

## Using Trusts to Protect Family Assets

A basic goal of most estate plans is to leave assets to children in a manner that will improve their financial security and keep wealth within the family. We are often asked: What happens to the assets in my trust if my children get divorced? And how can I keep a future ex-spouse from claiming a share of a child's inheritance?

Generally, a divorcing spouse's rights and interests in trust property at the time of divorce are considered when a judge decides how to distribute marital property. Some trusts, however, may be structured in such a way to avoid being included in a divorcing beneficiary's marital estate. A recent case from the Massachusetts Supreme Judicial Court (SJC), *Pfannenstiehl v. Pfannenstiehl*, held that a husband's beneficial interest in a trust was not subject to division in divorce due to certain trust provisions and factors.

In *Pfannenstiehl*, a divorcing husband was a beneficiary of a trust established by his father. The trust was not for his sole benefit; instead the husband was one of several beneficiaries, including the husband's siblings and other family members. The trust was also designed to benefit future generations; as the family grew, so did the number of beneficiaries. The trust allowed the trustee to distribute trust property to any one or more of the beneficiaries, as the trustee decided in the trustee's discretion. There were no mandatory or required distributions.

Prior to the divorce proceedings, the trustee made monthly distributions to the husband and his two siblings, but made no distributions to the

other beneficiaries. These monthly distributions to the husband were an important income source that allowed the husband and wife to maintain their upper-middle-class lifestyle. When the couple filed for divorce, the trustee immediately stopped all monthly distributions to the husband, but continued making distributions to the husband's two siblings.

The lower court ruled that the husband's interest in the trust was part of the couple's marital estate, entitling the wife to a greater share of the couple's property. The husband appealed, and the SJC reversed the lower court's decision, ruling that the husband's interest in the trust should not be included as part of the marital property subject to division. The trust did not require any particular distributions to the husband, and there were many other eligible beneficiaries (including future family members) that the trustee needed to consider. The SJC held that the husband's interest in the trust was too speculative and uncertain to be included in the marital estate and, therefore, the trust property itself could not be subject to division in a divorce (although the judge could still take it into account in certain circumstances).

No trust that provides current benefits to your children is "divorce proof" as a matter of Massachusetts law. However, as *Pfannenstiehl* confirmed, certain trusts have the potential to protect family assets from the creditors of the beneficiaries, including an ex-spouse of a divorcing beneficiary. For this reason and many other reasons, trusts are critical as part of an estate plan to protect property for your family.

## IRA Charitable Rollover

As 2017 draws to an end, if you are receiving required distributions from your retirement plans and there are charitable gifts you would like to make, it is a good time to consider direct IRA charitable rollovers.

The IRA charitable rollover allows individuals age 70 ½ and older to donate up to \$100,000 (annually) from their IRAs to eligible charities without having to include the distributions as taxable income. The gift must be made by December 31st of each year. Since there is no “double dipping” allowed by the IRS, you cannot exclude the rollover amount from income and also claim an itemized charitable deduction for transfer.

A donor’s total IRA charitable rollover contribution cannot exceed \$100,000 per year and must be made directly to

an eligible charity. An eligible charity includes most public charities other than supporting organizations; however, distributions to donor advised funds held by public charities and private foundations, except in narrow circumstances, do not qualify. Distributions can only be made from traditional IRAs or Roth IRAs; charitable donations from 403(b) plans, 401(k) plans, pension plans, and other retirement plans are ineligible. Donors should be wary of receiving goods or services in return for charitable IRA rollover contributions; this may disqualify them from the tax-free treatment.

We encourage you to speak with your accountant to determine whether it would be advisable for you to take advantage of the IRA charitable rollover. This is an easy and tax-efficient way to make contributions to nonprofit organizations that are important to you.

### GILMORE REES & CARLSON PC

ATTORNEYS AT LAW

70 WALNUT STREET  
WELLESLEY, MA 02481

US Postage  
**PAID**  
Permit #4  
Rutland, VT 05701  
First Class Presorted

## GILMORE REES & CARLSON PC

ATTORNEYS AT LAW

### About Gilmore Rees & Carlson PC

**Estate Planning • Probate Administration • Probate Litigation • Real Estate**

One of the largest estate planning firms in New England, our attorneys have been recognized for their exceptional experience in the field. The firm carries the highest professional rating in the national Martindale-Hubbell Law Directory and is listed in the Bar Register of Preeminent Lawyers. Many individual attorneys are listed in the Best Lawyers in America and New England, Massachusetts and Rhode Island Super Lawyer lists.

**Please feel free to contact the firm if you would like to discuss the matters highlighted in this newsletter, or any other legal matters.**

**Gilmore Rees & Carlson PC • (781) 431-9788, (508) 520-2200 or (401) 272-5400 • [www.grcpc.com](http://www.grcpc.com)  
Wellesley • Franklin • Providence**