

The Value of a Trust

By Kristen M. Jackson

What to consider when setting up a trust for minors or incapacitated beneficiaries.



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People often create trusts as part of their estate planning to manage property for the benefit of minor or incapacitated beneficiaries, or others whom the settlor believes are unable to manage their own financial affairs effectively. Even if you think you do not have enough assets to benefit from using a trust for tax-planning purposes, a trust may be valuable if special circumstances surround the beneficiaries who will inherit them.

Outright Distributions

If you leave assets outright to a minor beneficiary, unintended consequences may occur. When a minor directly owns property, a court-supervised guardianship proceeding will be required to manage their property since minor children do not have the legal capacity to manage assets or execute contracts. A guardian will be appointed to manage the assets until the beneficiary reaches age 18 at which time the court will order that the assets be distributed to the beneficiary. The beneficiary may not be capable of managing the assets at that age. Even if the beneficiary is an older adult, once the beneficiary receives a lump sum outright, the property will be vulnerable to divorcing spouses, lawsuits, and the beneficiary's bad decisions.

Incremental Distributions

If you do not want your beneficiaries to have full control their inheritances when they turn 18, you can establish a trust and appoint a trustee to handle funds until your beneficiaries are older and better able to handle their own financial affairs. One option is to hold a minor beneficiary's inheritance in trust and pay the beneficiary when he or she reaches a certain age or achieves a specific goal and then make an outright distribution of their inheritance. Another option is to pay the beneficiary increments. For example, the beneficiaries could receive 50 percent of their inheritance when they reach 25 and the balance at age 30. Or, a 50 percent distribution can be made when they earn a college degree with the balance paid when they complete graduate school. Meanwhile, the

property still in the beneficiary's trust could be used to pay for the beneficiary's education, medical bills or support needs.

Lifetime Trust

Another option is to leave beneficiaries' inheritance in trust for their entire lifetime. There are many benefits to choosing this option:

- When a minor beneficiary becomes an adult the assets held in the trust will be protected from divorcing spouses, lawsuits, and, if a third party trustee is used, then from the beneficiary's own bad decisions and outside influences.
- If an adult beneficiary lacks the ability to handle his or her own affairs.
- You can control who will receive any assets that remain in the trust when the beneficiary dies by specifying how it will be distributed.
- You can use a third party trustee while the beneficiary is a minor but then make the beneficiary his



or her own trustee at an age you think the beneficiary will be responsible enough to take full control.

- For incapacitated beneficiaries, the assets in trust can be used to supplement any government benefits they receive while ensuring they continue to be eligible for those benefits.

Consideration must be given to the potential drawbacks of using an incremental or lifetime trust. A trustee must be in place during the entire term of the trust to administer the trust according to its terms. This means added costs and expenses for accounting and legal advice and trustee fees. For a minor or incapacitated beneficiary, however, the cost of managing his or her assets in trust is often less than the cost of court-supervised guardianship.

When considering the use of a trust for beneficiaries, the amount of the inheritance, age and capacity of beneficiaries must be weighed against the costs to administer the trust. Consult with an experienced estate planning attorney to discuss your options and to implement the right plan for your family. **L**