IS YOUR TRUST STILL FULFILLING YOUR OBJECTIVES?

by Henry Montag

People establish trusts for many different reasons. Some for the management aspects to make sure their assets will be properly invested and not squandered away by a spendthrift child or spouse. Others establish trusts to make sure that if sued, their assets are protected from the claims of a creditor. A careful parent or grandparent may establish a trust to provide an inheritance earmarked for the next generation and even to make certain that their child's assets are protected in the event of a divorce. Trusts can also be set up to provide for the welfare of a child, to provide for their educational fund or to send a birthday, graduation or wedding gift even after the grantor has passed away. A Trust is an excellent way to make a charitable bequest to assure your Legacy will always be remembered.

Some individuals with sufficient assets that choose to leave their IRA principal intact for a grandchild might choose to set up a stretch IRA trust. Doing so would allow the assets in the IRA to continue to grow tax deferred and accumulate for many years without having to take a distribution, a very smart and effective way to defer taxes on assets and even gives one an opportunity to skip a generation of taxes. Creditor protection for a beneficiary may also be another significant reason for a grantor to set up an IRA trust especially if the beneficiary might be sued because of their occupation, or spendthrift personality.

Prior to the estate tax exclusion increasing to over $5,250,000 many attorneys advised their clients to use marital A B Trusts to reduce the size of the assets in their estate to escape the federal estate and state inheritance taxes. Many advisors also suggested that clients place their primary homes in a Qualified Personal Residence Trust (QPRT'S), to avoid having their value included in their taxable estate for estate tax purposes. .While there are many reasons for an individual or family to consider the benefits of establishing a trust, it is equally important that individuals review their trusts to make certain they are still operating in their best interest today. For example many individuals that placed their homes in QPRT'S, may wind up passing the ownership of the home from a parent to child while the owner is still alive. However, in doing so they give up a significant tax benefit known as a stepped up basis at death unnecessarily as estate taxes may no longer apply today as a result of the new higher estate tax exclusions.

Many young families with children that have special needs, set up a Special Needs Trusts (SNT) to enable their child to receive whatever public assistance they may qualify for, and in addition provide them with other assets when parents are no longer alive. If there aren't sufficient assets to guarantee an income for the rest of a child's life, then the trust can be funded with a life insurance contract. While it's always important to choose a trustee wisely, never is it more important than when it comes to providing management for a special needs child for the rest of his or her life. Just as much thought should go into the selection of a trustee, as a trustee should carefully consider the duties and responsibilities he/she is assuming by agreeing to act as a trustee for their family or a close friend.

Too often people just appoint or accept the title as Trustee but don't understand the fiduciary liability and moral responsibility they now assume as they become personally liable to preserve the assets in the trust. This most commonly occurs when a life insurance contract was purchased in order to exclude the death benefit from their taxable estate. At that time, their attorney or accountant advised them to select an individual to act as trustee for their trust owned life insurance (T.O.L.I). Often times a son or daughter or friend is chosen, unknowingly placing them in a position where their lack of specialized knowledge concerning their duties may place them and the advisor making the suggestion in a position where they can be sued by other family members. This can happen if a universal life insurance contract

is allowed to expire prematurely as a result of a combination of sustained lower interest rates and a lack of policy performance evaluation and review process. Too often I see a client calling their stock broker several times a week to go over a $50,000 or $100,000 investment portfolio, yet they neglect to pay the same attention to a $500,000, $1,000,000 or more life Insurance portfolio. An interest sensitive universal life contract where the insured assumes all performance risk must be actively managed just like any other asset class.

Since many of these contracts were taken out 20-25 years ago in the mid 80's when the interest rates were significantly higher (13-15%) than they have been over the last 10-20 years, many of these contracts are expiring by as many as 8- 10 years earlier than anticipated. Evaluating the performance of a life insurance Portfolio every 4-5 years allows an individual to make sure they're still getting maximum value. In addition it allows them to take advantage of all the new features available since the recently enacted Pension Protection Act, (2010) and make certain that their contract won't expire prematurely based on incorrect assumptions regarding interest rates made years earlier when rates were higher.

One thing is certain – an individual is always better off if they take the time to overcome their own inertia which I call P.D.D, planning deficit disorder. By reviewing their current situation and comparing what they now have as opposed to what better arrangement may be available they may avoid a potential crisis and take advantage of new laws which provide a greater degree of flexibility than what may have been available when they initially made their plans.

Henry Montag, partner in Financial Forums Inc., is an Independent Certified Financial Planner, in practice since 1976 with offices on Long Island and NYC. Henry has lectured extensively on the subject of the proper utilization of financial products to protect and preserve assets, for individuals and business owners to organizations such as the New York State Bar Association, the New York State Society of CPA's & the National Conference of CPA Practitioners, as well as various regional banks and civic organizations.

Over the years he has developed an understanding of the overall coordination of a client's assets, their goals as well as the features and benefits currently available in the financial marketplace today. He has been quoted in The Wall Street Journal, Investor's Business Daily, Newsday, Long Island Business News, Investment News, etc. He has appeared as a guest on Fox News, News 12, FIOS T.V. as well as many radio financial talk shows.

HENRY MONTAG CFP
516-695-4662
henry@financialforumsinc.com
WWW.FINANCIALFORUMSINC.COM