

The Decision-Making Process

Many times, the hardest part about estate planning is coming to a final conclusion about what you want for the people you love. Very often, it can be helpful to hear what other people have done in similar circumstances. What follows is a summary of some of the kinds of choices you might make for your family. Remember, you can do anything you wish to do. Making planning decisions is a bit like painting a picture; one starts with a blank canvas, and can use as many colors as you wish. The directions you give me will replace you, financially, for your family once you are gone. With that in mind, I hope the following illustrations help.



The first choice you have to make is whether you wish to plan with a Will, or whether you prefer to use a Living Trust.

- The question is one of process and procedure. If you use a Will to give your instructions, you leave the process of transferring assets until after your death, relying on the probate court, with its attendant time and cost.
- If you use a Living Trust, you transfer title to your assets today, so as to avoid the need to involve the court when you die or if you become incapacitated.

Your choice:

Will?

Living Trust?



The second choice you have to make is whether to leave your gift to your loved ones, outright, free of trust; or, instead, to leave it in trust for their benefit.

- Leaving a gift outright is simple, and that simplicity is its advantage.
- Leaving a gift in trust provides you more benefits, though. It can provide management of money if a beneficiary is young; a child under 18 cannot hold assets, legally, and avoidance of an expensive and public guardianship is a must.
- It also provides the wisdom and experience of a trustee in managing money, when a beneficiary has not yet attained that kind of experience; so many people live month-to-month and paycheck-to-paycheck, so managing a large inheritance is beyond the knowledge of many people.
- It is protected from the claims of creditors, so a beneficiary can encounter rough times, financially, get through them (such as the filing of bankruptcy) and come out the other end, with their inheritance intact.
- It enables you to control where the money goes if a beneficiary should die before all of the money has been distributed.

Outright?

If you choose outright, you are finished with this process!

Or, in trust?



If you have more than one child or beneficiary, you must first decide when the inheritance is divided into separate shares.

- If your children are old enough, you may choose to divide your estate into separate shares at the time of your death, as soon as all bills and taxes are paid. Once divided, the rules for one child's share do not affect the other children.
- Other times, the choice is made to keep all assets together in one common pot, and distribute to the children or beneficiaries based on need, not necessarily based on equality.
- This is often the case when children are young and are being raised, because the **common pot trust** duplicates what many parents do, which is to provide for their children's needs without regard for exact monetary equality when their children are young. For example, if a 13 year old needs braces, most parents are unlikely to write a \$3,000 check to the 15 year old lucky enough to have straight teeth.
- The common pot trust is also used to get children to a basic level, such as getting them all through college before division.
- To account for the difference in ages and the differences in children, very often, we will define certain special needs (such as purchasing a home, getting started in business, or wedding expenses) that can be advanced against a child's future share, so that the oldest does not have to wait for the youngest to reach a certain maturity.
- If you choose the common pot trust, you must also decide when to trigger division into separate shares. When the youngest graduates from college? Turns 25?

Your choice:

Immediate division?

Or, common pot trust?

If so, when does the common pot trust end?



The next choice is to decide *how long* the trust will last; or, stated another way, how long do you want the benefits of protecting the inheritance in trust?

- Some people choose to have the trust last for their children’s lives, to then be distributed to grandchildren, other people, or charities. In that way, they know their family is always safely provided for, and they know that they retain control over what happens to the assets if a beneficiary should die or be subject to negative financial stress. The trust provides creditor protection, because the assets in the trust remain safe and protected and available for the family, according to your wishes, and no one else can affect what you have drafted in your trust agreement.
- Some want to give their children outright ownership and control over their inheritance, with all the pluses (and minuses) of that ownership, but they do not wish to give them a large sum of money all at once. So, those folks choose to distribute assets in stages, so that if a child makes poor decisions, they have something to fall back on. The number of installments, and the age of distribution is purely personal.
- A common choice is two installments, the first at 25, the second at 30.
- Some choose more installments, say over a longer period of time.
- Others choose to distribute assets as if the trust were an IRA, with a distribution every year, measured by the beneficiary’s projected life expectancy, so the beneficiary doesn’t outlive the trust.

Your choice:

Retain in trust for life?

Or

Distribute in stages?

If the choice is to distribute in stages, then how many installments, and over what period of time?

Installments:	Periods:
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The next decision that must be made is to decide the rules for what the Trustee is to distribute during the lifetime of the trust. During the common pot trust period, if any, generally the Trustee makes discretionary distributions for the children’s health, education, maintenance, and support (“HEMS”), magic words in estate planning that are very flexible and mean that the Trustee should support the beneficiary’s standard of living. Very often, special needs are defined and permitted as advances against future shares. After the division is made into separate shares, however, the Trustee must know how to make distributions, if at all, while the trust continues.

- Some people are very liberal and continue with HEMS, encouraging the Trustee to make any distribution believed to be in their child’s best interest.
- Others are more conservative, seeking to preserve principal, with distributions to be made only for genuine and severe need. (This rule is often coupled with the installment distributions discussed above, so that a child might not get automatic distributions from the trust, but every few years, the child receives a large chunk of the inheritance, free of trust.)
- Some parents may choose to distribute income, but not principal, regularly, with no discretion involved.
- Others will direct a monthly allowance to be made, tied to the Consumer Price Index, say \$3,000 every month, adjusted annually to keep pace with inflation.
- To motivate a child, parents may choose a “matching plan” where the Trustee distributes one dollar (or more) for every dollar earned by their child each year, generally proven by the child’s income tax return.
- Other times, there are certain specific concerns to be planned for, such as a handicapped child, or a child addicted to drugs or alcohol.

Your choice:

HEMS:

Liberal?

Conservative?

Other?

Remember, you can choose different rules for different beneficiaries. In addition, these rules may change as your child grows older.



Once you know what you want the trustee to do, then you must select the trustee.

- Should you select an individual?
- Of course, any human being is subject to frailties, such as illness, change of heart, death, etc.
- An individual should be up to the job, meaning they should be able to manage and invest money, handle details, be able to prepare and file tax returns, etc. A person who hates those kinds of financial matters would not make a good trustee.
- They should have the time to do the job. This is not a gift, after all. That person will be taking on another job, in addition to all of their other life responsibilities.
- The alternative choice is to name a corporate fiduciary, such as a bank.
- The professional trustee knows what they are doing.
- It will likely always be there, act according to your wishes, and invest prudently and conservatively.
- The professional will certainly be paid a fee, usually a percentage of the trust estate, say 1.25% of the first million dollars, reducing from there; but, remember, the individual is also entitled to collect the same fee.
- A compromise between these two is to name an individual as a co-trustee with a bank, giving the individual who knows your family the power to make discretionary distribution decisions, and giving the bank the responsibility to invest and manage the money and keep all records and file all tax returns.

Your choice:

Individual

Professional

Co-Trustees



Finally, you can decide whether you wish to make provisions for any other parties, such as other family members, friends, or charities. Many parents tell me that they know their children will not miss the \$10,000 that they wish to leave to their favorite charity, but the charity can really use those dollars.

Special Gifts:



Is there anything else that you would like me to know or to do in your plan?

Special Instructions: