

TRUST TOPICS  
with Attorney Tim  
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Will your son or daughter be a spendthrift? Will he/she marry one?

How's your crystal ball on his/her health, liabilities, on his/her choice of a mate?

We pray for the best outcome for our children, but a trust for them often makes sense.

## What can you do to Protect your Children's Inheritance from being lost to forces sometimes beyond their control?

One answer: Spend it all.

No one has quite figured out how to time that one. Short of that, we recommend the Inheritance Trust™ a Win-Win for Everyone

With people living longer, having multiple marriages, and surviving disabilities and injuries more frequently, the idea of protecting what we hand down makes more and more sense to understand and to implement in the estate plan.

Recently, I described a solution for better protection of my client's children, as follows. The oldest child is Jessie:

"The Inheritance Trust™ is a means by which Jessie would receive her inheritance, for life, under the terms of a trust agreement that is designed ahead of time, but built at the time of your death.

"The design of the trust is ordinarily to allow Jessie to be her own trustee, to be permitted to use all of the funds, to the point of exhausting them as desired, for reasons such as her health, education, maintenance, and support ("HEMS") in the lifestyle to which she is accustomed or has reasonably come to expect.

"Nothing is to prevent Jessie from using the trust for *her* children or spouse if she chooses."

Trust™ is intended to offer protection against what we have dubbed the "4Ds": divorce, debt collection, disability and destructive spending. By law, the child-trustee can be the decider of what is in her best interests and can decide how and when to protect herself against the 4Ds.

The range of responsibility for the child is practically infinite. On one extreme, the child can be put totally in charge for his/her "general welfare" purposes. But, this is not a great design for protecting assets, because "general welfare" is deemed to be essentially a blank check that anyone can fill in - a divorcing spouse, creditor, or the government - in their favor, not your child's.

On the other extreme, the trust can be rigidly controlled by a third-party trustee, which can be very uncomfortable for the child, to say the least, causing them to be downright miserable. Probably not what you want.

- We generally draft with a liberal bias toward the child having control. Trustees can be added or subtracted, and can be chosen by the child – or not, all as you see fit.

As a general matter, the Inheritance

### Inheritance Trust™ Situation Example

Suppose your child inherits from you in an Inheritance Trust. She wants to pay off her mortgage with the Trust funds.

She could do that without any question, hardly even having to check the idea against the terms of the trust. If she is her own trustee, she would have authority to do that on her own.

But, let's say the house on which the mortgage was paid off is in joint name with a spouse. The effect of the payoff would be to benefit the spouse as much as it benefits the child.

Ordinarily that is a perfectly delightful result, and no one has any issue with benefiting a spouse. There is nothing in the trust design that would prohibit using the funds in that way.

That said, a trustee, especially an independent trustee, might pause to reflect on discuss whether paying off the mortgage is wise under the circumstances depending on:

- the status or the future of the marriage
- whether the current financial environment is a good one in which to pay off a mortgage. There are times when people are actually better off carrying a mortgage because it frees up resources for other purposes
- whether the trust funds might be used to pay the monthly mortgage payments.

In another instance, suppose the child wants to use Trust funds to help his own child through college. Fine. The child is given the right to "appoint" the trust assets to a child, a spouse or to charity, in most cases, thus sharing the trust funds.

**Are children in charge of trusts more likely to use their funds wisely? We think so.**

### Here's why:

1. Assets held in trust are more likely to receive professional financial advice or management and are less likely to be lost to bad investment.
2. There is the perception on the part of the inheritor that what they receive in trust is to be regarded in a special manner, in keeping with the purposes or principles that benefit the long-term good of the family – for health, education and support of beneficiaries or members of their families in times of need.
3. There is a greater likelihood of assets being passed down to subsequent generations or for charitable purposes when they are held in trust and perceived as the heirloom legacy of the previous generations.

In the final analysis, the Inheritance Trust™ may not be the way for everyone's family to inherit, but it often beats the alternative in which children forfeit their inheritance to creditors, predators, and poor decision-making.

### Questions? We would love to help.

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Do not rely on this article as legal advice. For more information, Attorney Borchers may be reached at [tim@borcherslaw.com](mailto:tim@borcherslaw.com).