, who has schizophrenia. While Jim is currently stable and managing his finances responsibly, in the past he ran up hundreds of thousands of dollars of credit card debt. The trust

specifies allowable uses, like healthy food, annual family trips, dental procedures, prescription drug costs not covered by Medicaid, and other expenses beyond day-to-day living costs.

“It’s such a peace of mind to know that Jim will be provided for,” says Greiling, who didn’t choose a professional trustee because she wants Jim to work with someone who cares about him and is more available to support his needs. “We picked Angela purposely because she’s very responsible, trustworthy, conscientious and free.”

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Indeed, trusts are a terrific way to provide for a relative who has a disability, because they protect assets from creditors and avoid the relative losing government benefits because of a direct inheritance. The Greilings initially set up the trust because Mindy’s mother wanted to leave her grandchildren an inheritance, but if Jim received more than about \$2,000, it would disqualify him from receiving Social Security disability payments.

Make sure that you account for these kinds of special circumstances when planning the trust and picking a trustee. And select additional successor trustees in case someone dies, becomes incapacitated or is otherwise no longer available.

Sarah, 57, a social worker in Virginia who asked to be referred to by one name to avoid causing family friction, found out the hard way about the cost of using the wrong trustees. Sarah’s grandparents appointed her mother and uncle as trustees of a family trust along with their attorney, but there was no successor trustee. The attorney died in a plane crash and the brother resigned, leaving Sarah’s mom struggling to find documentation and comply with tax and reporting requirements. Then Sarah’s mom died, naming Sarah her successor.

“It’s one big mess that I now have to untangle all by myself,” she says. “My mother and my uncle did not follow the trust instructions for a distribution that they made over a decade ago. That distribution has to be corrected before the trust can be closed.”

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