



## ARMOR TRUST ATTORNEYS

### Trusts: Under Utilized Estate Planning Tools

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Trusts are valuable planning vehicles that are under utilized by clients. Often when I suggest the use of an irrevocable trust the client's response is "Aren't trusts for rich people? I'm not rich so why would I need a trust?" I find this response comes from a lack of understanding trusts and how they work.

It is true, many wealthy families use trusts and trusts are a big reason rich families stay rich and get richer, but you do not have to be wealthy to benefit from a trust. A trust can help your family keep and benefit from the wealth you have spent a lifetime accumulating, the same way trusts help wealthy families keep their wealth. But first, it is important to understand what trusts are and what benefits they can provide.

#### Explanation of Trusts

In legal terms a trust is a legal entity that can hold title to property, including cash, real property, and other investments, for the benefit of one or more other persons or entities. The person or entity creating the trust is called the Grantor. The person or entity that manages the trust and is responsible for the assets in the trust is called the Trustee. The persons or entity that benefits from the trust are the beneficiaries.

A trust has two parts: 1) the assets that make up the trust, called the trust estate, and 2) the legal document that states how the assets are to managed and distributed, called a trust agreement. A trust agreement is essentially a contract between the Grantor and the Trustee where the Trustee agrees to manage and

distribute the assets in the trust in accordance with the trust agreement for the benefit of the beneficiaries.

So what does this mean in practice? It means that the trust owns the assets and the trust is treated as if it is a person. The trust gets a tax identification number and must file tax returns and pay taxes. The beneficiaries of the trust cannot take assets out of the trust without permission of the Trustee.

#### Benefits of Trusts

The benefit that most people immediately jump to is that trusts can eliminate or reduce estate taxes. As a result, many people think that if they do not have estate tax liability then they have no reason to use a trust. However, trusts have many benefits and uses above and beyond estate taxes. Some of those uses

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will be discussed in this newsletter.

### **Trusts for Minors**

In North Carolina children under the age of eighteen (18) cannot inherit assets outright. Instead any inheritance left to a child must go in a custodial account at the Clerk of Court to be held until the child turns eighteen. However, parents can plan for the management of any assets their child may inherit at their deaths through the use of a trust and avoid the creation of a custodial account.

By creating a trust to receive a minor child's inheritance a parent can choose the Trustee to manage the trust assets for the benefit of the children, rather than be stuck with the Clerk of Court. Parents can also determine what the trust assets will be used for. For example, parents can write the trust agreement so that the assets are used for the children's education. Finally, the parents can dictate when, if ever, the trust assets are distributed out of the trust and to the children, rather than have the children automatically receive everything at age eighteen.

### **Protection from Creditors**

Trusts are also valuable because the trust assets are protected from the creditors of the beneficiaries and from beneficiaries that are irresponsible with money. This is a benefit that wealthy families use to protect family wealth from irresponsible family members and as a result ensure that the family wealth continues to future generations rather than being squandered by one generation. In legal terms the creditor protection a trust can provide is called spendthrift protection.

This is how it works: Patty Parent is doing her estate planning and wants to be sure her son, Benny Beneficiary, is provided for. However, Benny has a history of spending irresponsibly and racking up credit card debt. Patty wants to be sure Benny does not blow through his inheritance and that his creditors cannot get his inheritance so she creates an irrevocable trust with Benny as beneficiary.

According to the trust agreement the Trustee can pay for Benny's housing, support, medical expenses, and education. After Patty's death Benny goes on a spending spree. Because of the trust

Patty set up, neither Benny or the credit card companies can demand that the trust pay the credit card bills because they are not housing, support, medical expenses or education. At Benny's death any remaining trust assets can benefit Benny's children and grandchildren. By creating a trust Patty ensured that her assets benefit her family far into the future, rather than being frittered away by Benny.

### **Flexible Distribution of Your Assets**

Trusts, like Wills, can be used to leave assets to specific beneficiaries. However, trusts can be more flexible than a Will. With a trust there can be multiple beneficiaries over a period of time. A common example of this is a second marriage scenario.

It often works this way: Donald divorced his first wife five years ago and has three children from the marriage: Huey, Dewey and Louie. He met Daisy and decided to get married again. Donald went to see Lucy Lawyer, an estate planning attorney, because Donald wanted to be sure Daisy and his three sons would be provided for at his death. Donald told the attorney that he wants to leave

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everything to Daisy and then Daisy has promised to leave anything left to his sons at her death.

Lucy explained that if Donald leaves everything to Daisy, the assets she inherits are hers, outright, and she can do whatever she wants with it, leave it to charity, to her third spouse, or her children. She is not legally required to leave anything to Huey, Dewey, and Louie. Donald responds that he does not want that, he wants to be sure Huey, Dewey and Louie inherit something, but he loves Daisy and he doesn't want to disinherit her.

Lucy tells Donald that a Trust can help solve his problem. Donald can leave everything to a trust which will benefit Daisy during her life. Then at her death, any remaining trust assets will go to Huey, Dewey, and Louie. By using a trust Donald is guaranteed that all of his heirs, including his sons, benefit from his estate at his death. This is just one example of where the flexibility of a trust allows a Grantor to ensure all of his or her intended beneficiaries benefit. There are many more situations where a trust will help a grantor achieve all of their estate distribution goals.

## Estate Taxes

Unless Congress acts, as of January 1, 2011, the estate tax returns and everyone will have a \$1 million exemption. This means each person can pass \$1 million in their estate before incurring estate tax. The one big exception is a married couple. A husband or wife can pass an unlimited amount of assets to a surviving spouse without incurring estate tax so that any estate taxes aren't due until the second spouse's death. This is called the marital exemption. A trust can help a married couple use both spouse's exemptions and shelter \$2 million rather than just \$1 million at the second spouse's death.

## Other Benefits of Trusts

Trusts have many additional benefits other than the ones discussed above. There are many specialized trusts that are drafted and funded for particular purposes such as to help facilitate charitable donations or to hold and manage assets for disabled individuals on government benefits.

Finally, one benefit of any type of trust that many people appreciate is that the terms of trusts are private, unlike the terms of a Will, which are public record. This benefit is

often a primary reason wealthy people in the public eye use trusts instead of a Will.

## Conclusion

Hopefully it is clear that trusts are a valuable and flexible tool in your estate planning arsenal. This article just touches on the many situations that would benefit from the use of a trust. If you wonder if your estate plan can benefit from a trust, please call Armor Trust Attorneys at 919-571-4398 and make an appointment to speak with an attorney and discuss your options.

**At Armor Trust Attorneys, we are committed to serving clients who have wealth preservation and transfer needs. We are a boutique estate planning and wealth preservation firm. Unlike large law firms, our clients always speak directly with an attorney, and we focus on their needs, so that they can sleep better knowing that their unique needs are being met.**



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