THE

ESTATE PLANNER

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Is silence golden?

The good and the bad of keeping your trust a secret

It's common for parents to set aside money or other assets in trust for their children or grandchildren. At the same time, many parents agonize over the impact this wealth may have on their heirs. Will the promise of a significant inheritance encourage financial irresponsibility or recklessness? Will it provide a disincentive to higher education and gainful employment?

One potential solution is a "silent trust," sometimes referred to as a "quiet trust." These trusts, which are permitted in many states, limit the amount of information shared with beneficiaries or, in some cases, keep the existence of the trust a secret. Silent trusts offer several benefits but, as discussed below, they also have a few drawbacks. And in some cases, there are other strategies for achieving the same objectives.

What are your options?

The duties of a trustee are governed by state law, which varies from state to state. Most states require trustees to keep beneficiaries (at least those who've reached the age of majority) reasonably informed about the existence of a trust as well as its terms and administration. Typically, at a minimum, trustees must provide beneficiaries with a copy of the trust agreement and an annual accounting of the trust's assets and financial activities.

Most states allow you to place limits on the information provided to beneficiaries, but they accomplish this in different ways. Some states, for example, allow the trust agreement to waive the trustee's duty to inform the beneficiaries. Others allow the trust's settlor (the person establishing the trust) to limit the trustee's duty by executing a separate waiver document. In some states, a settlor can limit the disclosure of information by appointing a third-party surrogate (a trusted advisor, for example) to receive notifications and other information from the trustee on the beneficiaries' behalf.

Eventually, beneficiaries must be given information about a trust. Some states require disclosure after a specified time or upon the occurrence of a specified event (such as the beneficiary reaching a certain age). Others allow the settlor to determine when beneficiaries will be informed.

What are the benefits?

The ability to keep a trust's terms or existence a secret offers several important benefits, including:

- Maintaining confidentiality over the settlor's financial affairs and estate planning arrangements,
- Avoiding beneficiary scrutiny of the trustee's investment and management of trust assets,
- Preventing the disclosure of information about the trustee's management of family business interests, and
- Potentially reducing disincentives for beneficiaries to behave in a financially responsible manner, pursue higher education and gainful employment, and lead a productive life.

A flexible trust for encouraging good behavior

A disadvantage of incentive trusts is that by setting specific goals — such as finishing college or maintaining a certain income level — they may discourage alternative, but equally worthy, lifestyles. Examples include being a stay-at-home parent, doing volunteer work or starting a not-for-profit organization.

A principle trust offers the flexibility to accommodate these choices. Rather than condition trust distributions on specific behaviors, the trust outlines general principles for distributing funds to beneficiaries who demonstrate responsible behavior, providing the trustee with broad discretion to apply these principles on a case-by-case basis.

A secret trust may also help protect beneficiaries from becoming targets of fraud, identity theft or other nefarious schemes.

What are the drawbacks?

The most significant drawback of a secret trust is that it defeats one of the key purposes of keeping beneficiaries informed: to enable them to monitor the trustee's activities and ensure that he or she is acting in their best interests. Without anyone "policing" the trust, there's an increased risk of litigation years or even decades down the road, when beneficiaries learn of decisions by the trustee that they believe breach the trustee's fiduciary duty. This may be less of a concern, however, in states that allow a third-party surrogate to monitor the trust.

Another drawback is that secret trusts may not be effective in discouraging irresponsible or destructive behavior. It's nearly impossible to keep your wealth a secret from your children, so they'll likely expect to share that wealth one day, regardless of whether they know about a trust. But failure to explain the details of your estate plan to your children can lead to hurt feelings and disputes when they learn about them years later.

Is an incentive trust an option?

Instead of avoiding *disincentives* to positive behavior, which may or may not be effective, a better approach for many families is to provide *incentives* for such behavior using an "incentive trust." Rather than keeping the trust a secret, an incentive trust provides positive reinforcement by informing beneficiaries of the trust's terms and by conditioning distributions on behaviors you wish to encourage. Examples include obtaining a college or graduate degree, maintaining gainful employment, pursuing worthy volunteer activities, or avoiding alcohol or substance abuse.

Secret trusts may not be effective in discouraging irresponsible or destructive behavior.

Another alternative, which offers greater flexibility, is a "principle trust." (See "A flexible trust for encouraging good behavior" above.)

To tell or not to tell

If you're concerned about the impact a trust will have on your children or grandchildren, talk to your estate planning advisor about the pros and cons of silent trusts. There are many strategies you can use to accomplish your estate planning objectives while helping your heirs to lead productive lives. ▮

Qualified Opportunity Funds: Estate planning implications

If you own appreciated stock, real estate or other capital assets, it's important to consider capital gains taxes as part of your financial and estate planning. One issue that often arises is whether to sell a capital asset or hold it for life. As you weigh the pros and cons, consider the tax benefits offered by investments in Qualified Opportunity Zones (QOZs) — economically distressed communities designated by the federal government.

Created by the Tax Cuts and Jobs Act, the QOZ program allows you to defer current capital gains and avoid taxes on future gains by reinvesting gains in a Qualified Opportunity Fund (QOF). QOFs are funds that invest primarily in one or more of the nearly 9,000 QOZs throughout the United States and its territories and meet certain other requirements.

A balancing test

Deciding whether to hold or sell an asset means you'll have to balance competing tax and financial interests. On the one hand, there may be important investment or financial planning reasons to dispose of an asset, but doing so will trigger capital gains taxes on its appreciation in value. On the other hand, if you hold an asset for life and bequeath it to your children or other heirs at death, they'll enjoy a stepped-up basis in the asset, essentially eliminating the capital gain.

The ability to sell an asset and defer the gain by reinvesting it in a QOF may change the equation for many investors.

QOZ benefits

The QOZ regulations are complex and in a state of flux, but generally the tax benefits are available to investors who recognize capital gains from other investments and reinvest those gains in a QOF within 180 days. The program offers three important benefits:

1. **Tax deferral.** The original capital gains are deferred until the *earlier* of December 31, 2026, or the date you dispose of the QOF investment.

2. Tax reduction. If you hold a QOF investment for at least five years, you enjoy a 10% step-up in basis, reducing the amount of deferred gain. If you hold the investment for at least seven years, you receive an additional 5% basis step-up, reducing your deferred gain by a total of 15%.

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3. Permanent gain exclusion. If you hold a QOF investment for at least 10 years, you enjoy a permanent exclusion from tax for any capital gains attributable to appreciation of the QOF investment itself. (This doesn't affect the tax treatment of the original, reinvested gain.)

Here's an example: On December 1, 2019, Laura sells publicly traded stock, generating $2 million in capital gain. On December 31, 2019, she invests $2 million in a QOF and holds the investment until December 31, 2029, when its value has grown to $3.5 million. At the end of 2026, Laura is taxed on the deferred gain, which is reduced by 15% to $1.7 million because she has met the seven-year holding period. (Note: If Laura dies before the end of 2026, the deferred gain will be taxed to her heirs.) On December 31, 2029, Laura satisfies the 10-year holding period, so the $1.5 million gain earned by the QOF investment is permanently excluded from her income. She can continue to hold the investment, sell it tax-free, or give it to her children or other heirs, who may also exclude the gain.

Time is running out

If you're considering selling a capital asset and reinvesting the gain in a QOF, you'll need to act quickly to maximize the tax benefits. To receive a 15% basis step-up you'll need to meet the seven-year holding period by the end of 2026, which means you'll have to invest in a QOF by the end of 2019. ∎

Coming to a family consensus on moving a parent to a nursing home

Do your estate and financial plans account for *all* members of your family? You've likely addressed your spouse and children, but what about your aging parents and in-laws? No matter how diligently you prepare, your planning can quickly be derailed if a parent or in-law requires long-term home health care or an extended stay at a nursing home or assisted living facility.

Take a sensible approach

If moving a loved one to a nursing home is the best plan for all concerned, consider the options. Before sitting down with him or her to discuss a move, make sure you have all the information needed to present viable alternatives. For instance, if you live far from a parent and will be proposing a move to a nursing home closer to you, be prepared to compare facilities in your parent's area as well as your own.

Take the temperature of other family members, such as your siblings. Will they be on board with a decision to move your mother or father to a nursing home? If not, try to iron out your differences before you meet with your parent. Also, see if it's viable for one sibling to assume oversight of the

you may be accused of "sounding like a broken record," reiterate the dangers your parent faces if he or she doesn't obtain the necessary assistance.

Conversely, avoid making common mistakes committed by people in similar situations. Don't try to exert a level of control that makes the family dynamic seem more like a dictatorship than a democracy. Don't take away your parent's dignity. And don't take his or her anger personally; you're someone your parent can vent to, especially if you're the one delivering the message.

parent (such as the one living closest to the nursing home) or whether responsibilities will be divided.

Talk directly to your parent, but gently. Be reasonable and sensitive about the way you present the option of moving to a nursing home. Consider whether the meeting with your parent should be on a one-on-one basis or if it's better to include other family members. Be careful: You don't want your loved one to feel ganged up on. At the very least, designate a spokesperson — someone who's usually not confrontational — to initiate and lead the discussion.

Acknowledge your parent's feelings. Regardless of the way things turn out, it's important to make it clear that you understand his or her point of view. Don't simply dismiss whatever misgivings your loved one has about leaving home. Show some compassion for what he or she is going through.

Remain resolute. Despite these allowances, you must stand firm if a loved one is no longer capable of self-care. Continue to acknowledge whatever concerns are expressed, but keep the process moving forward in a sensible timeframe. Although

Nursing home costs

Inevitably, one of the first questions that arises when contemplating a nursing home move is, "What's it going to cost?" As you might imagine, a nursing home stay doesn't come cheap, but the actual out-of-pocket expense will vary, depending on several factors.

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According to PayingforSeniorCare.com, the national daily average for nursing home care for a shared room in 2018 was $235, but there was a wide disparity among geographic regions. In the Southeast and Midwest, the daily average

was around $170, while the Northeast cost was pricier, around $350 a day.

Other factors come into play, such as whether the resident has Alzheimer's or some other debilitating illness. Make sure you read all the fine print.

Explore all options

Given the potential magnitude of long-term care expenses, the earlier you begin planning, the better. Contact your estate planning advisor to review your options.

ESTATE PLANNING RED FLAG

You're drafting your own estate planning documents

There's no shortage of online do-it-yourself (DIY) tools that promise to help you create an "estate plan." But while these tools can generate wills, trusts and other documents relatively cheaply, they can be risky except in the simplest cases. If your estate is modest in size, your assets are in your name alone, and you plan to leave them to your spouse or other closest surviving family member, then using an online service may be a cost-effective option. Anything more complex can expose you to a variety of costly pitfalls.

Part of the problem is that online services can help you create individual documents — the good ones can even help you comply with applicable laws, such as ensuring the right number of witnesses to your will — but they can't help you create an estate *plan*. Putting together a plan means determining your objectives and coordinating a collection of carefully drafted documents designed to achieve those objectives. And in most cases, that requires professional guidance.

For example, let's suppose Marlene's estate consists of a home valued at $500,000 and a mutual fund with a $500,000 balance. She uses a DIY tool to create a will that leaves the home to her daughter and the mutual fund to her son. It seems like a fair arrangement, but suppose that by the time Marlene dies she's sold the home and invested the proceeds in her mutual fund. Unless she amended her will, she'll have disinherited her daughter. An experienced estate planning advisor would have anticipated such contingencies and ensured that Marlene's plan treated both children fairly, regardless of the specific assets in her estate.

DIY tools also fall short when a decision demands a professional's experience rather than mere technical expertise. An online service makes it easy to name a guardian for your minor children, for example, but it can't help you evaluate the many characteristics and factors that go into selecting the best candidate.

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