



Modifying Estate Plans and Irrevocable Trusts: Good for Your Clients and Good for Your Business

(Original article prepared by WealthCounsel for Carrell Blanton Ferris & Associates, PLC.
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Estate Plans, like houses, need updating and remodeling from time-to-time. Old Estate Plans – those established by your clients more than five years ago – likely need some adjustments. As you know, the U.S. has passed two major tax acts within the last six years: the American Taxpayer Relief Act of 2012 and the Tax Cuts and Jobs Act of 2017. Aside from tax issues, many clients will have experienced some combination of changes involving family, health, and wealth rendering their existing Estate Plan out-of-date because it no longer reflects their situation and goals.

Many irrevocable trusts need updating and remodeling, too. Some of your clients may have established an irrevocable trust that is no longer needed – an Irrevocable Life Insurance Trust, for example. Another client may be the beneficiary of an irrevocable trust established by a deceased spouse, parent, or other family member. Such an irrevocable trust may need updating to minimize Capital Gains taxation. Irrevocable trusts can also be modified to remove a bank trustee, because the client wants to appoint a new trustee to handle the administration, enabling you to manage the trust's investments. Your clients need to know that the Virginia Uniform Trust Code provides several ways for an irrevocable trust to be modified without court involvement.

When you as the Advisor raise these types of issues with clients, your clients gain peace of mind while you get an opportunity to deepen your relationship. This type of issue-spotting adds value to your services and secures you as their top-of-mind financial professional.

Why updating old trusts serves both you and your clients

Your clients may be missing out on lucrative new opportunities, such as income tax planning opportunities to reduce the impact of capital gains taxes, or to add asset protection elements to protect a child's inheritance against overly aggressive creditors.

Modernizing old trusts isn't just beneficial for your clients' financial circumstances — it'll also help you do your job with greater ease and efficiency. Old trusts can be hard to work with on a variety of levels. Managing assets across multiple, similar trusts can be more difficult for you as their financial advisor, makes tax reporting for the CPA more cumbersome, and makes administration for the client or trustee needlessly challenging. Remodeling these trusts, consolidating them, or otherwise modifying them to make administration easier saves costs for clients and makes your job easier.

A common misunderstanding among many individuals is that "irrevocable" means unmodifiable. As mentioned earlier, even if a trust is irrevocable, it is often possible to change it without court involvement, provided the change does not violate a "material purpose" of the trust. The exact mechanics will always vary depending on the trust and the client's circumstances, but it's almost always possible to make some improvements. In some circumstances, it may even be possible to terminate the trust.

A trust may need updating for a variety of reasons:

- 1. Changes in legislation.** If your married clients haven't updated their Estate Plan since the passing of the American Taxpayer Relief Act of 2012, the plan likely includes an "A/B Tax Plan" designed to minimize estate taxes. Since December's 2017 Tax Cuts and Jobs Act raised the estate tax exemption to \$11.2 million in 2018 (\$22.4 million for a couple), an Estate Plan with an "A/B Tax Plan" adds unneeded complexity and may result in your client's children paying higher capital gains taxes. In many instances this tax planning ought to be removed.
- 2. Changes in your client's asset mix or wealth level.** Your client with substantial retirement plan assets needs to consider the taxation issues related to passing on these assets to children and grandchildren. Further, your client needs to be aware of the impact of the 2014 decision in *Clark v. Ramaker* in which the U.S. Supreme Court ruled that inherited IRAs are not asset-protected from creditors. Fortunately, with proper planning, retirement assets can be passed down in trusts for asset-protection purposes without foregoing the beneficiary's ability to stretch-out distributions over the beneficiary's lifetime.
- 3. Changes in your client's family structure, such as divorce, remarriage, birth of a new child or grandchild.** For instance, a client who has remarried and has children from a previous relationship needs to update the estate plan to balance a desire to provide for the

new spouse, while insuring that the children do not get disinherited. And, a client who desires to name an underage grandchild as a beneficiary of a life insurance policy or IRA needs to understand the problems that will arise when a minor child inherits property.

4. Changes in your client's risk profile. Your client now owns rental property individually. Since personal ownership subjects your client to legal liability, the client ought to consider establishing an entity, perhaps a Limited Liability Company or Virginia Business Trust, for asset-protection benefits and other management considerations.

5. Changes in the risk profile of your client's children. When your client planned several years ago, the son was a successful business owner who was to receive his inheritance outright. Now, as a result of poor business decisions, the son has accrued much debt. If your client were to die today, the son's creditors could seize the inheritance. In such circumstances, your client should consider changing the estate plan to protect the son's inheritance by leaving it to the son in a trust with an independent trustee.

6. Changes to give a responsible adult child asset protection. Historically, a person would leave a responsible adult child an inheritance outright. Today, many of your clients – after learning about the asset-protection benefits and family-line protections of a trust – will leave that same child an inheritance in a lifetime, beneficiary-controlled trust. (Incidentally, such planning provides you with a great opportunity to retain assets under management while building a relationship with the next generation of family.)

7. Changes needed as a result of some type of error in the existing estate planning documents. It is far better for your client to correct a typo or an unclear section now, rather than waiting until it becomes a potentially costly headache later should your client become incapacitated or die unexpectedly.

8. Changes to replace a bank trustee. If you have a client who is the beneficiary of an irrevocable trust trusted by a bank, there's a good chance your client would prefer that you handle the trust's investments, too. In most instances, a bank trustee can be removed and replaced with an administrative trustee, allowing you to manage the investments. Our law firm established Legacy Fiduciary Services, PLC for this purpose. LFS is a law firm dedicated to serving as trustee of trusts created and governed pursuant to the laws of Virginia. LFS does not manage the investment of trust assets, providing you with a great opportunity to retain assets under management.

As their financial advisor, your clients will thank you for alerting them to the opportunity to remodel and refresh their old trusts to take advantage of new opportunities while continuing to avoid and minimize risk. The result? A fuller, more secure life. If you have clients with trust-centered estate plans that are more than five years old, we'd love to explore whether a remodel is in order. Give us a call today.