



More Trusts Used As Families Get Complicated

By Arden Dale – May 02, 2011

Most families are a far cry from the kind of brood epitomized on the 1950s TV sitcom “The Adventures of Ozzie and Harriet.” Families and their estate plans are more diverse now, and trusts play a main role.

Divorce, same-sex marriage and reproductive technology all promise to make trusts boom in estate plans over the coming years, even after a steady rise over the past few decades.

Jeffrey P. Hart, a Boston lawyer, worked with a same-sex couple in Massachusetts to create a trust to reduce estate tax. The pair has no children, so didn’t need to focus on questions about which beneficiary should get what. All assets were to go to the survivor.

The wealthier of the two men owns a real-estate development business, so the idea was to pass it to his partner with the smallest possible state and federal estate tax bill. Massachusetts recognizes same-sex marriages, so all state estate tax could be postponed until the death of the second spouse. Not so with the federal government--it levies the estate tax at the death of each partner in a gay couple.

Massachusetts state estate tax applies on estates of \$1 million or more; the new federal exemption is \$5 million.

Hart set up a trust on the assets of the wealthy spouse so that if he dies first they won’t be taxed again by the federal government when the partner dies. And, because real-estate values fluctuate, he recommended the pair consider life insurance on the wealthier man to help pay the federal estate tax on assets over \$5 million should he die first.

Same-sex couples often need to do special estate planning because of the federal estate tax issue, says Carlyn McCaffrey, a partner at McDermott Will & Emery in Chicago.

In another case, Hart helped sort things out when a client approached him with a trust set up by a lawyer for his father that had created problems. The father had founded a business and created a marital deduction trust to hold it. The trust left most of his assets, including the whole business--now run by the eldest son--to the father’s second wife. The aim was to eliminate estate tax at his death. A special provision directed that the business would go to the eldest son when the second wife died.

After the man passed away, though, the wife decided to sell the business. That didn’t sit well with the children. A wrinkle in the rules of the trust allowed her to make the sale, however. Ultimately, the son ended up buying the business, but only after a lot of distress, ill will and negotiations the children never saw coming.

What should have been done, says Hart, is “to have prearranged a plan for the son to buy the business on reasonable terms for both.”

Different kinds of trusts are used to solve the various needs of nontraditional families. A few of the most common are marital deduction trusts, qualified terminable interest property (QTIP) and credit shelter trusts. These can be used for more traditional families, too.

For some advisers, trusts are so important that wills are a kind of “side issue,” says Donald R. Weigandt, a wealth adviser in the Los Angeles office of J.P. Morgan Private Bank. In his practice, Weigandt adds, he generally puts clients’ assets into a revocable trust during lifetime, and “wills are only there to pick up assets not in the trust and put them in it.”

The reason for that strategy? Most people connected with an estate don’t want to go through probate. Wills must go through probate court, while trusts don’t.