CORE ESTATE PLANNING

Beneficiaries and Fiduciaries

by Layne T. Rushforth

1. INTRODUCTION

1.1 Estate-Planning Goals and Tools: The primary goal of estate planning is to see that your assets will be managed and distributed according to your desires during your life and after your death. There are a number of estate-planning tools, but the most common tools are the last will and testament ("will") and the revocable living trust. The main difference between a will and a living trust is that the living trust avoids court proceedings, including guardianship proceedings during life and probate proceedings after death.

1.2 People Are Most Important: Your will or trust will not accomplish your most important objectives unless it focuses on the right people. The people involved in a will or trust are the beneficiaries and fiduciaries. A will or trust can meet the minimum legal requirements, but that document may not accomplish your most important objectives unless you appoint the right fiduciaries, include the appropriate powers and restrictions, identify your primary and contingent beneficiaries, and give clear guidelines to meet beneficiaries' needs while discouraging unnecessary extravagance, dissipation, and waste.

1.3 Beneficiaries: Your "beneficiaries" are those who benefit from your will, trust, and/or other estate-planning arrangements, including life insurance, retirement benefits, and financial accounts. Your estate planning documents must not only identify who is and who is not going to benefit from your assets, but they must also give clear guidelines regarding the nature, timing, prerequisites, and amounts of distributions and other benefits. Most clients do not want assets unnecessarily dissipated by beneficiaries' creditors, marital disputes, probate expenses, or additional taxes. Because the legacy you leave should make a positive rather than a negative difference in the lives of those whom you intend to benefit, the will or trust should have custom-tailored provisions for each beneficiary, especially if the beneficiary has a special problem, need, inappropriate habit, or vulnerability that could be exacerbated with ill-advised distributions.

1.4 Fiduciaries: Your "fiduciaries" are those persons appointed to act for you in a position of trust, either during life or at death, such as the executor of your will, the trustee of your revocable trust, your agent under a power of attorney, and your guardian. Your documents must name the persons you want to take care of the various aspects of your personal and financial affairs. Your will, trust, and related documents should give your fiduciaries sufficient guidelines so that they understand your intent, and they should give the fiduciaries the power and authority necessary to carry out your intent.

2. BENEFICIARIES

2.1 **You:** A revocable living trust begins for your own benefit, and you are the primary beneficiary to whom and for whom the trustee makes distributions. You can be the trustee as long as you are willing and able to serve, but the time may come during your lifetime when you do not want to be trustee or when you can no longer manage your own affairs. Upon your resignation or incapacity, a successor trustee can assume authority over and responsibility for the trust, with the primary responsibility of providing resources for your care.

(a) *Discretion.* In most cases, you will want to give the trustee of your revocable trust broad discretion to make payments to you or for your benefit rather than specifying any type of mandatory distributions.

(b) *Gift Giving.* If you have begun a program of making annual gifts to reduce your estate, you may want to consider authorizing the trustee of your revocable trust to continue that gift-giving program as your agent.

(c) *Dependents.* If you have parents, children, or other dependents for whom you are providing funds, you may wish to authorize the trustee of your revocable trust to continue to provide such funds. If the payments you are making are constant, you may want the trustee to continue those constant payments; otherwise, you may wish to give the trustee the discretion to determine what payments are appropriate.

2.2 Debts, Taxes, and Administrative Expenses: After your death, all of your property will be distributed subject to the payment of your debts, taxes, and the expenses of administering your estate or trust. These materials do not go into any technical discussion of those payments. Suffice it to say that these obligations have the highest priority, and distributions under a will or a trust will not be made to a beneficiary until these obligations have been paid in full.

2.3 Your Spouse or Significant Other: It is common for a client to want to leave his or her spouse or significant other in complete control of all assets. When a couple's estate exceeds the "applicable exclusion" for federal estate tax purposes[1], minor restrictions on the surviving spouse or significant other can result in significant estate tax and generation-skipping tax savings for the ultimate beneficiaries. The law allows married couples to defer all of the estate tax until the survivor's death regardless of the size of the estate, while unmarried couples can accomplish much the same thing, except as to an unlimited deferral of the estate tax until the survivor's death. Even when tax savings are not an issue, some couples are not prepared to handle financial affairs on their own, and the management and advice of an "independent trustee"[2], "special trustee", "investment advisor", or "custodian" can be helpful.

(a) *Outright Control.* A surviving spouse or significant other can be the sole trustee and can have total control over the assets. As stated above, this may not be wise for estate tax purposes in estates exceeding the exclusion amount. Also, an outright distribution to a surviving spouse or significant other is not usually advisable when each spouse or significant other has different beneficiaries, such as children from prior relationships. There is a great temptation for the survivor to amend the trust to omit the predeceased spouse's family or other beneficiaries.

(b) *Bypass Trusts.* A "bypass trust" can be established for the benefit of the surviving spouse without subjecting those assets to federal estate taxes, claims from the surviving spouse's creditors, and distribution to the surviving spouse's new spouse or other persons the predeceased spouse would object to.[3] Bypass trusts are discussed generally in subsection 2.6 on page 7 of this memo.

2.4 Non-Family Beneficiaries: Beyond family members (including quasi-family members with whom you have a special connection), your beneficiaries might include friends, acquaintances, co-workers, or even strangers whom you want assist financially. Your beneficiaries might also include one or more charitable organizations. Including non-family beneficiaries is especially appropriate if the resources available to your family members are more than adequate to provide for their needs or if larger gifts to your family members will not significantly improve their lives or might even facilitate an undesirable lifestyle.

2.5 Residuary Beneficiaries: Beyond your spouse or significant other, you must identify the those living beneficiaries to whom you intend to leave your legacy. After expenses have been paid and you have provided for relatively minor distributions to other, those beneficiaries who will get what remains (referred to as the "residue" of your estate or trust) are called the "residuary beneficiaries." This group might include your children and other descendants, extended family members, other living beneficiaries with whom you have a special connection, and one or more charities, or some combination thereof. You must decide who gets what, when, and on what terms.

(a) *Unequal Shares; Nothing.* Before you make any decision with respect to the ultimate allocation or distribution of your assets, remember that you can leave your assets to any persons or entities and on whatever terms you decide. If you die leaving surviving children and you have no will or trust, the law will treat the children equally. In your will or trust, you do not have to treat them equally or leave them anything at all (except as to minor children to whom you owe a duty of support). Even if you want to be "fair" to children or other beneficiaries, that does not mean you have to treat them the same. You can give different shares or you can treat them differently as to the timing of their distributions.

(b) *Pre-Residuary Distributions*. Some people wish to leave gifts of cash or other property to specific people before allocating and distributing the bulk of the estate or trust.

(1) Gift List. Specific gifts of assets can be in a separate list, but only if the will or trust mentions that such a list might exist.[4] A gift list can be made at any time. Oral instructions to the trustee and stickers on tangible objects are not legally binding, and unless consented to by all beneficiaries, it may be illegal for the trustee to comply with those types of instructions. As part of the preparation for a will or trust, make a list like this:

Beneficiary	**Asset**
John Jones	1999 Infiniti Q-45 automobile
Sarah Zulano	Toaster Oven
Larry Brown	100 shares of IBM stock[4]

(2) Cash Gifts and Specific Bequests. Cash gifts can be made, but you may want to specify items to be sold if there is not enough cash to go around. In many estates, it is better to specify percentages, rather than dollar amounts. Specific items, other than those made on a separate gift list, must be mentioned in the trust. If you wish to make cash gifts, make a list like this:

Beneficiary	**Amount**
Fred Smith	$1,000
John Jones	$25,000
Each grandchild who has graduated from an accredited college or university with a bachelor's degree	$10,000

(c) *Residue.* After specific gifts have been specified, you must specify who gets whatever is left over, which is called the "residue". Generally, the residuary beneficiaries are also your primary beneficiaries, such as your children or other family members.

(1) Allocation and Distribution. In a will or trust, unless there is only one residuary beneficiary, you first need to give the executor or trustee instructions as to if, when, and how to *allocate* your assets into shares for the beneficiaries, specifying any conditions that determine the allocations to be made. Once the assets are allocated to shares for various beneficiaries, the fiduciary must be instructed to *distribute* the assets, including when and on what conditions assets are to be distributed to or for (or used by or for) the beneficiaries. For example, you may direct an allocation of a certain percentage or of specific assets to the surviving spouse or partner, leaving the balance to children or other beneficiaries, and how distributions are made to the spouse and how distributions are made to the other beneficiaries can be completely different.

(2) Pot Trust. In some cases, you may decide to defer the division of assets into shares for specific beneficiaries. For example, if your children, grandchildren, or other beneficiaries have a significant age difference, and you want the trust to remain undivided (as a "single pot" or pool of assets) for the entire group of beneficiaries until the youngest beneficiary in the group reaches a particular age or until some other triggering event, such as graduation from college. Until the triggering event occurs, the trustee is given the discretion to make equal or unequal distributions to various members of the group in accordance with specific guidelines, which can be very general (e.g., "*as much as the Trustee deems appropriate for the beneficiaries' health, education, and/or support*") or very specific (e.g., "*an amount equal to 25% of the beneficiary's earned income, as determined under Internal Revenue Code § 911(d)(2) and applicable Treasury Regulations*.")

(3) Fractional Shares. If there are two or more residuary beneficiaries, it is common to allocate the residue by fractions or percentages. Here is an example:

Residuary Beneficiary	**Percentage of Residue**
Fred Smith	25%
John Jones	55%
Sarah Zulano	15%
ABC Health Foundation	5%

(d) *Distributions: Outright, Installments, or Discretion.* You may or may not want to have one or more beneficiaries receive an immediate distribution of their shares. If you decide not to give a beneficiary an outright distribution in one lump sum, you will have the trustee retain certain assets, to be distributed according to guidelines that you specify.[5]

(1) Age. The most common criterion for distribution is age. Most people do not want a child, grandchild, or other beneficiary to receive a distribution before the beneficiary is at least 25 years old. Some pick age 21, others use age 30, and others even specify age 65. Many people provide for lump-sum

distributions, but it is also very common to stagger a large distribution over three distributions at various ages, such as 25, 30, and 35. It is completely up to you.

(2) Installments and other Mandatory Distributions. You may wish to have a beneficiary's share distributed in periodic installments, for example, one third upon your death, one third five years later, and the final third five years after that, or, for another example, 10% a year for 10 years. You may also wish to make other distributions mandatory, such as annual or quarter-annual distributions of all of the trust's income or distributions of a specific dollar amount (perhaps adjusted for increases in the cost of living).

(3) Other Triggers. You may prefer to use a gauge other than age to determine the timing of distributions. Some direct distribution upon graduation from college or vocational training or after three years' employment in the beneficiary's career field.

(4) Discretionary Distributions. In addition to mandatory distributions, the trustee can be given the discretion to make distributions from a beneficiary's share (or from a pot trust) for specific purposes (e.g., college education, health insurance premiums, or medical care not covered by health-care insurance). Some trusts are completely discretionary and frequently are worded to encourage the trustee to supplement a beneficiary's other resources.

(5) Incentives. You may wish to give an incentive to beneficiaries to reach certain goals, to do specific things, and to otherwise be productive in life. For example:

(A) To encourage a college education, a trust might provide for a bonus for college graduation before a specified age or for obtaining an advanced degree or specific credentials (such as graduation from medical school or becoming a certified public accountant).

(B) To encourage a beneficiary's gainful employment, a trust might direct a distribution of an annual amount equal to fifty cents (50¢) for each dollar of "earned income" that is shown on the beneficiary's income tax return (IRS Form 1040) for the prior year.

(C) To encourage public service, a trust might provide for special distributions for participation in activities you want to encourage, such as honorable military service, being an at-home mother, Peace Corps service, AmeriCorps service, church-service missions, or service as a volunteer for the Red Cross or other community service group.

(6) Disincentives. You may wish to discourage certain behavior. For example, distributions to a beneficiary may be delayed, eliminated, reduced, redirected, or otherwise modified if a beneficiary has been convicted of a felony, is using drugs, has been unemployed while capable of working, or is delinquent in making court-ordered child-support payments.

(7) Special-Purpose Funds. You may wish to allocate assets to a special fund for a particular purpose. For example, you may want to set aside funds to be used for the college education or vocational training of those of your grandchildren who would otherwise not be able to attend.

(8) Unambiguous Conditions. If distributions or the timing of distributions are based on conditions, the terms and conditions must be clear, a time limit for meeting each condition must be given, and an alternate provision must be included in the event any condition is not met. To avoid legal challenges, the trust provisions must be unambiguous.

(A) Some discretion can be given to the trustee, but be careful not to make the job too burdensome. For example, if you want to prevent a distribution to a beneficiary who takes illegal drugs, it may be appropriate to give the trustee the discretion to select the type of drug test and the place where it is done, but you probably do not want to give the trustee the discretion to arbitrarily decide on his or her own whether a beneficiary is abusing drugs.

(B) Once a condition has been triggered, the trust must clearly instruct the trustee how to proceed.

(i) In extreme cases, the intended beneficiary might be eliminated as a beneficiary entirely, receiving nothing.

(ii) In other cases, the distribution can be delayed until the occurrence or nonoccurrence of an event within a specified time or can be redirected elsewhere, at least temporarily. For example, the trustee could be authorized to make child-support payments on behalf of a beneficiary who is delinquent on those payments. Also, the trustee might be authorized to pay for enrollment in a rehabilitation program for a beneficiary who has a problem with substance abuse, child abuse, or spousal abuse. For the trustee's protection, it is usually advisable for a trustee to be *authorized* but not *required* to make such payments. This is done by simply saying "the trustee may" instead of "the trustee shall".

2.6 Bypass Trusts for Creditor Protection, Estate Tax Savings, and Asset Management: It is common for a will or trust to give assets outright to children or other beneficiaries, but, as an alternative, leaving assets in a "bypass trust" can reduce depletion from creditors' claims, marital disputes, guardianship and probate proceedings, and federal estate and generation skipping taxes. Depending on the size of the trust and the nature of its investments, professional money management may also be another goal.

(a) *A Beneficiary's Powers in a Bypass Trust*. A bypass trust is an irrevocable trust that contains language making it a spendthrift trust (i.e., a trust exempt from creditors' claims) to the extent permitted by law and providing the beneficiary with any combination of the following benefits:

(1) Trustee. The right to be a trustee (or even the sole trustee, unless professional asset management is desired);

(2) Income. All of the income (or as much as an independent trustee deems appropriate if income-tax savings are desired);

(3) Discretionary Principal. As much of the principal as the trustee deems appropriate for the spouse's support, maintenance, health care, and education;

(4) "5 or 5 Power". The power to demand a distribution of principal each calendar year (or during a specified month of the year) not exceeding the greater of 5% of the trust or $5,000; and

(5) Power of Appointment. A power to "appoint" or direct distributions to anyone except the beneficiary, the beneficiary's creditors, the beneficiary's estate, and the creditors of the beneficiary's estate.

(b) *Eliminating Some Powers*. The foregoing powers are the broadest possible, but you can give any beneficiary any of these powers or any subset. For example, it is common to omit the 5% withdrawal right (to avoid estate taxation on 5% of the trust) and to limit the power of appointment (so that it can only be used to direct distributions within the family or some other identified group).

2.7 Unique Needs: Most clients want to treat their children equally, and this is perceived as being the fair thing to do. On the other hand, you may have children, parents, or other beneficiaries who have special needs.

(a) *Dependent Beneficiary*. If you have a dependent parent or child, any benefits should be discretionary so that the trust qualifies as a spendthrift trust that is not subject to assessment by public agencies or attachment by creditors.

(b) *Unequal Needs*. If there is a significant disparity in your various children's needs, do not be afraid to treat them unequally. Most parents, while they are alive, provide for their children according to their relative needs. Why should this stop at death? For example, is it really necessary to leave equal shares to two sons, when one is a successful brain surgeon and the other is struggling with child support payments after a nasty divorce?

2.8 Omitted Heirs: If you choose to omit an heir, say "I leave John Doe absolutely nothing." It is best not to explain your reasons.

2.9 Improper Gifts: Some provisions encourage litigation or create other problems. For example, you should NEVER: (a) give a beneficiary $1 or any other token gift; (b) make a gift contingent upon any unlawful act; (c) ridicule or defame any person; or (d) give a substantial gift to a minor without designating a trustee or custodian.

2.10 Alternate Beneficiaries: An alternate beneficiary should be designated to receive a gift to a beneficiary who fails to survive you or who dies at the same time you do. For example, you may want a specific gift made to a deceased beneficiary to go to the residuary beneficiaries or you may want the deceased beneficiary's children to receive the distribution. If all of your close family or friends are gone, you may wish to name one or more charities as alternate beneficiaries.

3. FIDUCIARIES

3.1 Generally: Fiduciaries fall into two general categories: those who are entrusted with your assets and financial affairs, and those who are entrusted with your health and personal care. This memo does not contain a discussion of your personal care fiduciaries, including your guardian and your "attorney-in-fact" under a durable power of attorney for health care; however, the fiduciaries entrusted with your assets should be authorized to provide resources so that your health care is properly provided for. Many clients choose the same people for both roles, but this is not necessary and in some cases is not desirable.

3.2 Qualification: As you consider selecting one or more trustees, please consider the following qualifications:

(a) *Trustworthy.* The title "trustee" is a derivative of the word "trust". Because there is generally no court supervision of a living trust, it is imperative that the trustee be absolutely trustworthy. You are giving the trustee great power to manage and control your affairs, usually at a time when you will not be around to supervise the trustee's actions. The integrity and honesty of each trustee you name must be beyond reproach. If you have a slight concern, you may wish to require a bond, but we would generally recommend another trustee.

(b) *Capable.* Your trustee must be able to do the job you are asking him or her to do. That will depend on the nature of your assets, the ages and needs of your beneficiaries, and the type of trust you are creating. A person who cannot balance a checkbook or make wise decisions with respect to his or her personal finances is probably not a good candidate for trustee. A trustee must be capable of making difficult decisions relating to the sale of assets, investments, and distributions to beneficiaries.

(c) *Available.* A trustee who is occupied with personal affairs must be able to take time off and tend to your affairs. No one should be named as trustee in a document unless they have consented in advance. Of course, this alone does not assure that they will be available later. Overnight mail, fax machines, and telephones have made it easier for a nonresident trustee to do the job, but minor delays can multiply and delay the settlement of the trust estate.[6]

(d) *Compatible.* Each trustee must be able to work compatibly with the trust beneficiaries, guardians for minor beneficiaries, and any other trustee(s). In addition, the trustee should be able to work well with accountants, attorneys, and other advisors to make sure that all legal obligations are met, including the filing of tax returns and the payment of taxes. You may want to discuss your objectives with your trustee to make sure that they do not have a personal philosophy that conflicts with yours, particularly as it relates to giving benefits to your beneficiaries.

3.3 Family, Advisor, or Bank/Trust Company: When you cannot manage your assets, the fiduciary or fiduciaries you appoint to act in your place can be a family member, an advisor (such as your accountant, investment advisor, or attorney), or the trust department of a bank or a trust company. Everyone has heard horror stories about estate or trust mismanagement by unscrupulous or incompetent fiduciaries, so your decision is very important.[7]

	Advantages	***Disadvantages***
Family	* Familiar with assets and beneficiaries. * May serve without compensation.	* May be biased and difficult decisions may alienate him or her from other family members. * Usually is untrained; pays more to advisors. * Entitled to same compensation as bank. * Not immortal; may not be available.

	Advantages	***Disadvantages***
Advisor	* Should be familiar with assets and beneficiaries. * Should have some training in investments, taxes, and trust administration. * Might be more objective than a family member.	* Training may be limited to one area. * May not have enough time to act as trustee because of job demands. * Not immortal; may not be available.
Bank	* Professionally trained to do this very job. * Might be more objective than a family member. * Fees are same as nonprofessional. * "Immortal"; someone will be around.	* Impersonal; trust officers change frequently. * Investments are too conservative. * May not be willing to manage real estate or family businesses.

3.4 Trustee: Most of our clients serve as the trustees of their own living trusts.[8] Alternate trustees must be designated to serve when the original trustee can no longer serve, whether by reason of resignation, incapacity, or death. Of course, you must name alternate fiduciaries who will serve if the first persons named cease or fail to act. The successor trustee of a revocable trust may have three functions:

(a) *Settlor's Care.* If the settlor of the trust cannot act, the trustee's primary duty is to make sure that the assets are properly managed so that the settlor's care can be properly provided for.

(b) *Estate Settlement.* When the Settlor dies, the trustee acts somewhat like an executor under a will, with the duty to collect the assets, to pay taxes and other obligations, and to distribute the remaining assets as provided in the trust document.

(c) *Asset Management.* A trustee will act as an asset manager and financial advisor to the extent the trust does not provide for outright distribution of assets to the beneficiaries. You may want to have a separate trust for each beneficiary or each family, and different trustees can be appointed for the various trusts.

3.5 Co-trustees: Two or more persons can be named to serve jointly as co-trustees. Co-trustees can be trust beneficiaries (often called "family trustees"), they can be nonbeneficiary professional advisors or corporate fiduciaries (sometimes designated as "independent trustees", "special trustees", or "custodians"), or they can be a combination of each. To avoid slighting someone, two family trustees can be appointed to serve together. To combine the personal insight of a family member with the expertise of a trustee who is professionally trained to manage and administer assets, the family may want to appoint a family trustee to service with an independent trustee such as a certified public accountant (CPA), the trust department of a bank, or a trust company. By having co-trustees, no single trustee can inappropriately use trust assets to his or her own personal advantage. If you select more than two persons, a decision by the majority will govern unless the document specifically requires otherwise. Having too many trustees can complicate matters by requiring multiple signatures on all transactions, and by creating the

potential need for court intervention if the trustees cannot agree on a matter, particularly if there is an even number of trustees who are equally divided on a question.

3.6 Co-trustees with Specific Duties: Generally, co-trustees have equal duties and responsibilities. On the other hand, you may want one of the co-trustees to be involved only in some decisions. For example, some people allow one or more family trustees to make most of the decisions relating to asset distributions but have an independent trustee make decisions relating to asset management and investments. An independent trustee should also make decisions that a beneficiary cannot make without adverse consequences under federal income, gift, estate, and generation-skipping tax laws. The family trustee and the independent trustee will be presumed to have equal authority unless you specifically delegate their powers otherwise. For example, you can provide that the family trustee will make all the decisions, except with respect to tax elections and distributions that could personally benefit the family trustee. On the other hand, you could instead provide that the independent trustee will make all the decisions, except with respect to distributions for education and health care for beneficiaries other than the family trustee.

3.7 Trust Protector: Many clients have the fear that an independent trustee may not perform as expected or may not work well with individual family members. You may want to give the family members the right to remove and replace an independent trustee, but usually you would also want to require that another independent trustee be appointed. If you are concerned that the power to replace an independent trustee might be used carelessly or might cause a dispute with the IRS regarding tax benefits, you may wish to appoint someone as a "trust protector" whose sole responsibility is to remove the independent trustee when there is a proper reason to do so. The independent trustee would be replaced by an alternate designated by you — or under a procedure outlined by you — in the trust document. For example, you could allow the trust protector to designate the new independent trustee or you could allow a majority of the adult beneficiaries to do so. While Nevada law allows a trust protector to be appointed, the trust instrument must specify what power and authority the trust protector has.

3.8 Executor: When your assets belong to the trustee of a living trust, a will may prove to be unnecessary. You may, however, inadvertently fail to transfer some assets to the trust, or there may be certain assets that you do not want to belong to your trust. To make sure that all property you own will be administered and distributed as you desire, a will is prepared that provides that any probate assets are to be distributed to the trustee of your living trust. This is called a "pour-over" will because the assets "pour over" into the trust. The executor is the fiduciary who will handle the probate estate after being officially appointed by the probate court. The executor's function is to collect, inventory, and manage your assets and to make distributions as authorized by the probate court. In most cases, the executor should be the same person as your trustee.

3.9 Guardian of Estate and Agent: To be consistent with your trust, you should name the trustee of your trust as the guardian of your estate (called "conservator" in other states) in your will and as your agent (or "attorney-in-fact") under a durable general power of attorney. This will authorize this person to act with respect to assets that are not covered by your revocable trust.

3.10 Guardian of Person and Health Care Agent: You should carefully select someone who can make medical and health care decisions for you if you cannot make them for yourself. This person should be named as guardian of your person in your will and as your health

care agent (also called your "health care attorney-in-fact") under a durable health care power of attorney.

3.11 Bond: In most estate planning documents, no bond will be required for any trustee or executor unless you want to specifically require a bond. If you feel that a bond should be required, this provision should be changed (or you should change your mind about who you have selected). A bond should not be necessary if you have selected a bank or trust company.

3.12 Trustee's Powers: Your trust should give the trustee the powers necessary to administer your assets. We will normally give the trustee the broadest powers permitted by law to provide flexibility; however, if you want to restrict certain investments or other activities, you must make that very specific. You may wish to have broad trustee's powers while you are serving and more restricted powers at any time you are unable to serve.

4. CONCLUSION

Your trust should be "customized" to meet the needs of you and your family. As you consider your beneficiaries, keep in mind that it is probably easier to decide who they will be than it is to decide how distributions will be made to them. Select your fiduciaries carefully, and if you choose to involve co-trustees, please be specific about the role each one will play.

[Version of June 9, 2020]

NOTE: This memo provides general information only and does not contain legal, accounting, or tax advice. For brevity, this memo is oversimplified and should not be relied on for any particular situation. Nothing in this memo can be relied upon for any specific individual's estate plan or to avoid any tax penalties.

RUSHFORTH FIRM LTD.
5550 Painted Mirage Road, Suite 320, Las Vegas, NV 89149-4584
702-255-4552 (Office) | 702-255-4677 (Fax)
office@rushforthfirm.com
https://rushforthfirm.com | https://rushforthfirm.info

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NOTES

1. Internal Revenue Code § 2010(c) provides for an "applicable exclusion", which is the cumulative amount that can pass free of gift and/or estate tax. The applicable exclusion is $5,430,000 for 2015, $5,450,000 in 2016, and $5,490,000 in 2017. For the applicable exclusion in prior years, see https://rushforthfirm.info/advintro.html#ae.

2. An "independent trustee" is generally any trustee other than a beneficiary or someone who is "related or subordinate to" a beneficiary.

3. Normally the bypass trust is funded with assets having a value up to the applicable exclusion for gift and estate tax purposes. [See end note 1.] This allows the surviving spouse or partner the benefits from the assets without including the value of those assets in the survivor's estate for federal estate tax purposes.

4. Gifts of stock, cash, and other property classified by the law as "intangible personal property" cannot be made on a separate list under the terms of a will.

5. This can be done under a revocable trust or under your will, but in Nevada and many other states trusts created under wills (referred to as "testamentary trusts") are subject to continuing supervision of the probate court.

6. The trust picks up the tab for airfare, meals, and lodging when the nonresident trustee does have to come to Nevada. Also, there is no requirement that the trustee has to economize on such expenses.

7. My experience is that more mismanagement occurs by untrained family members than by corporate trustees, accountants or others, so I recommend that family fiduciaries be selected carefully.

8. For self-settled spendthrift trusts (asset-protection trusts), the settlor (creator) of a trust cannot make unilateral decisions as to distributions to himself or herself, and a "distribution trustee" is required.