

# TODAY'S ISSUES



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## PUTTING YOUR WILL IN MOTION BEFORE DEATH

While some parents are willing to give modest amounts to their children during their lifetimes, most are reluctant to make significant transfers of wealth now. There are many reasons. What happens if we need the money? What happens if children carelessly fritter it away? Perhaps one of the children will have a bad marriage? And, on it goes. The fact is that some parents may be tempted to start the process but just don't quite want to let go of significant wealth while still living. I believe there is a solution that allows families to start the process now with the ability to reclaim assets if things go wrong. The big attraction is that families can reduce the value of their estates, avoid taxation on death and future gains, and future growth in the value of transferred assets will benefit children. All of this also comes with significant flexibility – if structured properly.

Bill figures he and his wife Susan can safely transfer \$250,000 to their children. They haven't quite decided how it should be allocated amongst them and are a little concerned that if they have future investment losses or require costly medical care, they might need some of the \$250,000 back. Here is a plan that should work. The technicalities are complicated, so you will need good tax advice.

Bill transfers \$250,000 to a trust for Susan and their three children. The trust is discretionary in that the income and capital of the trust can be allocated to any of the beneficiaries, which obviously includes Susan. Because of a beneficial tax provision for certain trusts, appreciated assets can be eventually transferred to trust beneficiaries without tax at the time of distribution out of the trust. The beneficiaries, of course, will only get the lower cost of these assets for tax purposes (not current fair market value at the time of distribution) and will certainly have to pay tax some day. But, if they keep the assets for a long time as part of their retirement portfolio, the gain is deferred even further. The trust allocations for the children can usually be protected under family law if the beneficiary keeps them separate.

Susan is the trustee of the trust and makes all of the decisions with respect to the distribution of income or capital of the trust. The real purpose of the trust is to get capital into the hands of the children eventually with future growth going to them so that it is not taxed to Bill or Susan on the death of the last to die. Probate is also reduced. Two hundred and fifty thousand dollars growing for 15 years at 6% becomes \$600,000. Why should Bill or Susan pay the tax on this if they want it to go to their children anyway?

There is always a possibility that something unforeseen could happen to one of their children. Bill and Susan may want to allocate the share of that child's trust assets to other children or even back to Susan. Because the trust is discretionary, Susan can simply make a different allocation. The trust document



should have a provision which indicates that “even hand rule” does not apply to the allocation of income or capital. Thus, Susan is free to do whatever she wants without repercussions from the children.

The beauty in this arrangement is that Bill and Susan can start the allocation now but if some calamity happens they can get their money back through Susan without taxation. If everything goes forward as planned, they eventually allocate the capital to their children when they are ready to do it. A win-win eh!  
*This Today's Issues was first written as an article for the MoneySaver magazine.*

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