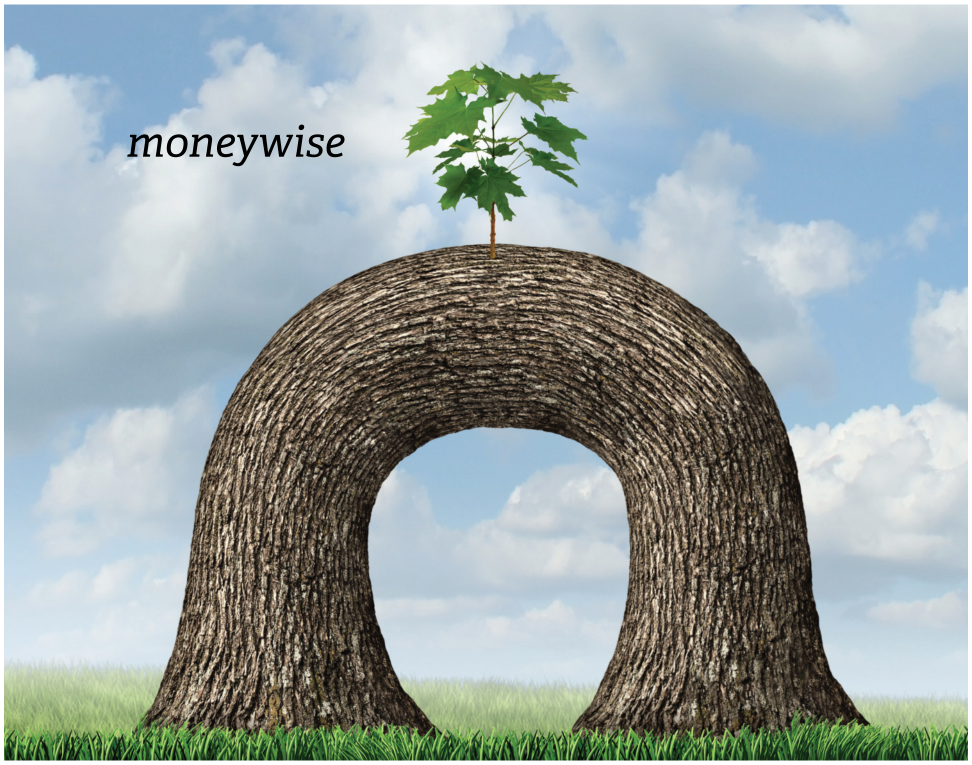

Trust in the Future

Q I want to establish a family trust. What issues do I need to keep in mind from the beginning of the process?

Marc J. Soss, Marc J. Soss, Esquire says: When creating a Revocable Trust it is important to take into consideration the following factors: total net worth; federal unified credit amount; (state unified credit amount (if you are not a Florida resident); your marital relationship (first or second marriage); children (with current spouse or prior relationship); and special factors (special needs child, child with creditor issues, poor money manager, drugs and alcohol, citizenship of spouse, etc.). Each factor can have a significant impact on the verbiage and provisions contained in your estate planning documents.

Having an understanding of your net worth and federal unified credit amount will allow you to plan how your estate plan with work, both on the death of the first and surviving spouse. A couple with an approximate net worth of $750,000 will probably not be concerned with taking advantage of a deceased spouse's unified credit and recognize (unless Congress changes the law again) that the surviving spouse's estate will not be subject to the federal estate tax upon his or her death. In these types of scenarios, it typically makes sense for the estate plan to be drafted to leave everything to the surviving spouse and provide them with the ability to disclaim an amount should circumstances warrant it. With high net worth clients, utilization of all or a portion of a deceased spouse's federal exemption amount should be at the forefront of the conversation and take into consideration the new "portability" provisions (ability for a surviving spouse to claim a deceased spouse's federal estate tax exemption–thereby leaving them with both spouses' exemptions).

Couples who have long-term first marriages may leave everything to the other, upon the first spouse's death, and then the balance to their children, if any. The inheritance can be left outright (they get it immediately upon the surviving spouse's death) to the children or in stages (different ages, ie...35, 40 and balance at 45). Alternatively, the balance could be left to charitable organizations or a foundation.

Planning for blended families can create issues at the time of each spouse's death, especially when children from prior marriages or relationships are involved. It is important to inquire whether a pre-marital or post-marital agreement exists and whether the couple has already made its provisions obsolete. Another issue that requires attention is when one spouse desires to leave their wealth, after the death of the surviving spouse, to their children (from a prior marriage), while the other spouse may want the wealth divided among all of the children (his and her children from their prior marriages) when both spouses are deceased. Unless a marital agreement has been entered into by the couple, the wealthier spouse's estate plan may be required to leave their surviving spouse's inheritance in trust for their benefit.

These type of "marital trusts" often create tension after the death of the wealthier spouse because it requires the surviving spouse to ask the trustee (usually one or more of the decedent's children) for funds to live on. Every dollar expended for the benefit of the surviving spouse decreases what will remain for the ultimate beneficiaries. Long-term first marriage couples with children may find it easy to nominate one or more of their children to serve as trustee in the event of their incapacity and/or death. In contrast, blended couples may have differing opinions on who should step into their shoes in the case of incapacity and/or death.

Barry Spivey, partner at Sprivey Fallon Law says: Trusts have a lot of purposes. You would avoid passing assets through probate court, which you don't have to do if your assets are in a revokable trust at the time of your death. It's generally going to be less expensive using a trust as opposed to probate because there is a lot more work in a probate administration. And in the event of incapacity, a successor trustee takes over and you don't have to have a guardianship of assets issue. A guardianship can last for years if somebody has Alzheimer's or a similar condition, and you have to go to court to have permission to buy or sell assets, you have to file annual reports in court, financial and other kinds of reports, which you have to have a lawyer do it. It's more expensive than a trust, and your trustee doesn't have to go to court and can just buy and sell assets and pay in trust assets for the bills for the person who created the trust. It's generally more efficient. Of course, selection of a trustee is pretty critical for somebody who knows how to invest. Those are the non-tax reasons for having one, but if you have got an estate worth more than $5,340,000, a trust can save some estate tax, or postpone the payment of estate tax. For a married couple, for example, each of them can pass $5.34 million free of tax, but in excess of that you would have to put it in a trust for the surviving spouse. That trust, until the surviving spouse's death, is not taxable and passes to the beneficiary.

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