



CESTNICK

TAX MATTERS

All in the family trust 2: More tips on helping your beneficiaries

It drives me crazy when I put the kids to bed and they then decide it's time to get hungry. It's a conspiracy against me — I'm sure. This week, I put my kids to bed. Five minutes later, my daughter came out of her room and announced "Dad, I'm hungry."

"I told you earlier to eat your dinner," I replied. "You had your chance, now go back to bed."

Five minutes later: "Dad, I'm HUNGRY. Can I have a snack?"

"No!" I said. "And if you ask me again, I'll have to punish you."

Five minutes later: "Dad, when you come in to punish me, can you bring me a snack?"

I'm going to miss these younger years when the kids are grown. In the meantime, we have to take care of them. And if Carolyn and I were to die prematurely, a trust will be set up for their benefit. Last week, I began sharing some uses for trusts. Today, let's finish that discussion.

Trust uses

Two uses of trusts that I wrote about last week were: (1) splitting income, and (2) multiplying exemptions. Let's continue with eight more ideas:

3. Providing for dependents. If your dependents are minors or disabled, a trust can be an effective vehicle to provide for their needs. Leaving money directly to these dependents may not be possible or practical. The trustee that you name will be responsible for using the assets of the trust for the benefit of these dependents.

4. Managing assets. There are times when professional management of assets is important — perhaps because your beneficiaries don't have the capability or desire to manage the assets on their own. By choosing trustees that are capable of managing the assets, you'll look after this problem.

5. Protecting assets. If you want to protect your assets against creditors, the potential breakdown of a marriage, or against those who might influence your beneficiaries, a trust can accomplish this. There is "fraudulent conveyance" legislation that could prevent you from transferring assets to a trust to avoid creditors or others in some situations — speak to a lawyer about it.

6. Controlling distributions. If you don't trust your beneficiaries to directly own the assets you want them to have, you can distribute those assets to them over time through a trust.

7. Providing privacy. A trust can replace your will. After your death, your will is likely to be probated. In this case, your will becomes a public document, along with the value of the assets that formed your estate. Certain people are entitled by law to receive a copy of your will. A trust agreement, however, is a private document and can keep your affairs confidential.

8. Avoiding compulsory succession. If someone feels that they were treated inappropriately in your will, a legal battle could ensue. There are laws that could permit your will to be varied (changed) in some situations. A properly drafted trust can be watertight so that this type of challenge to your wishes is avoided.

9. Avoiding probate. Assets held in a trust fall outside of your estate and therefore do not require probate or the payment of probate fees.

10. Saving taxes. Testamentary trusts can offer income splitting, so that your heirs can share the tax burden with a trust created in your will. And provincial surtaxes (where they apply) might be minimized by splitting income with a trust as well. It may also be possible to take advantage of lower tax rates in another province by earning income in a trust resident in that jurisdiction. Speak to a tax pro for more.

Tim Cestnick, FCA, CPA, CFP, TEP is Managing Director of The WaterStreet Group Inc., and author of *The Tax Freedom Zone* and *101 Tax Secrets for Canadians 2007*, among other titles. tcestnick@waterstreet.ca