



CESTNICK

TAX MATTERS

Seven more reasons to use a trust

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In the movie world, sequels often fall far short of the original effort. I'm hoping this sequel to my [last article](#), which outlined seven reasons why you might want to set up a trust, is one of the exceptions. Here are seven more reasons to consider using a trust in your financial planning.

Ensure professional management.

Maybe you want to give money or other assets to a family member today, or upon your death, but you're concerned about their ability to manage the assets on their own. Perhaps they're minors or have a cognitive disability of some kind, for example. In these cases, placing the assets in a trust and naming a trustee to control, administer and manage the assets might make good sense. The trustee could be one or more individuals and could include a corporate trustee such as a trust company. A trust also acts as a replacement for a power of attorney over the assets in the trust.

Provide for a disabled beneficiary.

If you place assets in a trust for a disabled beneficiary, it's possible to have professional management, and to save taxes too if the trust is a "qualified disability trust" (QDT). How? QDTs can be taxed as a separate taxpayer at

graduated tax rates, enabling a splitting of income with the disabled beneficiary. Also, a trust set up for a disabled person can provide support to the beneficiary while still preserving provincial disability benefits. (This is often called a "Henson Trust," named after a 1989 court decision.)

Protect assets from spendthrifts.

Perhaps one of your heirs is likely to misspend any money you leave behind when you pass away. You can protect the inheritance by placing the funds in a trust set up in your will and naming a trustee (or more than one) to control the funds and make distributions to, or on behalf of, your heir as appropriate.

Three things to consider about using trusts in your planning

Avoid the probate process and fees.

Any assets that are placed in a trust before your death will fall outside your estate and will not be dealt with in your will. As a result, you'll avoid the probate process and fees on these assets. The probate process is where your provincial government validates your will, which then allows your executor to act on your wishes. And this can take time. Avoiding

the process allows your trustee(s) to act immediately in dealing with your assets.

Preserve privacy. Your will is not a private document. Once it has gone through probate, it becomes a public record and can be searched. This concerns some people, so a trust may be a better way to deal with assets in this case because a trust agreement is a private document.

Avoid compulsory succession schemes. If you have concerns that someone might not like what your will says and may try to have a court vary (that is, change) your will, a trust can provide some protection here. Now, if you're hoping to exclude your spouse from your estate by placing assets in a trust, you're not likely to succeed. Married spouses generally have certain rights unless you have a written agreement otherwise. This is a complicated area of law, and can vary by jurisdiction, so make sure you talk to a lawyer about the rules that apply in your case.

Keep the assets in the family. Some people want to ensure that, upon death, their spouses continue to have use of assets, but want their kids to ultimately inherit those assets when the surviving spouse dies. This is a common scenario where there are second marriages. One solution is to specify in your will that certain assets should be placed in a spousal trust for your surviving spouse.

There will be a tax-free transfer of those assets to the spousal trust (no tax will be owing until the surviving spouse dies). The terms of the trust will ensure that your spouse receives any income earned in the trust while he or she is alive and can provide that your kids receive the assets when the surviving spouse dies.

There are other potential uses of trusts as well, such as rewarding certain accomplishments of beneficiaries, or providing support to children or an ex-spouse if you pass away. Speak to a tax professional and lawyer specializing in trusts and estates for more information about the use of trusts in your situation.

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