

TRUST CONNECTION

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MCF Private Trust

A Monthly Report
on Trust News
and Information

Our trust services enable us to seamlessly serve you and your family in a manner that is both cost-effective and efficient. We are able to serve as an investment advisor to your trust without sacrificing protection for trust beneficiaries. MCF Private Trust is a Trust Representative Office of National Advisors Trust Company, a national independent advisor-owned trust company.

Silence May be Golden

While trusts play an integral part in transferring assets to future generations, they may present a potential problem with confidentiality.

Consider the case of a father who created a \$22 million irrevocable trust for the benefit of his 17-year-old twin daughters. The grantor happened to reside in Oregon, which is a state that has adopted the Uniform Trust Code (UTC), a comprehensive set of laws governing the creation and administration of trusts that has been adopted by more than 30 states. Each state may adopt it as written or with modifications. The UTC requires that the trustee of an irrevocable trust notify qualified beneficiaries of the existence of the trust, furnish them with a copy of the trust document and provide a statement — at least annually — of the trust assets and transactions. Even if the grantor has language in the trust document detailing when the beneficiaries should receive notice and accountings of the trust, that desire is overridden by the UTC.

In the case of the Oregon grantor, the trustee of the trust sent statements to the grantor, as the custodial parent, on behalf of the minor beneficiaries, so the daughters were not aware of the existence of the trust. The trustee notified the grantor, however, that upon the girls attaining the age of majority the trustee was required by law to notify them and to send them at least annual statements.

There are many possible reasons why a grantor would not wish for beneficiaries to be aware of a trust. It may be that in the grantor's eyes the beneficiary is financially, emotionally or psychologically immature. Knowledge of the trust may negatively

affect fiscal or social responsibility. It could attract unsavory friends, put the beneficiary at risk for identity theft, or even promote frivolous lawsuits against the beneficiary. The solution to the problem is to place the trust in a jurisdiction that permits silent or quiet trusts.

One such jurisdiction is South Dakota, a non-UTC state. South Dakota has one of the most progressive quiet trust statutes, which allows the grantor, or a trust protector, either by the terms of the governing document or a writing delivered to the trustee, to expand, restrict, eliminate, or otherwise modify the rights of beneficiaries to information relating to the trust (SDCL 55-2-13).

In our grantor's case, naming a South Dakota trustee such as National Advisors Trust of South Dakota automatically brought the trust under the administrative provisions of South Dakota law. Because of the benefits of the statute, it was not necessary to modify the language of the trust to include restrictions on beneficiary notification (which may have presented another problem depending upon the terms of the document). The grantor simply had to notify the South Dakota trustee, in writing, that the daughters were not to receive any information about the existence or value of the trust as long as he was alive.

Silent or quiet trust statutes vary among the states. South Dakota, Delaware, New Hampshire, Ohio, Alaska, Tennessee and Wyoming all have some of the more progressive laws. Some UTC states have modified the notice requirements to allow for quiet trusts or have provided for a delayed notice requirement until beneficiaries attain age 25.

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If you are considering a trust as part of your estate plan, your financial advisor can walk you through your jurisdiction's situs-specific notice requirements to beneficiaries so that you can plan accordingly. Even though the UTC generally applies only to irrevocable trusts, be aware that a revocable trust will become irrevocable, usually upon death, and the successor trustee may have a duty to notify. Silence may definitely be golden.

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