SPECIAL REPORT #4

Asset Protection Planning With PAT's

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Trusts, Estates, and Taxes...
A Problem Solving Law Firm

In the past, a lot of people (even us) believed that once assets had bypassed Probate and Estate Taxes, then it was okay if the Trust distributed assets ***directly*** to our beneficiaries. However, after handling estates of hundreds of clients who have passed on, we have found that what happens ***after*** beneficiaries receive their inheritance, is just as important as what happened ***before*** they received it. In other words, beneficiaries often run into a rocky marriage, greedy spouse, bogus lawsuit, creditors, personal injury claim, a government that is trying to reduce benefits and even estate taxes. If your beneficiaries have these problems or could possibly have them in the future, a distribution of trust assets ***directly*** to them, might be dead wrong!

In the event a child does not survive you, a large sum could pass to a grandchild. The old method had the trust ***distribute to grandchildren*** at age 21 or 25, without regard to pursuit of education or career. With the huge increase in real estate values and values of estates in general, do you really want $100,000, $200,000, or more in the hands of someone that ***young***? Today, we design distributions in stages going out as far as age 40 or 50. We also build in "education incentives". If they maintain a 'B' average in legitimate college courses (not basket weaving), their education will be paid for. If they graduate early, they might receive the first stage of the distribution at an earlier age.

What if a beneficiary is ***elderly, ill, has drug or alcohol problems***? Clearly, they should not be managing assets themselves. For them, the Trustee can hold assets in Trust during his or her life and have a broad standard to distribute assets to the person as necessary for his or her reasonable support and health.

Then there is the beneficiary who has problems with money. You know…he earns five dollars and spends ten. For him, we use a ***spendthrift*** Trust. If he wants money from the Trust, then he must show the Trustee that he needs it. To the greatest extent possible, the Trustee will pay the expense or the bill for him and will ***not*** put money directly in his hands. The Trustee will pay the mortgage or doctor's bill and makes sure that he is provided for.

What if you have created a trust which provides that the money is not distributed to a child until age 35 or 40? After you're gone, this child does well in business and runs his own very successful company. What about the child who had an alcohol problem but went through rehab and has been sober for years? Do you still need these restrictions in place for these children?

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What about your child who is now 75 years old and has a stroke and is required to reside in a nursing home and receive long term care for life, at a **huge expense**. The money that you have left him or her would make them ineligible for any state or federal benefit programs (like Medicaid, etc.). We now build in the power for a trust to ***adapt*** and provide the Trustee with flexibility…to allow distribution at an earlier age if it would be prudent or to allow direct distributions to the reformed alcoholic if he can prove that he has remained sober. The beneficiary that couldn't manage his money, for whom we created a restrictive ***spendthrift*** Trust may have changed his bad habits. Perhaps he or she married, settled down, matured, and became more responsible with money. The child who had a stroke at age 75 could have their inherited funds held inside a trust that could be ***converted*** to a "Supplemental Needs Trust" that would allow them to be eligible for state and federal benefit programs while remaining the beneficiary of this special trust. Will your Trust ***adapt*** to these situations after you are gone?

There are always those clients who say they have the "perfect beneficiary". She is not too young, is good with money, has a good marriage, has no disabilities, and receives no government benefits. It sounds fairly simple, but there are always possible problems that may occur in the future. The most common problem we have seen after Mom and Dad are gone, is ***divorce.*** Once your child receives money ***directly***, if they are married, it usually ends up in the bank account, investment account or new house owned jointly with their spouse. Once the funds are ***co-mingled***, they can be divided in a divorce action. We have also seen the receipt of an inheritance as a driving force for the in-law to initiate a divorce, if there have already been some marital problems. Money creates greed. Even if your child remains happily married, after his death where will the inherited money go? … right to his or her spouse. Wouldn't you rather see it stay in your blood-line and pass to your surviving children or grandchildren?

Another problem that has arisen is ***lawsuits***, both legitimate and bogus. There is the real possibility that your beneficiary could cause an auto accident with serious injuries. Often, standard liability insurance policies are not adequate to pay the damages. Personal assets, including inheritances are being use to pay for injury claims. Our children who are professionals, may be subject to lawsuits for medical or legal malpractice. Also, everyone is suing everyone else (you've heard "I'm gonna sue you"). Many of these claims are phony and have little or no merit. However, the cost of attorney's fees to defend these claims, the aggravation and sleepless nights because of the legal proceedings, the possibility of losing at trial, is causing many folks to ***settle*** the claim, just to make it go away. Some of these settlements are substantial.

Lastly, we often see beneficiaries do very well financially, (because they are successful doctors, lawyers, dentists, real estate developers, business owners, executives, etc.). Now they invest their inheritance over 20 or 30 years. Their own substantial assets ***plus*** the money you left them, grows into a huge estate. When they pass it to their surviving siblings or children (your grandchildren), there is a second estate tax! That estate tax can be larger than yours. As you can see, ***outright, direct distributions are no longer the best type of estate plan.***

To resolve these problems, we have created an ***"asset protection trust"*** that we call the **PERSONAL ASSET TRUST℠ (PAT).** You've heard about wealthy people who have placed assets in trust so that they can't be reached by lawsuits. We have taken that asset protection technology and built it into our Living Trusts.

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This is how it works, If your trust had 3 beneficiaries, John , Bill, and Mary, instead of John receiving his inheritance ***directly*** in his name, now he gets a special ***continuing*** trust (so do Bill and Mary). John can even be the Trustee of his continuing **PAT** trust, control the trust, have liberal use of the money, and (if you allow), even decide where it will go after his death. But here's the secret. Does John own the money? No, the trust does. We build walls of protection into this trust. ***These walls protect against divorce, creditors, lawsuits, loss of government benefits, and the second estate tax.*** There is however, a possible problem. If John runs his trust alone, someone could get a court order to break open the trust, requiring ***him*** to release the money. To avoid that possibility, we provide him with a 'toggle switch' that he can "turn on" if he needs to, allowing him to appoint someone of his choice as a ***Trust Protector***. The ***Trust Protector*** can be anyone except a sibling, spouse, child or grandchild. Commonly, nephews, nieces, aunts, uncles, cousins, accountants, close friends, financial planners, or lawyers are appointed as the ***Trust Protector.*** Even with a court order against John, the ***Trust Protector*** will not sign-off to release the money and can "lock down" the trust. This is done merely by ***postponing*** the distributions of cash and income from the Trust. It can be re-opened when the threat is over and then the ***Trust Protector*** must resign. Then your child resumes control over his or her own trust again.

What about the ability to ***adapt*** the trust to a change in circumstances after you are gone? We cannot give John the power to amend the trust you have created. If we did that, the creditor protection and the estate tax protection would be voided. Instead, he would again flip the "toggle switch" to the "on" position and appoint the ***Trust Protector*** to amend the trust to ***adapt*** it for the beneficiary who no longer needs the restrictive trust, or has become sober, to make a trust more restrictive for the "spendthrift" beneficiary, to convert it to a "supplemental needs trust" or to simply comply with a change in the tax, estate planning or asset protection laws that could occur in the future.

It's not uncommon that a surviving spouse or a surviving child does not know how to operate and administer a trust after the loss of a spouse or parent. ***After all, how many people have "driven" a trust before.*** Well, we've solved this problem. Our **PAT** Trusts come with a book we have written, called ***"To My Trustees."*** This is the "operator's manual." It explains in "plain English" (with a helpful DVD) how to operate and administer the trust, ***how to avoid problems, pitfalls, IRS trouble, and resolve conflicts*** in administering the trust. It literally keeps your Trustee "on the road." It is a comprehensive 160 page guide that is crucial to the successful administration of the trust. Our **PAT** Trust also includes a ***free "service program"*** that includes: (1) ***free*** telephone calls for estate planning advice, ***for your lifetime***; (2) a ***free*** "check-up" office consultation ***every three years***, so that we can make sure that all of your assets have been transferred into your trusts and the beneficiaries on your retirement assets and insurance policies have been changed to the trust; and (3) a ***free*** office consultation with the surviving spouse and a ***free*** office visit with the children (or other beneficiaries) after second spouse has passed on, ***to explain the operation of the trust and the duties*** of the trustee. This service program makes your **PAT** Trust even more valuable and it is a service program that ***no other attorneys provide***.

Could any one of the above scenarios affect your beneficiaries? It is not only possible, it is likely. If you would like to find out more about the **PERSONAL ASSET TRUST℠(PAT)** and how it can protect your beneficiaries, call us at **(847) 670-8200** and ask us about our next ***free*** **PAT** seminar or schedule an office visit with us.

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...for your peace of mind.

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