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National Academy of Elder Law Attorneys

By Susan M. Graham, Attorney at Law

Keeping Your Assets in the Family The Inheritance Trust

As is the case with most wills, the majority of people who set up revocable and irrevocable trusts leave their assets outright to their children in equal shares when they die. So, what's wrong with that? Well, there may be a better way....

Instead of leaving your assets equally to your children, why not leave it to your children's trusts, which you can create here and now?

The Inheritance Trust is created by you, today, as grantor, naming your child as trustee and beneficiary when you die. So, for example, if your daughter were Mary Jones, the trust would read "Mary Jones, as Trustee of the Mary Jones Inheritance Trust".

There are a number of good reasons to create trusts for your children today. Just as you've learned about the benefits of a trust, undoubtedly your children will wish to avail themselves of the same opportunity one day. But in the case of your children, there are a number of additional benefits to leaving assets to them in trust. These are: (1) the assets will be protected from their spouse in the event of divorce (2) the assets will be protected from their creditors in the event of a financial hardship, and (3) on your child's death, the unused assets will go to your blood relatives (usually grandchildren) instead of in laws or others. These assets are protected from lawsuits. I had a client who unfortunately accidentally hit a child on a bike. That client knew she would be sued, and lose her assets including her inheritance. If her parents had placed her inheritance in a Inheritance Trust it would have been protected.

These trusts provide that, during your children's lifetimes, they have complete access to the income and the principal of their trusts -so that you're not giving them a "gift with strings attached" or

"ruling from the grave". But when your child dies, you would like the unused portion of their inheritance to go to your grandchildren. If the grandchildren are under age 30, the funds are held in trust for them until then, with the Trustee (usually one of your other children) using so much of the assets as may be needed for their health, education, maintenance and support. If one of your children dies without leaving children of their own, then the trust funds go to their surviving brothers and sisters.

An additional benefit is that, as a client of the firm, we are pleased to offer these trusts to you at a fraction of the cost it would be to your children if they were to go out and set these trusts up for themselves either now or many years later when they receive their inheritance.

The reality of the Inheritance Trust is that it is much easier for your child to keep assets separate from their spouse when these assets are left to them in trust. On your death, all of your assets are retitled directly from your trust to your children's trusts. There is a world of difference when a child can say to their spouse "my parents left this money to me in a trust" compared to their receiving the inheritance "in hand" and having to take active steps to keep those assets separate from their husband or wife.

We look at it this way, if you're going to leave it all to them anyway, why not use a small portion of the inheritance to do some good planning for them today? Not only will they greatly appreciate what you've done for them, but also it will get them on the right track of planning for themselves and their families. If you would like to discuss whether the Inheritance Trust makes sense for you and your family please call our office to arrange for a consultation.

The Graham Law Office, P.A.

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About the National Academy of Elder Law Attorneys: The National Academy of Elder Law Attorneys (NAELA) is a professional association of attorneys concerned with improving the availability and delivery of legal services to older persons. Through NAELA, attorneys exchange ideas and information on substantive elder law issues and the development of an elder law practice.

***About the National Elder Law Foundation:** The National Elder Law Foundation (NELF) is the only organization approved by the American Bar Association to offer certification in the area of Elder Law. NELF is approved by the Idaho Commission on Certification of Attorney as Specialist.

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