

A dynasty trust that requires a family chat

[By Rick Miller](#)

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CHICAGO - Discussing one's future inheritance with parents may be awkward, but such a conversation is something more estate and financial planners are likely to start recommending.

The reason: increased attention on a relatively unused estate-planning tool known as the inheritor's trust.

A special type of dynasty trust designed for the heir - with the grantor's assent - to receive an inheritance, it protects those assets from estate taxes, divorce settlements and creditors.

"Most of our clients already have an estate tax problem, so when they receive an inheritance, it is just increasing their estate tax problem," said Steven J. Oshins, an estate-planning attorney with Oshins & Associates LLC in Las Vegas.

"[The inheritor's trust] keeps it outside of our client's estate for estate tax purposes, creditor protects it, and divorce protects it, which is very valuable."

Unlike many irrevocable trusts, it is drafted to give the heir the power to make all investment decisions for the trust.

## **New awareness**

Although some estate-planning attorneys say they have been setting up such trusts for at least 10 years, awareness and interest - particularly among financial planners - have been heightened by recent lectures and articles on the technique by Mr. Oshins and others. "It is like a V8 moment," said Vincent M. D'Addona, a New York-based chartered financial consultant and accredited estate planner, referring to the vegetable juice advertisements of years ago. "You smack yourself on the head and say ... 'Why wasn't I doing this?'"

Mr. D'Addona, who does business as Strategies for Wealth Creation and Protection, had heard Mr. Oshins speak on the topic, but it only recently sank in as viable trust for his

client. Nearly every client in the past six months either has been exposed to the concept or formed the trust, he said.

"What's bizarre is that it's really a pretty simple concept, but it is counterintuitive" for an adult child to facilitate a planning maneuver for parents, said William Van Pelt IV, president of The Mid-Continent Cos. Ltd., a Houston financial planning firm with \$500 million under advisement. "I guess that's why most people aren't familiar with it."

"It has gained interest more recently, because more people have more-significant wealth," noted Michael C. Foltz, a former estate-planning attorney who is a principal with Balasa Dinverno & Foltz LLC in Itasca, Ill. His firm, which has \$900 million under management, recommends the trusts.

"Practitioners are looking for ways to protect assets from claims and creditors, and to preserve assets being passed down to their children," he said.

Even if it's a touchy subject for an adult child to raise the topic of their inheritance, the benefits can be too overwhelming not to bring it up, advisers said.

"Sometimes, when you are talking to a 55-year old client, they still see themselves as 15 years old in the eyes of their parents, so isn't it important that they kind of get over that?" added Mr. D'Addona, who would not disclose assets under management. "I am all about straight communication with people."

The inheritor's trust - sometimes called a lifetime or heritage trust - is a dynasty trust (an irrevocable trust that continues into perpetuity under many state laws) that is drafted as a discretionary trust, whereby an independent trustee has absolute discretion over distribution.

The name "inheritor's trust" was trademarked last year by Mr. Oshins, his father, Richard Oshins, and Fort Worth, Texas, lawyer Noel C. Ice.

Under a discretionary-trust format, Steven Oshins explained, the inheritor is the investment trustee but chooses his "best friend" as the distribution trustee. Nevertheless, the inheritor can fire the distribution trustee at any time if things aren't going as planned.

Typically, lawyers who draft generation-skipping trusts - which avoid estate taxes if the inheritor leaves the assets in the trust to pass on to their own heirs - design them as a support trust, in which the inheritor is the sole trustee, but then distribution is limited to "health, education, maintenance and support," Mr. Oshins said. With a support trust, the creditor protection is not quite as strong, he added.

In the case of the inheritor's trust, designed in this manner, "the entire inheritance will be protected from bankruptcy, protected from divorce, protected from personal guarantees, protected from [a judgment or settlement from] car accidents, or any other type of claim

that can be made against the beneficiary."

To work, however, it requires a discussion with the parents or relatives who intend to pass along the assets - and some action on their part.

The parents, for instance, have to change their estate-planning documents to direct that the inheritance go into the trust rather than pass directly to the child, as is typically done. The inheritor's trust also requires a third party to set it up officially, and usually, the parents are asked to sign as the grantor, Mr. Oshins explained.

Some financial planners are deftly brokering those arrangements. Steven Podnos, a fee-only planner and part-time physician who runs Wealth Care LLC in Merritt Island, Fla., recently raised the subject of the trust with a wealthy client in his 70s. Dr. Podnos also does planning for the client's daughter, who is in her 40s, and brought up the subject with her as well.

"I am kind of going between the two of them," said Dr. Podnos, who has \$30 million under management. "I am saying to the daughter, 'I am going to advise your dad that what he leaves you should be left in trust indefinitely, and that is to protect you ... Don't feel like you are being controlled from the grave; there are sound financial reasons,' such as the ones cited above, for leaving the assets in a trust.

"And at the same time, I am saying to the father, 'Listen, rather than just do what an estate-planning attorney would do out of routine, think about this.'" he said.

### **No awkwardness**

Mark Levine, a 37-year old entrepreneur from Marina del Rey, Calif., recalled experiencing no awkwardness when he raised the topic of an inheritor's trust with his parents. He said that he always has had an open line of communication with them on money-related topics.

"They've been open to talk about that stuff for years, and so it just came more natural," said Mr. Levine, a client of Mr. Oshin's. Mr. Levine became more concerned about asset protection issues when he recently formed a new company that designs fountains and waterscapes for Las Vegas hotels.

"Maybe for families that don't talk about [financial matters], it would seem to be an awkward situation to bring up," he added. "When we talk about it, it is just one of the duties you have as a prudent family member."

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