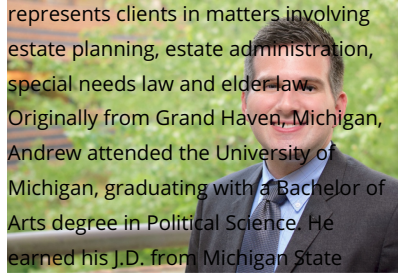


# What We Know

## ARTICLES & INSIGHTS

### 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.

## Understanding Potential Pros and Cons of Using Dynasty Trusts

July 12, 2019 | by

Wealthy individuals and families have long used different types of [trusts](#) to pass on their assets at death. Properly-structured trust instruments can eliminate the need for probate court and the publicity that comes with it while offering tax planning opportunities and a mechanism for the trust creator to exercise some control from beyond the grave. In states that allow for “dynasty” trusts, grantors have additional flexibility to provide for future generations and protect wealth from creditors.

### What is a Dynasty Trust?

A dynasty trust is essentially an irrevocable trust that can “live” beyond the lifetimes of the grantor and the initial trust beneficiaries. In North Carolina, a dynasty trust can exist in perpetuity, without being forced to pay assets to residuary beneficiaries and taxes to the IRS and the state government. Dynasty trusts can allow trust assets to be used for the benefit of several generations, providing support while keeping the investments and other holdings inside the trust and, importantly, outside the beneficiaries’ taxable estates.

Before creating and funding a dynasty trust, it is important to understand the potential benefits and considerations of this type of estate planning vehicle.

### Benefits

The following benefits make dynasty trusts appealing for many people:

- **Asset management.** As with any trust, dynasty trusts provide a mechanism for managing assets for the benefit of your heirs. This can be particularly beneficial if your children or grandchildren are young, financially unsavvy, or financially irresponsible. When you place assets inside a trust, your trustee – not your beneficiaries – is responsible for managing and distributing assets according to the terms of the trust.
- **Support for future generations.** Because they do not have a set expiration date, dynasty trusts can be used to leave a legacy of support for multiple generations to

come. The trust agreement could direct the trustee to pay out income to the beneficiaries and make principal distributions at the trustee's discretion. A typical distribution standard is to provide for the beneficiaries' health, education, support, and maintenance, but you could direct your trustee to consider the beneficiaries' other available assets and income when evaluating distributions. In this way, you can potentially extend the life of your trust beyond your grandchildren's generation, depending of course on the assets inside the trust, the investment performance, and the distributions made.

- **Asset protection.** Another popular benefit of dynasty trusts in North Carolina is the fact that, when structured properly, assets inside the trust are not available to your creditors or the beneficiaries' creditors. Similarly, you can protect trust assets in the event of a future divorce or professional malpractice claim against you or a beneficiary. That's because trust assets belong to the trust, which is a separate legal entity for tax purposes.
- **Avoid double estate taxation.** There is no escaping your obligation to pay Uncle Sam estate taxes due at the time of your death, but using trusts and careful estate planning can limit the amount you will pay. If you were to leave assets to beneficiaries outright, your estate could be subject to estate tax and then your beneficiaries' estates could also be subject to estate taxes when they die. This means the same assets could potentially be subject to estate taxation more than once. When you use a dynasty trust, those assets will not be included in the estate tax calculations for your children's, grandchildren's, or future beneficiaries' estates, because the trust assets themselves remain in the trust – not in your beneficiaries' estates.

## Considerations

There are also some potential drawbacks to using dynasty trusts that bear consideration before deciding on this approach:

- **Lengthy fiduciary obligation.** If you establish a revocable trust to distribute assets outright to your beneficiaries when you die, it often makes sense to name your spouse, an adult child, or another person as your trustee. With dynasty trusts, however, your trustee must be able to serve in that role for an extended period. You could name a succession of individuals, however practically speaking, this is problematic too because your trust could outlive everyone alive today. One solution is to appoint a professional fiduciary, such as a major bank's trust department, as trustee. While there is no guarantee that the bank will be around forever, careful drafting can ensure continued professional management.
- **Lack of flexibility.** With a fixed-duration trust, the trust agreement's provisions can be adjusted to reflect changed circumstances, helping ensure the Grantor's intent is met. Dynasty trusts, by their nature, may exist for generations after your death. This means there could be unforeseen events that the trust simply cannot be adapted to meet, giving rise to the possibility that your ultimate wishes and goals may not be carried out in the end.
- **No outright distributions to heirs.** A final consideration is that if you choose to use a dynasty trust, your children, grandchildren, or other intended beneficiaries will not receive a traditional inheritance under the trust. That's because your trustee will

always be held to the distribution standard specified in the document (for example “health, education, maintenance, and support of the beneficiaries.”) This may frustrate beneficiaries who believe they are entitled to receive an inheritance when you die.

There are other potential pros and cons of using dynasty trusts, so if it’s something you are considering, talk to an [estate planning attorney](#) who can help you evaluate whether this approach may make sense as an element of your plan. Contact our office to learn more and explore various strategies.

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