

# PLANNING *for Today's Concerns*

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## The Objectives and Benefits of a Spendthrift Trust

A spendthrift trust is typically used to prevent a beneficiary from receiving his or her inheritance all at once. There are several reasons why a grantor (the person who creates the trust) might want to consider such an approach. The most obvious reason is that the grantor believes the beneficiary will quickly squander the inheritance. That is, the beneficiary is a spendthrift.

Other reasons to consider a spendthrift trust include:

- The beneficiary (or the beneficiary's spouse) has many debts and, consequently, the inheritance could be lost to creditors
- The beneficiary's marriage is troubled and seems likely to end in divorce
- The beneficiary's friends are spendthrifts (or worse) and have undue influence over the beneficiary's behavior
- The beneficiary is simply "not good with money"
- The beneficiary suffers from alcohol or drug addiction

How does a spendthrift trust protect the beneficiary's inheritance in situations like these? First, the beneficiary cannot access the assets in the trust, or promise them to someone else. Thus, creditors and other threats cannot reach the trust's assets either. In addition, since the beneficiary's inheritance can be distributed in specified amounts over time, the entire inheritance cannot be lost all at once. Of course, the portion that is distributed would be vulnerable unless other protective measures are taken.

### The Role of the Trustee

It is crucial to choose one's trustee carefully because the terms of the trust give the trustee control over trust assets and their distribution to the beneficiary. Similarly, it is extremely important to outline the trustee's authority in detail. Here are some examples of factors to consider when setting the terms of the spendthrift trust:

- Should the trustee be instructed to make fixed payments according to a specified schedule, or does the trustee have some discretion to choose the amount and timing of distributions?

*(Cont.)*



## The Objectives and Benefits of a Spendthrift Trust (Cont.)

- Should the trustee make distributions in cash or provide the beneficiary with goods and services instead?
- Can the trustee withhold distributions if the beneficiary behaves inappropriately? If so, what types of behavior would trigger the withholding of assets?

Given the importance of the trustee's role in administering the trust and managing the beneficiary's inheritance, the choice of trustee should not be taken lightly. The decision to serve as trustee should not be taken lightly either. In certain situations, the trustee could very well be performing the role of mentor, or disciplinarian, or even parent. In addition, the trustee can be held legally and financially responsible for failing to follow the mandates of the trust.

Other factors to consider when creating a spendthrift trust include how and when the trust will end, what will happen if the beneficiary "grows up" and develops the maturity to manage the inheritance, and what should be done with trust assets if the beneficiary passes away.

If you want to leave a loved one an inheritance but are concerned about his or her ability to manage it, we can help you determine whether a spendthrift trust is a good solution.



## What Will Happen to Your Digital Estate When You Pass Away?



Even if you are not tech savvy, you likely have a digital "estate" comprised of assets with financial and sentimental value. You probably also have plenty of personal information floating around out there in the digital universe. To protect these assets, and to ensure you don't leave behind a massive digital mess for your loved ones to clean up, you should organize your online accounts and make sure they can be accessed by your loved ones if you become incapacitated and after you pass away.

Most states now have laws granting a decedent's executor or family members the right to access and manage some of his or her digital assets. However, certain digital platforms do not allow such access,

and others have extremely tight security, with two-factor password authentication, confirmation codes, and more. This makes organizing your digital accounts and keeping a record of how they can be accessed extremely important.

Here are some examples of the digital assets you might have:

- Email accounts, which may contain "conversation threads" revealing other digital accounts and assets
- E-Commerce accounts and Apps like Amazon, PayPal, Etsy, and Venmo

*(Cont.)*



## What Will Happen to Your Digital Estate When You Pass Away? (Cont.)



- Financial accounts and Apps like Scottrade, E\*Trade, and Banks
- Retail accounts with usernames and passwords
- Social media accounts and Apps like Facebook, Pinterest, Twitter, YouTube, and TikTok
- Photo sharing accounts such as Instagram, Flickr, Shutterfly, and Snapfish

While some of your digital accounts might have been inactive for years, others probably play an important role in your current personal and financial affairs. To begin the organization process, ask yourself this: what would happen if you deleted each of your accounts right now?

If the answer is “nothing much,” you probably don’t have to make that particular account part of your digital estate plan. For the others, you’ll want to make sure your executor or loved ones can access and manage the accounts if you become incapacitated and after you pass away. To accomplish that, you need to compile a list of the passwords, authentication codes, and other information necessary to access important accounts... and make sure your executor and family know where to find them. The one place you don’t want to provide this information is your last will and testament. Remember, a will is a public document, and anyone can see it if your estate is probated.

## Yes, Even Millennials Should Have an Estate Plan

Many people believe that estate planning is only for elders. The truth is that younger folks, including millennials, can benefit from having an estate plan of their own.

Millennials are generally defined as individuals born between 1981 and 1996—that is, people between the ages of 25 and 40. This is the age at which many people begin their careers and start families of their own. If you have a child, you should at the very least have a last will and testament. It allows you to name a guardian for your minor children, which helps ensure they will be raised according to your wishes if you and your spouse pass away unexpectedly.

Another reason millennials need an estate plan is to ensure people of their own choosing can make medical and financial decisions on their behalf in the event of incapacity. Legal documents such as powers of attorney for health care and finances can accomplish this goal and spare your loved ones from having to make difficult decisions about your care and/or finances if you can no longer make them yourself.

Estate planning can help you accomplish many other goals depending on your particular needs. We welcome the opportunity to discuss your options.



## Financial Changes and Your Estate Plan

Did your finances change? So did your estate plan, whether or not you knew it. Significant financial changes should prompt a call not only to your financial professionals but also to the attorney who handles your estate plan. This is because a change in the size of your projected estate changes your estate plan automatically, without you ever having changed a single document! If you don't check in with your estate planning attorney, your assets may end up distributed quite differently than you intended when you were in a different financial situation.

*Consider the following examples.*

### **Example 1**

#### **An increase in the size of your projected estate due to a significant improvement in your financial situation.**

The wills of you and your spouse leave everything to your three children after the both of you pass away. You want the children to split your estate into equal shares. Your assets can be easily divided into three shares if one child receives the house and the other two children split your remaining assets, so that's how you have your wills written. Then, a relative passes away, leaving you \$150,000. You intended to distribute assets as equally as possible between your three children, but because of the improvement in your financial situation, if you and your spouse pass away, two of your three children would get more of your estate than the third child who gets the house. This was not your intent, and it happened despite you not making any changes to your documents.

### **Example 2**

#### **A decrease in the size of your projected estate due to an unexpected adverse change in your financial situation.**

You and your spouse want to leave almost everything to your two children after you are gone, but you are also both inclined towards charitable giving. Your total net estate is worth approximately \$450,000, so you decide that \$200,000 is enough to leave each child. Your attorney drafts last wills and testaments stating that \$50,000 will go to the American Cancer Society, and the remaining assets will be split into equal shares between your two children. Then, you and your spouse suffer an unexpected financial setback which reduces the total value of your net estate to \$100,000. If you and your spouse now pass away, the American Cancer Society gets half of your estate – and your children only get \$25,000 each. This was not your intent, and it happened despite you not making any changes to your documents.

No matter what situation you find yourself in, an attorney specializing in estate planning can help you understand how your financial changes can affect your estate plan and make sure that your estate planning documents reflect your true intent. If you're worried about how a recent change in your financial situation might have affected your estate plan, contact us today for a consultation.