

New Dimensions in Estate & Trust Planning

*An Article to Benefit Clients & Friends
of*

FERRIS & ASSOCIATES
A PROFESSIONAL CORPORATION
Attorneys and Counselors at Law

Trust & Estate Planning ♦ Probate & Estate Administration ♦ Business Formation & Planning

MULTI-GENERATION TRUST PLANNING How to Protect Your Family Wealth and Values for Generations *by Richard L. Ferris, Esq.*

As we begin the twenty-first century, we are witnessing a truly unprecedented transfer of wealth in the United States. By most studies, this inter-generational wealth transfer is upwards to \$25 TRILLION dollars.

After 30 years of working with individuals and families on their wealth transfer strategies, I have discovered that the most difficult, yet most rewarding, part of the estate planning process is asking essential questions about what clients want to preserve – besides financial wealth – and how they can enhance each family member's growth. In other words, how do we provide financial security for our children while ensuring they achieve on their own? How do we make sure an inheritance will help them and NOT hinder their life journey? Most clients who have worked their way through our law firm's two-step process – diagnostic and design; then document presentation and

signing – will almost always make these comments: “We want our children or beneficiaries to make wise choices with their inheritance around their health, education, support and maintenance.” “We want to broaden our children's horizons and prepare them to efficiently manage the money and to enjoy a richer (not lazy) life.”

It's your choice: Either **OUTRIGHT DISTRIBUTION** or **MULTI-GENERATION TRUST PLANNING**.

Our experience in reviewing many wills and trusts over the years is that most parents design their plan to leave their inheritance outright or at a given age (ex. Age 30). This could be the worst possible distribution pattern in the world in which we live: lawsuits, predators, divorces, business failures, greedy spouses, lottery syndrome spending, mismanagement of funds, etc. Why? Always

remember this very important legal principle: What you OWN you can lose; what you CONTROL you can protect. Let me explain. Being a child of a Multi-Generation Trust where the trust always **OWNS** the inheritance at your death is like having a rich uncle who provides what the child needs for health, education, support and maintenance for LIFE. Here, your uncle (trust) owns the wealth, not the child. Therefore, the child cannot lose (to failed marriages, predators, greedy in-laws, estate taxes, etc.) what the child does not own. Moreover, if your beneficiary child is financially and emotionally mature, he or she can serve as their own trustee, along with a corporate fiduciary, trust company or CPA of his or her choice upon your death. That's giving the child (beneficiary) **CONTROL** over his or her trust share, but **NOT** ownership. Can you think of a better way to create a "Prenuptial Agreement" for a child/beneficiary of your wealth at death?

Are there Estate Tax Benefits to a Multi-Generation Plan?

Yes! What your child controls (not owns) at death will not be subject to his/her Federal and/or State death taxes. Did you know that you can transfer up to \$5 million of your wealth plus its APPRECIATION from generation to generation with **NO** Death Taxes on the transfer? Like the parent's Estate Tax Exemption, the Tax Law gives the child beneficiary another wealth transfer exemption for your Multi-Generation Trust Plan in the exact amounts as the parents'. Tax Law calls this the Generation Skipping Tax Exemption (GST). These (\$10 million if married, \$5 million if single) Multi-Generation Tax savings provisions can be included in any current or new will or Revocable Living Trust document.

Following are some commonly asked questions about Multi-Generation Planning:

Question: Does Virginia allow Multi-Generation Trusts? Yes, effective July 1, 2000, Virginia now allows Multi-Generation Trusts under Virginia Statute 55-13.3. So, if the Trustmaker(s) wishes to implement Multi-Generation provisions in their Will or Trust, they must amend or restate their documents under this new Statute. Moreover, the State Law that governs the Trust or Will must be "Virginia" since most states **DO NOT** allow Trusts to run in perpetuity. The old Common Law (prior to Virginia's new Law) permits Trusts to run only about two generations and then that Trust must end and the beneficiaries take outright their Trust share. This is called the Rule Against Perpetuities.

Question: What if I move to another State? Except when a Trust is a "State Specific Trust" (Example: Multi-Generation) a trust is transferable (or portable) from state to state under the "full faith & credit clause" of the U.S. Constitution. Trusts are treated like "contracts" and are valid from state to state; unlike wills that may be "state specific" due to the Will terms or state law.

Question: Why do my children need inheritance protection? Studies show that most people usually spend their inheritance within 18 months after receiving it, no matter how young or old they are or how much money is involved.

Obviously, this is not always the case and many children will be savers and not spenders. But statistics show that no matter how frugally or carefully a person may live, bad things can happen to good people.

Sometimes children need to be protected from themselves. In **MOST** instances, people are not saving what they need for retirement. This is not because they don't want to save but because they cannot earn enough to fund their current lifestyle. Sometimes, it doesn't matter

how much an individual earns; his or her lifestyle will increase along with a live-for-today philosophy. Also, all of us have a wish list that would come true “if only we had the money.” This is sometimes referred to as the “lottery mentality.” Easy money is easily spent. A look at lottery winners teaches us that more money is often not the solution, but instead, creates additional problems such as divorce, bankruptcy and abandonment of the “work ethic” that is so important to success in life. Inheritances can often create this same “lottery mentality,” since it is not “earned” money but rather “gifted” money or free money (no price paid for it). We also find that children who have little and suddenly inherit a lot are often ill equipped to manage their inheritance or make wise financial decisions. This is a learning process that takes time and guidance.

Even children who maintain frugal spending habits can also have problems. We live in a world where trial lawyers sometimes refer to those who have successfully accumulated an estate as having “deep pockets.” If a person has assets, they can become the target of unscrupulous individuals. If someone is injured, others should pay, especially the “deep pocket” individuals. A bad business decision can overflow onto other assets saved for retirement, which becomes difficult, if not impossible, to replace once it is gone. And, even though we don’t like to talk about divorce, it can occur in the best of families, throwing the inheritance into the marital pot for an argument. After receiving an inheritance, the death of a child also can cause that inheritance to pass to a surviving spouse, only for that inheritance to go in a new direction if that spouse later remarries. Any of these scenarios are usually inconsistent with the parent’s preferences on how they really wanted their estate passed down within their family. The future of estate taxes is uncertain at this time, but if this tax is eliminated, can we be assured it is gone forever? Multi-Generation Trusts can be a vehicle for passing wealth

down through successive generations without subjecting it to taxes upon the death of each beneficiary.

Question: What if my child is a spendthrift and needs inheritance protection from his or her poor spending and saving habits? To be certain your estate meets the needs of your child the way you want, Multi-Generation Trusts can be designed to control the cash flow to that child. Some monies can be distributed monthly or quarterly to supplement that child’s current income. Also, if the Trustee deems appropriate, additional monies could be made available in the event of a financial or medical emergency. The balance can be accumulated, invested and allowed to grow for future use. Cash flow can increase when the child reaches retirement years to supplement other income.

Question: What if my child is very responsible and does not need inheritance protection? Multi-Generation Trusts are not just for the irresponsible or spendthrifts. We should not ignore the problems that can occur in life regardless of how responsible we are. Those who do so may be setting themselves up for a big disappointment. If we learn from the lives of others, rather than insisting on being the test case, we clearly see the importance of protecting what we have successfully accumulated. Multi-Generation Trusts for the responsible child may be drafted to give much more liberal access to money. If a child needs money, it should be accessible. If someone else wants the money, the door of accessibility closes.

Question: Who is in charge of the Multi-Generation Trusts? The key to access is not just in drafting the trust but also in the selection of Trustees. If the child is to be in charge of the Trust as a Trustee, we always recommend two Trustees (Co-Trustees) that must act together. Without this, the trust cannot be fully protected from the reach of outsiders. The Co-Trustee can be an individual, attorney, CPA, trust company or bank. If we want to protect

the trust from the child, that child may still be a Trustee; but, we would set up a Co-Trustee who acts as the checks and balance. If the trust is for the responsible child, we usually name the child as a Trustee and give that child the right to name his or her Co-Trustee (usually a bank, trust company, attorney or CPA). We call this Co-Trustee a “friendly Trustee,” someone who will say “yes” when appropriate and “no” when inappropriate. In the trust, we can also give the child the right to fire a “friendly Trustee” if their performance is below standards. The choice of Trustees is what makes the trust work well. These important decisions are carefully reviewed with you at your attorney conference. Choosing your Trustees is one of the most important decisions you will make in your Estate Plan.

Question: How do you tell children about your wealth? First, begin with a guiding principle explanation of your family’s values, what life lessons you have learned over the years, what your spiritual values are and your philosophy about money and its use. Remember, transferring your family “VALUES” through the generations is just as important as transferring your wealth. Then, simply say, you will inherit enough money to get all of the education you need, and perhaps help pay a mortgage on your home or start a successful business. But, you will have to continue to work hard, have your own career or important duties of a homemaker and shop on your OWN dollar. Our (my) wealth will be there for your NEEDS not your WANTS!

With careful planning and expert counsel with your Estate Planning Attorney, you can **PROTECT YOUR FAMILY’S WEALTH AND VALUES FOR GENERATIONS.**

This publication is intended for general information purposes only and does not constitute legal advice. The reader must consult legal counsel to determine how laws apply to their specific situations.

* * * * *

About the Author

RICHARD L. FERRIS began his legal career in 1972 with the Ohio Attorney General's Office, Tax Section. After serving as a Director of a major financial institution’s Estate and Business Analysis Department, he founded the Williamsburg Law Firm of Ferris & Associates in 1993. The Firm focuses on Estate & Trust Planning; Probate, Trust and Estate Administration; and, Business Formation and Planning.

Dick earned his Law Degree from Ohio Northern University; Master of Laws (LL.M.) in Taxation from Boston University; and his CLU, ChFC, and Masters of Science in Financial Services Degrees from the American College.

He has authored many articles on Estate and Business Planning, including publication in the Virginia State Bar’s *Trusts and Estates*. In addition, Dick is a frequent speaker before civic, social, and professional groups. He has co-authored three books on Estate and Trust Planning: **LEGACY—Plan, Protect and Preserve Your Estate**; **GENERATIONS—Planning Your Legacy** and **LOVE, MONEY, CONTROL—Reinventing Estate Planning**.

Dick is admitted to practice before Virginia, Ohio, and District of Columbia Bars, and is a member of the National Network of Estate Planning Attorneys. He is admitted to practice before the U.S. Tax Court in Washington, D.C.