

# Estate Planning Focus

TRUSTS & ESTATES NEWSLETTER FALL 2017



## Motivating Your Heirs: Incentive Trusts and Ethical Wills

SUSAN G. MEYERS  
616.752.2184  
smeyers@wnj.com



Many clients express concern that an inheritance may have a negative impact on their children. This is often the case for clients who created their own

wealth, experienced hard work and spent and/or invested their earnings carefully. Will leaving an inheritance to their children inhibit their children's drive and make their children complacent? Will an inheritance make life "too easy," depriving their children of the benefits of "making it" on their own? Frequently our conversation turns to incentive

trusts, and whether an incentive trust might counterbalance the perceived negative effects of "free money."

Incentive trusts are trusts that permit payments to a beneficiary contingent on certain goals being met, or certain behavior being avoided. At first blush, incentive trusts seem like a great idea.

Shouldn't they simultaneously motivate a beneficiary while conveying what is important to you and the life lessons you have learned? As with all things in life, it is not this simple and there are pitfalls with incentive trusts. What if the beneficiary is physically or mentally unable to achieve the stated goals? What if a beneficiary wants to stay at home to raise a family, or pursue a career in a meaningful field that pays a low income?

Further, an incentive trust is invariably a subjective analysis. Providing measurable targets to the trustee and the beneficiary is critical to achieving your goals and making the trust workable. Will the person you've selected as trustee be willing and capable of evaluating the beneficiary and denying a payment if the beneficiary does not meet the goals?

Incentive trusts are necessarily more expensive to craft because they must

be specifically tailored to you and your heirs and to the behavior you want to motivate or discourage. If you are convinced that an incentive trust is right for you, however, there are some things you can do to increase the likelihood of success and minimize bad feelings:

- **Create a specific list of behaviors** you want to motivate or discourage, the specific criteria the beneficiary and trustee will use to measure progress and whether there will be time limits to achieving goals (e.g., the perpetual student problem). Examples include directing a payment to a beneficiary upon graduation from college, for achieving certain grades or to match a beneficiary's W-2 income. Or payments may be prohibited if the beneficiary engages in self-destructive behavior, such as substance abuse. Think through as many possibilities as you can to plan for the unexpected, and provide

specific examples.

- **Describe why** these terms are included. Is it so that the beneficiaries will be engaged, contributing members of society? What does that mean to you?
- **Identify the reward** for meeting the objectives. It could be a percentage of trust funds or a stated dollar amount, or merely that the trustee, at his/her discretion is permitted to make a distribution of any amount.
- **Carefully select the trustee** who will make these determinations. Will the trustee be capable of saying "no" if objectives are not met? If the trustee is a family member, how will saying no affect the trustee's relationship with the beneficiary?
- **Consider giving the trustee flexibility** to make payments in certain circumstances even if a beneficiary cannot meet the criteria. For instance, if circumstances substantially change or a beneficiary is incapable of achieving the stated goals due to no fault of his or her own.

Good communication between you, the trustee and the beneficiary is key to the success of the trust. Consider writing side letters explaining in your own words why you included these terms, what you hope is achieved (or avoided), and your philosophies about life lessons that matter to you.

These side letters are often referred to as ethical wills. They can be the documents by which you transfer your values and reflections on life, and should include mistakes from which you've learned as



well as successes from which you've gained. A few topics to include in your side will could be:

- **What made you happiest in your life?**
- **What are you most proud of?**
- **What are your biggest regrets?**
- **What events hold deep personal meaning or life lessons for you?**
- **Who have you learned the most from?**

- **What does spirituality mean to you?**

There are many helpful resources online and in book stores to assist you with writing an ethical will. It is important to remember, however, that a side letter or ethical will is not legally binding, and must be coordinated carefully with your estate plan to ensure it does not hamper or contradict provisions in your estate plan. Further, the language you use is vitally important to whether your incentive trust will be viewed

as insensitive and controlling, or appropriately encouraging.

Finally, there is no substitute for expressing your views in person with your loved ones. Consider meeting in person to discuss your plans with your heirs. Both you and your heirs may be pleasantly surprised by what you both learn from each other. And if the first meeting is awkward and uncomfortable, don't lose heart. Keep at it. Nothing important is gained without hard work. 

## EDUCATION & COMMENDATIONS

### EDUCATION:

- James Steffel and Joseph Owens presented on the new Michigan Asset Protection Trust legislation to the Michigan Bankers Association, Lake Michigan Estate Planning Counsel and the Probate Section of the Grand Rapids Bar Association
- Jennifer Remondino and Daniel Borst spoke at the Estate Planning for the Family Business Owner Lunch & Learn for the Family Business Alliance

### COMMENDATIONS:

- David Skidmore was elected as Officer of the State Bar of Michigan Trusts & Estates Section
- David Thoms was elected as a board member for the Kalamazoo Institute of Arts
- Warner Norcross & Judd was recognized as number one in the *Grand Rapids Business Journal* Top Area Estate Planner List in the October 23, 2017 issue.
- Mark Harder was recognized as a Top 100 Michigan Super Lawyer by *Michigan Super Lawyers Magazine*.
- The following Warner Norcross Trusts & Estates attorneys have been honored as *The Best Lawyers in America*® 2018:

- Sean Cook
- Mark Harder
- Frank Henke
- Jay Kennedy
- Laura Morris
- Jeffrey Power
- Jennifer Remondino
- David Skidmore

- James Steffel
- David Thoms
- W. Michael Van Haren

- The following Warner Norcross Trusts & Estates attorneys have been named *Lawyers of the Year* by *The Best Lawyers in America*® 2018:

- Carl Dufendach
- Susan G. Meyers
- David Skidmore

- The following Warner Norcross Trusts & Estates attorneys have been named *Rising Stars* by *Michigan Super Lawyers Magazine*:

- Laura Morris
- Beth O'Laughlin
- Joseph Owens
- Jennifer Remondino

- The following Warner Norcross Trusts & Estates attorneys have been named *Super Lawyers* by *Michigan Super Lawyers Magazine*:

- Sean Cook
- Carl Dufendach
- Mark Harder
- Frank Henke
- Susan G. Meyers
- Jeffrey Power
- David Skidmore
- James Steffel
- W. Michael Van Haren

# Are You Stuck With That Irrevocable Life Insurance Trust?

JENNIFER REMONDINO  
616.396.3243  
jremondino@wnj.com



The world in which we operate — from technology to family circumstances to the enactment of state and federal laws — is constantly evolving. Congress enacted the American Taxpayer Relief Act of 2012, which forced us to rethink how estate plans are structured, particularly for married clients with assets under \$11 million. Currently, you can pass assets of \$5.49 million upon death or during life without triggering the estate or gift tax. For married couples, that amount doubles. For many, estate and gift tax issues once drove the design of the plan and this shift in exemption rates has allowed clients to focus more on what is right for their families and less about the tax consequences of their decisions. We are often able to simplify the estate plan and save the family money from ongoing trust administration.

An update to your estate plan to focus more directly on family considerations and less on tax considerations is relatively straight-forward. The complications arise when one spouse has already passed away or the estate plan contained irrevocable trusts primarily for the purpose of avoiding, minimizing or paying estate taxes. Often these trusts are irrevocable life insurance trusts designed to hold life insurance policies that would pass to the family free of estate tax. Often clients understand

“irrevocable” to mean permanent. The good news is that tools are available to terminate or restructure these trusts. This planning might be appropriate for clients who no longer are concerned about estate taxes or asset protection.

So how do you do it? It all depends on the terms of the trust. The terms of the trust agreement are very important in determining how to close down a trust.



The terms of the trust agreement are very important in determining how to close down a trust.

Often the trust agreement grants an independent third party the power to direct the trust assets to one or more of the beneficiaries. If the spouse was an initial beneficiary, the trustee can distribute the insurance policy and any other assets in the trust to the spouse. The distribution of all trust assets under such a power allows the trustee to simply close the trust. If the trust agreement doesn't contain this power, then the principal distribution standard under

the agreement may give the trustee enough flexibility to distribute the policy and any other assets to one or more beneficiaries. If no power exists and the trustee does not have broad enough authority, the trustee may terminate the trust under state law without court authority assuming the trust assets are worth less than \$75,000. This amount is indexed for inflation and goes up slightly each year. If the life insurance policy is a term or other policy with a cash value of less than \$75,000, or generally if the assets of the trust are less than \$75,000, the trustee has the authority to terminate the trust under the theory that the assets are insufficient to justify the cost of administration. Under this state statute, the trustee must give notice of the proposed termination to certain beneficiaries within 63 days. If the size or terms of the trust do not allow for termination, decanting may also be available, allowing the trustee to move the assets to a more flexible trust that ultimately will allow for termination. If all else fails, the trustee always has the ability to petition the probate court to seek court termination. With any of these approaches, it is important that the trust beneficiaries are aware of the termination. Oftentimes we ask that they give their consent.

When creating an estate plan, it is difficult to foresee all of the factors that will impact the plan in the future. The good news is that there are always ways to adapt the plan to the current situation and make sure it is still in your and your family's best interests.

# How Planning for the Division of Personal Property May Prevent Family Disputes

KAREN KAYES  
231.727.2619  
kkayes@wnj.com



“Money is easy to divide. Stuff isn’t.” This is a common refrain from estate planning attorneys who have seen their share of disputes involving a decedent’s personal belongings. Personal property includes items like household furnishings, art, photographs, books, jewelry, tools, boats and vehicles.

Unfortunately, many of these cases end up costing the estate far more than the disputed items are worth. The wooden spoon that mom always used to make her famous pumpkin pie, perhaps worth

\$5.00 at best, is now being fought over by three children and costing the estate thousands.

What begins the dispute? “Mom always told me I could have....” Without a written direction, those “promises” are unenforceable. Fortunately, Michigan allows for a legal disposition of tangible personal property with two very simple requirements:

1. **You must put in your own handwriting what items will go to whom, or you must sign a document which describes the distribution of property; and**
2. **The writing’s existence must be referenced in your will.**

We have included a sample personal property listing document in this newsletter edition. The items can be described any way you wish, as long as they are identifiable by the individual handling your estate. Once completed, the original should be filed with your will. As with all estate planning documents, this listing should be updated regularly.

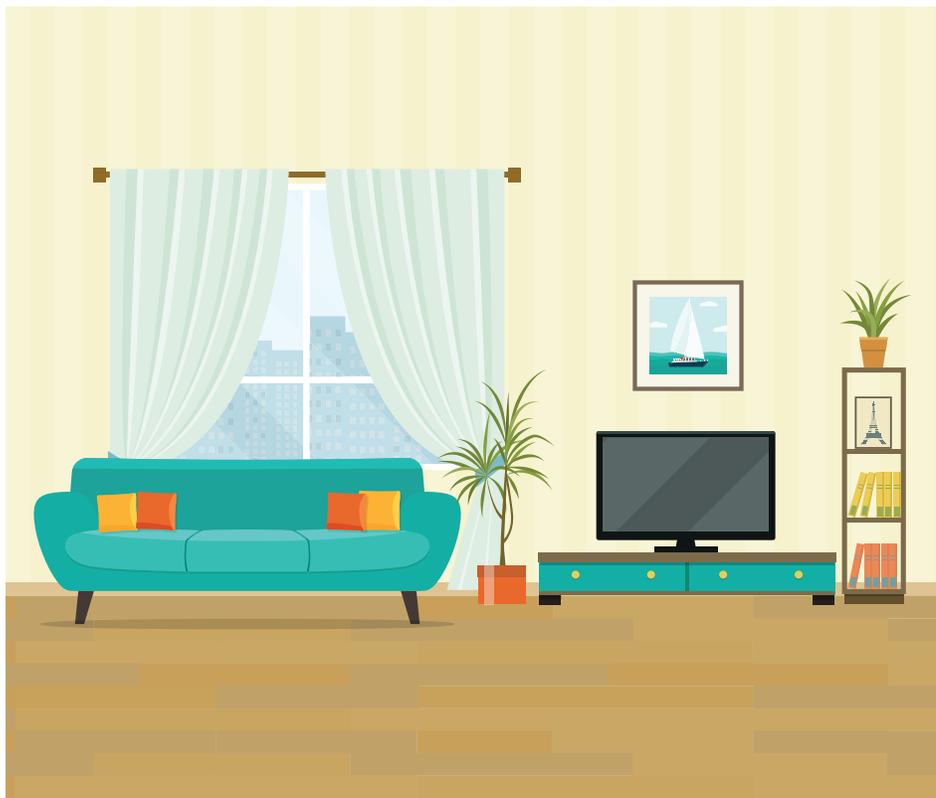
## OTHER CONSIDERATIONS:

Are there items on your list that have significant value? If so, should there be an offset to the other beneficiaries for this value?

How is the remainder of your personal property to be handled? Here are a few ways to handle the division of the remaining personal property:

- **Allow family members to take turns selecting items;**
- **Allow family members to “bid” on items; or**
- **Draw straws.**

If there are items you want a particular person to have, or that you have agreed to leave someone, prepare a list. Ask your children if they would like anything specific. If you, as a child or other heir, desire an item for sentimental or other reasons, be sure to speak up! Even though the conversation may seem difficult, it can eliminate headaches, heartaches and expenses.



# Attorney Spotlight: Mi-Hae Kim

## Tell us about your background and why you chose to become an attorney.

Right after college, I worked for an auto supply company assisting with sales, logistics, accounting and general management, and witnessed the many legal questions and issues that can arise within a business setting. This prompted my first opportunity to work closely with outside counsel and sparked my interest in the legal profession. At the same time, I started my own limited liability company with a group of friends. I quickly realized that while I could learn and gain experience in the various aspects of business, learning the intricacies of law as it related to and affected our business was a whole other beast. I recognized that unfamiliarity of the law can make people apprehensive about pursuing or accomplishing their goals and felt that only an understanding of the law could allow me to break down those barriers. After that, it didn't take long for me to pursue law school.

## Why work for Warner Norcross & Judd?

During the interview process, I was very impressed by the attorneys. I could tell that there is a lot of talent here, but also felt a level of camaraderie among all the attorneys. Warner's positive vibe plus the size of the firm was also a big draw for me. Once I started working here, I knew I had chosen the right firm. The work culture is friendly, flexible and fun. I've developed close friendships with fellow associates and partners



who exemplify the kind of attorney and person I would like to be.

## What is your area of expertise?

My focus is in trusts and estates with a particular interest in family businesses. I enjoy assisting clients with entity formation and succession planning and hope to develop more expertise in this area to help multi-generational family businesses plan for their short-term and long-term goals. I enjoy this area of the law because I can use my business experience to help others.

## What do you think people would be surprised to learn about you?

I am a pretty avid gamer. I love playing first-person shooter games like Halo and Call of Duty, and pretty much love all games made by Blizzard — StarCraft, Overwatch and Hearthstone, to name a

few. If I had more time I would still play.

I also love to eat and I will try anything once. The most recent new food I tried was pig brain. Also, most people think I'm pretty timid when they first meet me, but I'm really not. I'm pretty strong-willed, opinionated and adventurous.

## What are your hobbies and interests?

I just got married, so spending time with my new husband is at the top of my list. Now that the wedding is over, we are planning some trips to visit our friends and family but mostly enjoying the free weekends we have to spend together at home with our two cats. I'm also a creative person with a curious soul. I sketch and bake cakes and pies. I can spend hours singing to myself in the car or in a private karaoke room. Right now I'm learning calligraphy. 





### A Better Partnership®

By providing discerning and proactive legal counsel,  
we build a better partnership with clients.

900 FIFTH THIRD CENTER, 111 LYON STREET NW, GRAND RAPIDS, MI 49503-2487

PRSRT STD  
U.S. Postage  
**PAID**  
Grand Rapids, MI  
Permit # 564

ADDRESS SERVICE REQUESTED

## Trusts & Estates Group

Daniel Borst	616.752.2735	Douglas Medonis	248.784.5158
Daniel Brick	616.752.2531	Teresa Meisner	616.396.3216
Patrick Colunga	616.752.2710	Susan G. Meyers	616.752.2184
Sean Cook	248.784.5058	Laura Morris	616.752.2407
Gregory Demers	989.698.3708	Jeanne Nyhuis	616.396.3104
Carl Dufendach	616.752.2136	Beth O’Laughlin	989.698.3703
Sarah Dumas	616.752.2264	Joseph Owens	248.784.5023
Jodi Grider	616.752.2405	Jeffrey Power	616.752.2156
Mark Harder	616.396.3225	Jennifer Remondino	616.396.3243
Frank Henke	248.784.5008	Christine Selewski	248.784.5176
Laura Jeltema	616.752.2161	David Skidmore	616.752.2491
Karen Kayes	231.727.2619	Jerome Smith	616.752.2105
Jay Kennedy	248.784.5180	Pamela Squire	616.752.2249
Mi-Hae Kim	616.752.2729	James Steffel	616.752.2621
David Klippert	989.698.3709	Cindy Thielman	231.727.2624
Linda Koehn	616.752.2323	David Thoms	248.784.5093
Amy Marciniak	989.698.3733	W. Michael Van Haren	616.752.2125
John Martin	231.727.2631	Megan Vogrig	616.752.2475

## WNJ.COM

GRAND RAPIDS

SOUTHFIELD

MIDLAND

MACOMB COUNTY

MUSKEGON

KALAMAZOO

HOLLAND

LANSING