



MOST COMMON AMENDMENTS TO REVOCABLE TRUSTS

The most common amendments to trusts remain changes to distribution and choice of trustees. But, there have been changes in the Federal and Ohio laws in recent years which have an impact on estate taxes, the administration of Ohio Trusts and the rollover of certain retirement benefits.

Ohio Estate Tax. The Ohio Estate Tax moved from an exemption of \$25,000 to \$338,000 in 2002. Old documents prepared for couples prior to that date need to include language to preserve the estate tax exemption of the first spouse to die. Pursuant to recent legislation, there is no Ohio Estate Tax for decedents dying after January 1, 2013.

Pension Protection Act of 2006. The Pension protection Act of 2006 created significant planning opportunities for the roll-over of qualified plans to inherited IRA's for non-spouse beneficiaries beginning on January 1, 2007. Previously, qualified plans such as 401(k)'s could only be rolled over to a surviving spouse and a non-spouse beneficiary was forced to take distributions over a period typically within 1 to 5 years of the owner's death creating significant income tax consequences to the beneficiary and the loss of the potential of significant growth from the use of tax deferral.

With an inherited IRA a non-spouse beneficiary can use his or her own life expectancy to determine minimum required distributions allowing the account balance to grow income tax free and deferring and minimizing income tax to the amount and time of each annual withdrawal of the minimum required distribution.

A planning tip to protect this money from creditors of the non-spouse beneficiary is to name a trust as the beneficiary with the trustee holding the money for the benefit of the non-spouse

beneficiary. While qualified plans and individual retirement accounts offer credit protection to the owners of such plans, such protection is not extended to non-spouse inherited IRA's.

Naming a trust can also protect a young or immature beneficiary from giving into the temptation of withdrawing the full account balance or making otherwise foolish decisions with the money that they may later regret. The trustee of the trust would control the account for the individuals benefit and the owner's financial advisor can even be named to continue to manage the assets.

A surviving spouse has much greater flexibility and broader benefits under the tax code when it comes to inheriting benefits from the deceased spouse. It is typically advantageous to name the spouse as the primary beneficiary then the trust second as a contingent beneficiary.

Make sure beneficiary designations are up to date. Too often individuals name beneficiaries when they create the account then never update them. If there is no living beneficiary named the assets will be payable to the account holders estate and result in a loss of income tax deferral. Many times individuals name their spouse as the sole beneficiary without naming a contingent then fail to update the designation after their spouse has passed.

Another common mistake people make is naming their trust as a beneficiary without seeking advice and having their trust reviewed or updated to make sure it complies with IRS rules to allow tax deferral of the assets for heirs. Naming a trust as the beneficiary of a trust that was not properly drafted for this purpose will result in a loss of the benefits offered by this Act and the potential of immediate income tax consequences. A trust should never be named as a beneficiary without seeking guidance from a trusted financial advisor or estate planning attorney that is well versed in planning for retirement benefits.

Sadly, many times individuals go through the time and expense of making sure their trust is up to date and in compliance with rules for allowing tax deferral, but never change the beneficiary designation to name their trust. The beneficiary designation controls whom the benefits are paid to regardless of anything stated to the contrary in the trust document. If the trust is the intended primary or contingent beneficiary of the plan assets, the account holder trust must name the trust as a designated beneficiary on the account.

The Pension Protection Act created great planning opportunities as discussed, but when naming a trust, the trust must be drafted carefully in a manner that complies with IRS rules and regulations for tax deferral and the beneficiary designation of the account must name the trust as a beneficiary.

Ohio Uniform Trust Code: Ohio passed a Uniform Trust Code in 2007 which has specific administrative requirements for trustees and beneficiary rights. Language should be added to all trusts to meet the Code requirements.

NOTE: IT IS RECOMMENDED THAT TRUSTS BE REVIEWED AT LEAST EVERY THREE TO FIVE YEARS FOR CHANGES IN THE LAW.