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ABOUT THE AUTHOR

Andrew is a member of the firm's Trust and Estates practice area. He primarily represents clients in matters involving estate planning, estate administration, special needs law and elder law. Originally from Grand Haven, Michigan, Andrew attended the University of Michigan, graduating with a Bachelor of Arts degree in Political Science. He earned his J.D. from Michigan State University College of Law.

Using Trusts to Avoid Leaving Assets to Your Son-in-Law or Daughter-in-Law

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While you may love your son-in-law or daughter-in-law, you may not necessarily want to pass your assets to them that your child inherited from you but then subsequently died. Many people have reservations about this scenario. After all, your son-in-law or daughter-in-law could remarry and the assets you worked a lifetime to accumulate could end up benefiting their new spouse. However, if you use a simple will or beneficiary designations to name your child as the beneficiary, that's exactly what could end up happening.

Understanding Different Types of Trust Instruments

You could instead choose to leave assets for your descendants in trust, either by using a testamentary trust or a revocable living trust.

A testamentary trust is a trust created in a Will. When you die, if the trust is "triggered," the trust springs into being at that point. Your Will contains details about who should benefit from the trust, under what conditions trust assets can be used or distributed, and who is in charge of managing the trust assets (the trustee).

A revocable living trust, also simply referred to as a revocable trust, is a separate estate planning document you create and fund during your lifetime. It operates in much the same way as a testamentary trust after your death, but can also be used to control assets during your lifetime. One of the benefits of using a separate revocable trust over a testamentary trust is that assets inside a properly-structured and funded revocable trust will avoid probate court when you die.

Trust Provisions Can Ensure Assets Pass to Intended Beneficiaries

Regardless of which type of trust makes the most sense for you, these trust instruments can be used to protect the assets you want to benefit your descendants. Rather than providing for the immediate distribution of your son's or daughter's share to him or her when you die, you can direct your trustee to use and distribute trust assets for your child's benefit during his or her lifetime and can direct that your grandchildren become the ultimate beneficiaries of remaining trust assets at your child's death.

There are different ways to structure trust provisions to benefit your descendants. You could give your trustee broad discretion to distribute funds for the beneficiary's health, education, support, and maintenance. Or, you could direct the trustee to distribute a set amount or percentage of trust assets to the beneficiary every year.

For many people, their sons-in-law or daughters-in-law have been an important part of the family for decades and it's hard to consider bypassing them in this manner. You could choose to also make your child's spouse a beneficiary of the trust during his or her lifetime but include guardrails around distributions such as a provision stating that distributions would stop if he or she got married to someone else.

Other Benefits of Well-Structured Trusts

Using a trust to plan for estate distribution to your heirs can avoid leaving money in your son-in-law's or daughter-in-law's control. Trusts can also protect assets in the event your intended beneficiary, whether a child or grandchild, is financially irresponsible, has a substance abuse or mental health problem, owes money to creditors, or simply needs some help managing their inheritance. This is particularly important when a beneficiary is a minor, but can also be helpful for adult beneficiaries who may not be prepared to handle receiving their share of your estate.

Trusts can be amazingly flexible. The important thing is to create documents designed to address your specific goals and wishes and to ensure your documents are updated as your situation changes. To learn more about using trusts and to create or update your own estate plan, contact your estate planning attorney today.

CONTACT US

919.250.2000
mail@smithdebnamlaw.com

RALEIGH OFFICE

The Landmark Center
4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000
Fax: 919.250.2100

CHARLESTON OFFICE

171 Church Street
Suite 120C
Charleston, SC 29401

Phone: 843.714.2530
Fax: 843.714.2541