

Potential problems with an old trust

from **ROBYN WALTON**

Congratulations on having the forethought to create a revocable (living) trust to provide centralized management for your assets if you become incapacitated or die, and to avoid probate. All trusts should be reviewed every few years to make sure the trust is up-to-date with the law and your goals today. Here is a checklist of trust features that you can review on your own:

Have you named the best Trustees for the job? A Trustee is usually who will "manage" and administer your trust when you die or become incapacitated. The question about who is the best possible choice as a Trustee is a changing and evolving situation because your life and assets change and your Trustee's life changes. If your Trustee has moved, experienced financial or personal difficulties, administering your Trust may be problematic for this person. Should your Trustee be different when you are incapacitated, as opposed to when you die? Does your Trustee get along well with your beneficiaries and cognizant of beneficiaries individual needs?

Can your spouse change your trust after you die? To the surprise of many trust owners often a trust becomes irrevocable ("unchangeable") when the creator(s) dies. Does your trust allow your spouse to pick a new successor Trustee or change the shares amongst your children (beneficiaries) after you die? Many people don't even realize the trust document can limit a spouse's ability to make changes to the trust or obtain a reverse mortgage



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after you die.

Does your trust protect your children and grandchildren from lawsuits and divorce? A well drafted trust should contain a provision that your children's trust shares cannot be attached by creditors or a spouse in a divorce. You also have the option of drafting your trust to continue long after your death. A trust can provide protection for children with financial or addiction issues that cannot manage money.

Have you funded your trust? "Funding" is the physical act of transferring or directing your assets and property into the trust. Any assets not transferred or directed to your trust before your death can still be subject to probate. For example, real property should be deeded into the name of the

trust and recorded before your death. Other assets may be directed into the trust by naming your trust as a beneficiary. A review of all of your asset titles and beneficiary designations should be made every few years.

An estate planning attorney can review your documents and advise you if your trust is still current, discuss the duties your successor trustees may face and whether your trustee is cut out for the job and help you determine if your assets are properly "funded" into your trust along with reviewing your distribution plan to be sure your trust matches your wishes.

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