



The Wealth Advisor  
*Presented by*  
Wilson Law Group, LLC  
~Winter 2015~

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## 5 Ways to Modernize Your Estate Planning Using Flexible Trusts

Your estate plan undoubtedly includes trusts that will continue to benefit your spouse for their lifetime and then for the benefit of several generations of your family. Implementing and maintaining trusts that will cover the administration, growth, and distribution of trust property over the span of multiple decades is challenging and generally requires you to have flexibility in your trust agreements. In this issue you will learn five ways that flexibility can be incorporated into your trust agreement.

1. Carefully selecting your trustees.
2. Defining your trust beneficiaries.
3. Including powers of appointment.
4. Allowing for trust decanting.
5. Providing for the appointment of a trust protector.

### 1. The Wrong Trustee Can Derail Your Ultimate Wishes

Choosing the right succession of trustees for a trust is critical to the trust's success and longevity. You have most likely considered naming (or have already named) one or more of your family members as Trustee(s). You may have also given the ability for the Trustee to appoint additional family members because they will better understand the varying needs of your beneficiaries and will keep the costs of administering the trust down.

However, your family members may not be able to fulfill all of their fiduciary obligations without hiring legal, investment, and tax advisors. These expenses will add up and can

ultimately cost more than a corporate trustee, such as a bank or trust company, which will be able to meet all fiduciary obligations under one roof for one fee.

On the other hand, forcing your trust beneficiaries to be stuck without a reasonable means for removing and replacing trustees will land your beneficiaries and trustee in court. Therefore, it is crucial to build provisions into your trust agreement which allow beneficiaries or a trust protector (more on them below) to remove and replace trustees without court intervention.

***Planning Tip:** Selecting a trustee is one of the most important decisions you will make when creating any long-term trust or dynasty trust. Serious consideration should be given to naming a corporate trustee, either alone or as a co-trustee with a family member or trusted advisor. A corporate trustee will act as a neutral party to oversee discretionary distributions and investment strategies that benefit both current and remainder beneficiaries. To create flexibility, specific beneficiaries (such as current income beneficiaries) or a trust protector should be given the right to remove the corporate trustee and replace it with another corporate trustee.*

## **2. Your Trust Beneficiaries Need to Be Clearly Defined**

You need to carefully consider who you want to include as beneficiaries of your trust years into the future. Should adopted children be included (both minor and adult adoptees)? How about children born using “assisted reproductive technology”? In the past the definition of a “descendant” or “child” was straightforward, but today it can encompass much more than blood heirs.

***Planning Tip:** While you cannot predict or foresee everything that will happen in the future, you should carefully consider who you want to provide for after you are gone. Clearly defining the class of beneficiaries who will benefit from your trust will allow for a smooth transition between generations and potentially head off litigation.*

## **3. Powers of Appointment Can Add or Eliminate Beneficiaries**

If you are concerned about how your children, grandchildren, or even great grandchildren will eventually grow up, you can build flexibility into a trust by giving your spouse or other beneficiaries the ability to include or exclude heirs through the use of powers of appointment. A power of appointment is also important if a trust is designed as a dynasty trust but the beneficiary fails to have children, and it can also be used to include or exclude charitable beneficiaries.



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**Planning Tip:** Powers of appointment at each generation should be considered when creating a trust that is intended to last for decades into the future. In many cases, the powers can be as limited or as broad as you desire without creating any gift tax or estate tax problems.

#### 4. Trust Decanting Takes Something Old and Makes it New

Trust decanting involves taking the funds from an existing trust and distributing them to a new trust that has different and more favorable terms. Decanting should be included in your trust agreement because it allows the following:

- Tweaking trustee succession provisions.
- Converting a trust that terminates when a beneficiary reaches a certain age into a dynasty trust.
- Changing a support trust into a full discretionary trust so that a beneficiary's creditors cannot reach the trust.
- Clarifying ambiguities or drafting errors in the trust agreement.
- Changing the governing law or trust situs to a less taxing state.
- Modifying powers of appointment.
- Merging similar trusts into a single trust or creating separate trusts from a single trust.
- Adjusting the trust terms to provide for a special needs beneficiary.

**Planning Tip:** You may be concerned that building decanting provisions into your trust will defeat your long-term goals and intent. Nonetheless, without building any flexibility into your trust agreement from the beginning, it is likely that your heirs will end up in court to fix a trust that no longer makes practical or economic sense.

#### 5. Trust Protectors Can Fix Just About Any Problem

A trust protector is an individual or entity that is empowered to see that your wishes are ultimately fulfilled. A trust protector's duties can be as limited or as broad as you choose. In essence a trust protector can be given the power to modify the terms of a trust without necessarily having to decant it and to address unforeseeable events such as changes in tax laws or family dynamics.

**Planning Tip:** Of any of the options you can include in your trust agreement to insure flexibility, a trust protector is in and of itself the most flexible. This is because a trust protector can be given the right to appoint, remove and replace trustees; include or exclude beneficiaries; adjust powers of appointment; and decant the trust into a new one. Therefore, trust protector provisions should be included in all of your trust agreements.



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## Are Your Trust Agreements Flexible?

Unfortunately trust agreements that are more than a few years old usually lack flexibility provisions for allowing the trust terms to be adjusted as the needs of the beneficiaries and governing laws change. The good news is that modern trust law contemplates these changes and can be invoked to fix an old trust that has gone awry.

If you are interested in learning how to build flexibility into your revocable trust or how to modify an existing irrevocable trust, please contact us.

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## Joint Bank Accounts and Medicaid Eligibility

Like most governmental benefit programs, there are many myths surrounding Medicaid and eligibility for benefits. One of the most common myths is the belief that only 50% of the funds in a jointly-owned bank account will be considered an asset for the purposes of calculating Medicaid eligibility.

Medicaid is a needs-based program that is administered by the state. Therefore, many of its eligibility requirements and procedures vary across state lines. Generally, when an applicant is an owner of a joint bank account the full amount in the account is presumed to belong to the applicant. Regardless of how many other names are listed on the account, 100% of the account balance is typically included when calculating the applicant's eligibility for Medicaid benefits.

Why would the state do this? Often, these jointly held bank accounts consist solely of funds contributed by the Medicaid applicant, with the second person added to the account for administrative or convenience purposes, such as writing checks or discussing matters with bank representatives. If a joint owner can document that both parties have contributed funds and the account is truly a "joint" account, the state may value the account differently. **Absent clear and convincing evidence, however, the full balance of the joint bank account will be deemed to belong to the applicant.**



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## Fun Facts

### One step ahead of the Roosevelts . . .

Wisconsin has a notable record for leading the nation in progressive reforms. For example, in 1854, Wisconsin began efforts to curb the power of Big Business -- 55 years before Teddy Roosevelt's famous "Trust Busting." In 1856, they had the first kindergarten in America. In 1873, they passed laws to control railroad rates, also a first in America. But the real push for social reform was in 1901 with the election of Governor Robert M. ("Fighting Bob") LaFollette, who spearheaded what became known as the "Wisconsin Idea," soliciting advice from independent social scientists before forming new legislation and establishing state agencies. Decades before FDR's social programs, LaFollette achieved sweeping reforms in industrial regulation, taxation, voters rights, workmen's compensation and unemployment compensation for the state of Wisconsin. Today Wisconsin is leading the nation with new ideas in economic reform. – *anythingwisconsin.com*

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## Upcoming Workshops

*Remember, you can register online at [wilsonlawgroup.com](http://wilsonlawgroup.com)  
or by calling our office at 608-833-4001.*

**Trustee Training – The Trust Process – All RWay Members**  
February 21, 10:00 a.m. – 12:00 p.m.

**Trustee Training – The Administrative Process – All RWay Members**  
February 28, 10:00 a.m. – 12:00 p.m.

**Increasing the Value of the IRA Inheritance Trust – Enrolled RWay Members**  
March 12, 6:30 – 7:30 p.m.

**Planning for Long Term Care – Enrolled RWay Members**  
March 19, 6:30 – 7:30 p.m.

**Funding Your Trust – Enrolled RWay Members**  
April 11, 10:00 a.m. – 12:00 p.m.

**Leaving a Charitable Legacy – Enrolled RWay Members**  
May 14, 6:30 – 7:30 p.m.



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## This Month in History

**February 24, 1582** - Pope Gregory XIII corrected mistakes on the Julian calendar by dropping 10 days and directing that the day after October 4, 1582 would be October 15th. The Gregorian, or New Style calendar, was then adopted by Catholic countries, followed gradually by Protestant and other nations. – *history place.com*

**Birthday - Astronomer and physicist Galileo Galilei (1564-1642)** was born in Pisa, Italy. He was the first astronomer to use a telescope and advanced the theory that the sun, not the earth, was the center of the solar system. – *historyplace.com*

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# Catch Us

## Doing Something Great!

If you see or experience exceptional service –  
Please fill out a KUDOS and let us know!

**Our Goal is an Exceptional client experience for ALL!**

### What is a Kudos?

Whether you are a new client or a long-term client, we would like to give you this opportunity to praise (or give “kudos” to) either an individual staff member or the Wilson Law Group team for any exceptional service you received.

**Use the enclosed envelope for sending your Kudos back.**

(see next page)



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# KUDOS

## You've Been Caught

by a Valued Client!

To: \_\_\_\_\_

From: \_\_\_\_\_

Date: \_\_\_\_\_

### YOU:

- |  |  |
|--|--|
| <input type="checkbox"/> Were a great listener                   | <input type="checkbox"/> Had a great attitude              |
| <input type="checkbox"/> Explained difficult topics clearly      | <input type="checkbox"/> Always make me (us) feel welcomed |
| <input type="checkbox"/> Kept us on track                        | <input type="checkbox"/> Communicated clearly              |
| <input type="checkbox"/> Answered my phone calls/emails promptly | <input type="checkbox"/> Made me and my family feel valued |
| <input type="checkbox"/> Brought our wishes to life              | <input type="checkbox"/> Were respectful                   |
| <input type="checkbox"/> Solved my problem                       | <input type="checkbox"/> Followed up promptly              |
| <input type="checkbox"/> Helped me out on the spur of the moment | <input type="checkbox"/> Other: _____                      |
| <input type="checkbox"/> Heard me                                | _____  |

**BUT WAIT. . .let me tell you more!**

Thanks for: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



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