# To Trust or Not To Trust

You get the most value from your trust when you understand a trust. Some people will tell you that if you have a trust, you don't have to pay taxes. Others will tell you that a trust is not as good as a corporation. Some believe a trust will afford you with privacy and protection.

While all of the above has some degree of truth, it is well to understand exactly what a trust can and can't do.

Before getting too involved, let's understand the trust concept in its simplest form.

If Brian gives Joe $100.00 to give to Karen, we have a complete trust. Brian is the creator or grantor, Joe is the trustee and Karen is the beneficiary. This is the basic structure of a trust. One only needs to have three separate positions, the creator, trustee and the beneficiary.

While Joe has the $100.00 in his possession, he is acting as trustee and by law, legal ownership of the $100.00 resides in him. If he does not give the money to Karen, then he has broken his fiduciary duties and Brian can bring charges against him. However, it is a very vague trust.

Brian would do better to have a "*trust agreement*", whereby he states, "Give this $100.00 to Karen tonight at eight o'clock". The trust agreement, or contract, is the controlling factor over the fiduciary duties of the trustee because, without it, Joe could hold the money and not give it to Karen for a year or more.

Understanding the strengths of a trust will afford you the privacy and protection one deserves in the world where everyone wants a "piece of you". Having a trust will not give you the privilege of not paying taxes that are, or would ordinarily be due.

Having said that, we must remain cognizant of the fact that a foreign trust, as defined in 26 USC 7701(a)(31) of the Internal Revenue code states, "The term "*foreign estate*" and "*foreign trust*" means an estate or trust, as the case may be, the income of which from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A".

So, one could have a foreign trust that would be exempt from Federal income taxes, but we will not discuss that kind of trust at this particular time. We will, however, discuss a basic irrevocable domestic trust. This kind of trust can give one a great amount of privacy and protection.

Some would argue that a corporation is better in this regards but consider these few points. A corporation needs to be registered with the State, a trust does not. A corporation requires annual minutes and extensive record keeping, a trust does not. A trust can do virtually everything that a corporation can do but do it privately and to a much greater degree of privacy.

## ASSET PROTECTION

**ASSET PROTECTION** is the big benefit that one can derive from an **irrevocable domestic trust**. Here is a simple example: John and Mary own their own home and are living the "American dream". John is unfortunately in a fatal car accident where he survives but the person he hit did not. The family and estate of


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the deceased sues John and Mary and win a judgment in the amount of ten million dollars. Unfortunately, John and Mary only have a maximum five million dollars worth of insurance coverage.

So, John and Mary lose everything.

Another example, Mark and Sharon own a small hardware business, water gets spilled on the floor by a customer's child, another customer slips, falls and pulls a shelf of hardware over on him. Again, a judgment is awarded that surpasses the available insurance benefits and Mark and Sharon are now "out of business".

Both of these examples are unfortunate, yes. Both of these examples are far too common, yes again.

Enter the trust. Let's suppose that both our couples had established a properly structured trust prior to both of these unfortunate examples in their lives. Everything would remain the same in our examples', however, the outcomes would be entirely different. John and Mary would still be living in their house and Mark and Sharon would still have the hardware store.

This is how it all works. An individual, trust or corporation, (any legal entity), would "create" a trust. Any legal entity would agree to act as trustee. Any legal entity would be named as beneficiary.

Let's say that a friend of our couple's creates a trust and names a corporation as trustee and our couple's minor children as beneficiaries. Our couples then sell, at fair market value, their house and business to the trust. (This is important because if they just give or grant the house and business to the trust, it would allow for a flow through similar to 'piercing the veil' of a corporation).

If our couples did this with all of their assets, they would own nothing and therefore not have anything that could be "got" other than the insurance money.

## PRIVACY

**PRIVACY** is another great reason to have a trust. By legal definition, the "*ownership*" of the trust estate, resides in the trustee. Therefore, John and Mary's home and Mark and Sharon's hardware business is not legally owned by them and the trustee would have the responsibility of signing legal forms, including any tax returns.

If it is structured properly, the trustee would prefer not to manage either the home or the business and would instead, sign a "***management***" contract with our two couples. This management contract would give our couples specific responsibilities and duties, which may include opening bank accounts, paying all the bills, etc., and the only thing the trustee would actually do is sign any "legal" documents.

This arrangement would allow our couples to continue to manage their affairs and "control" everything as they do now, but they would not be listed on any legal documents, - they effectively would own nothing. They enjoy the use of the property as if they did own it, but they are legally shielded from any adverse actions.

## AVOID PROBATE

Avoiding probate is another great advantage. A will can be very simple; "All of my worldly belongings go to …". Now, if all those worldly belongings are only the shirt on your back, there is not much need for lawyers and probate court. However, if there is a home and other financial assets, probate can become quite sticky.

When all the assets are in trust, and the original owner dies, (the current manager), nothing changes. The assets have already been "transferred", if you will, to the beneficiaries. The successor manager, predetermined, would simply step in and follow the directives of the trust document.

It is clean, simple and easy to do.

It is important to plan, so let's look at a few options in utilizing trusts.

## HOW MANY TRUSTS DO I NEED?

Please understand that you, as an individual, are a liability. You are a liability because at any given time, you could use faulty judgment or have/create an accident that could injure another party. Hence, the reason why one should have an "***asset protection trust***".

All of your real estate and financial instruments such as, bank accounts, stocks, bonds, etc., should be placed within this asset trust. If this is all you have, you need only one trust. (You should not place cars or other vehicles in this trust because they are also liabilities.)

If, on the other hand, you have a business of any kind, (even a home business), this business is very visible and also a potential liability. If this is the case, you should have an additional trust, a "*business trust*". This business trust would have its own bank accounts, EIN number, etc. and would carry the name of your "*business*".

Most businesses have many allowable tax exemptions and deductions. For example, utilities, office rent, telephones, etc. They can also lease office equipment.

As an example, let's say that the business generates $100,000.00 of income (gross) in a particular year. Let's also assume that the legitimate expenses are $50,000.00, which would include any equipment lease and office rent/mortgage. If the business was a trust, your "***asset trust***" could own or rent the office space and purchase or lease the office equipment. <u>The **asset trust** could then rent or lease all of this to your business trust at a profit.</u>

You could potentially increase the legitimate deductions and expenses of the business to maybe $60,000.00. This would mean the business would have the ability to generate income, have zero assets and have taxable income of only $40,000.00 instead of $50,000.00. This would save at least $2,500.00 in taxes.

But let's not stop here. Your business needs money. So, the "*asset trust*" borrows money at the best rate and loans it to the business at a higher interest. This puts more money into the "*asset trust*" and creates larger deductions for the "*business trust*" which would have the effect of decreasing the taxable income even more.

These are just a few simple ways that you could drive your "*business trust*" to the point of having no taxable income. In the unfortunate possibility of a judgment against the business, all of the assets are clear and the business would owe the asset trust money against future earnings, hence, there would be no assets to "be got".

## Protecting Your Assets from IRS Liens, Levies and Judgments.

Consider that the whole concept of protecting your assets from liens, levies and judgments from the IRS and others comes from the very wealthy. I'm talking about the top 6 families on earth, and from those who got them there.

Delbert John Rockefeller told the secret to his great wealth on his death bed; **Control Everything, Own Nothing.**

Anyone who violates the wisdom of someone as wealthy as Rockefeller was, is not exactly doing themselves a favor.

And yet, we are conditioned to follow the "**American Dream**" – of owning our own home and building our financial empire by owning all kinds of things.

If you understand the simple truth of "***control everything, own nothing***", you will be way ahead of the game. Rockefeller used trusts. Corporations evolved later because governments couldn't control trusts and everything involved with trusts was private and secret. (Kind of what the Constitution allows for.) So, governments sold everyone on the concept of corporations because there would be "greater protection" due to the fact that corporations would be "registered" with the state, and there would be all kind of laws and regulations that corporations must follow. Also, attorneys are brought into the picture to a greater degree so that many levels of individuals and agencies would be privy to the privacy of your corporation.

Doesn't really sound like a great deal to me.

If we advance a little more into the future, remember former Congressman Nelson Rockefeller in the 60's? Prior to him taking office as a congressman, he was asked how much money he made the previous year. Now keep in mind that it was Congress asking this question.

Nelson answered calmly, **"$650 million**."

But here is the really important question Congress asked; "*How much did you pay in income tax?*"

Nelson smiled, almost chuckled, "**Nothing**".

Now Nelson Rockefeller took to heart the wisdom of his grandfather. **Control everything, own nothing**.

If you are not getting the greatest benefit from your trust, if you think you may need an additional trust or have any questions concerning your trust, simply write to us at:

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