



# Newsletter

JANUARY 2010

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Our office will be closed for the following holidays:

January 18, 2010 – Martin Luther King Jr. BD

February 15, 2010 – Presidents Day

Our next newsletter will be mailed out the beginning of April 2010.

Remember if you have an article that you would like to contribute to our newsletter just fax it to us for our review. We must receive the article no later than March 15<sup>th</sup> for our April newsletter.

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## WE'VE MOVED!

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### **DELAWARE CORPORATIONS PAY YOUR TAXES NOW**

All corporations incorporated in the State of Delaware are required to file an Annual Report and to pay a franchise tax. Exempt domestic corporations do not pay a tax but must file an Annual Report. The Annual Report filing fee for all other domestic corporations is \$50.00 plus taxes due upon filing of the Annual Report. **Taxes and Annual Reports are to be received no later than March 1<sup>st</sup> of each year.** The minimum tax is \$75.00 with a maximum tax of \$180,000.00. Taxpayers owning \$5,000.00 or more pay estimated taxes in quarterly installments with 40% due June 1, 20% due by September 1, 20% due by December 1, and the remainder due March 1. The penalty for not filing a completed Annual Report on or before March 1<sup>st</sup> is \$100. Interest at 1.5% per month is applied to any unpaid tax balance.

Pay your taxes online at  
[www.corp.delaware.gov/paytaxes.shtml](http://www.corp.delaware.gov/paytaxes.shtml)



## **PERSONAL REVIVAL TRUST**

A personal revival trust is any type of trust that is set up to hold assets for a cryogenically person until they are revived. These trusts might also be called other names, such as dynasty trusts, cryonic trusts, or asset preservation trusts, but the concept is the same. If a person is planning to have his body or consciousness preserved, he would also want his assets preserved.

There are still a lot of unanswered questions about personal revival trust, such as; what are the alternatives to preserving one's assets? If a person is legally dead, he could give his assets outright to a non-profit organization, or to family or friends. If that route is taken, the question still remains, how will the person support himself when he is revived? How far is the organization that is preserving the body going to go toward reintroducing that person back into society? Will the revived person's employment or career field be around anymore? Will the revived person approach grandchildren and great-grandchildren looking for handouts? There may be an ethical responsibility on their behalf to help, but they have no legal obligation to do so. As you can see, relying on these alternatives is risky; therefore, as more people seek to preserve their bodies, the demand for personal revival trusts will grow.

The law has not yet developed in this field. An issue that may confront a trustee is defending challenges against the trust itself. There could be an immediate attack on the trust, or challenges could arise much later down the road.

Under common law, a trustee has a fiduciary duty to protect the trust's assets for purposes specified by the grantor. This has been codified by every state. Under the Uniform Trust Code, a trustee has a duty to administer the trust in accordance with its

terms and to defend the trust against claims. In addition, there is another practical consideration and motivation for trustees to defend a trust, which is to protect the trustee fees. This might be motivation alone to keep it intact.

Who might be a potential claimant against the trust? This could be anyone who thinks that he should be receiving assets from the trust, rather than having it sit, waiting for someone's eventual revival. One possibility is a spouse. A person cannot completely disinherit a spouse because states have statutory amounts to which spouses are entitled. A spouse might also try to get more than the specified statutory share.

Another possible claimant is a disgruntled heir who has been disinherited and who would have otherwise received assets by intestacy. He may challenge or try to invalidate the will or trust. Other possibilities are beneficiaries of the will or trust who are not satisfied with what they are to receive from the trust of the estate.

The IRS is unlikely to be a claimant against a trust because it has come to terms with the Rule Against Perpetuities, which limits the IRS to a one-time estate tax. As a matter of fact, if the income is allowed to accumulate and remain in the trust, then the IRS is likely to get more income tax from it.

A dynasty trust provides distribution of your assets through several generations and takes advantage of the generation-skipping tax transfer (GSTT). These assets are protected from estate taxes for generations. In some states, the dynasty trusts can last indefinitely. Other states limit the trusts to between 80 years and 21 years after the death of the youngest child living at the time the trust is put into effect. A few states have legalized dynasty trusts as perpetual, with up to 1,000 years' life.

Here are a few things to keep in mind when setting up a dynasty trust:

- Determine the amount of money to use to set up a dynasty trust. Keeping the assets in trust eliminates the possibility for beneficiaries to lose any of the funds through divorce, death tax or lawsuits. The beneficiaries are not the owners of the inheritance. The recommended minimum to begin a dynasty trust is \$500,000 over the amount you need to live comfortably. Keep in mind that you'll have to pay a percentage yearly for professional management of the trust.
- Set up a trustee for the dynasty trust. This can be an adult child until the death of the child (who can then hand the responsibility down to the next generation), or it can be through a financial institution for indefinite management of the trust.
- Decide whether to fund the dynasty trust upon your death or during your lifetime. Lifetime funding provides asset growth with less tax impact.
- Consider life insurance policies and stocks for placing in a dynasty trust. These assets tend to grow rapidly in trusts.
- Use an experienced estate-planning attorney to set up a dynasty trust. An attorney who is familiar with the grantor's assets and beneficiaries and can draft a document that is personalized for each beneficiary. If some family members are more able to care for themselves than others, the trust can be set up to provide accordingly.
- Make a decision about using irrevocable life insurance to fund a dynasty trust. At the grantor's death, the policy pays enough to cover estate taxes. The dynasty trust becomes irrevocable upon the death of the trustor. No changes can be made by the beneficiaries or trustee.
- Place stipulations on a dynasty trust that prevents your children and grandchildren from becoming "trust-fund kids." You can require them to obtain a college education and maintain a job to receive the trust income. Another option may be to match their earnings with income from the dynasty trust.

## **HOW TO CREATE A CREDITOR-PROOF TRUST**

The irrevocable trust is the trust favored in asset protection because it provides a high degree of protection from creditors. To insure safety, the transfer of assets into the trust must also be made under such circumstances that it cannot be set aside as a fraudulent conveyance and thereby defeat its asset protection objective.

The irrevocable trust, as its name suggests, is one that cannot be later revoked or rescinded by the grantor. This means that once you establish and fund the trust, you forever abandon your rights to reclaim your property. In sum: With the transfer of assets to an irrevocable trust you lose both control and ownership of the property. These are serious considerations.

Because the irrevocable trust deprives you of control, you also lose the right to receive income, and also the right to sell or dispose of the property. For these reasons, consider an irrevocable trust only when you have sufficient additional assets or independent sources of income for financial security after you transfer your assets into the trust. Be objective. Carefully analyze your needs and resources before you act!

An irrevocable trust, like other trusts, can own any type property, but it should only hold property that adds value to the trust. The trustees management decisions must follow the prudent investor rule and be guided by the investment objectives stated in the trust. You

can safely make an outright gift of property to the trust, or even sell assets to the trust if it has accumulated sufficient assets to pay you. But to be effective as an asset protector, the irrevocable trust must be correctly organized and operated in five important ways:

- The grantor cannot reserve any power to revoke, rescind, or amend the trust. The trust should explicitly provide that it cannot be rescinded, amended, or revoked by the grantor.
- The grantor can retain no rights, either directly or indirectly, to reclaim property once transferred to the trust. All conveyances to the trust must be absolute and unconditional, with no strings attached.
- The grantor cannot assert any authority on how the property will be managed or invested, or whether trust property should be sold or retained. These decisions must be delegated exclusively to the trustee.
- The grantor cannot assert any authority over income generated from the trust property, or how the income will be distributed, except as initially provided in the trust.

- The grantor cannot serve as trustee, nor appoint as trustee one who is not considered arms-length. Courts closely examine the relationship between grantor and trustee to determine whether the trustee is only the grantor's alter ego.

In sum, the protection provided by your trust will depend on the degree to which you relinquish control. The more control you retain, the greater the likelihood creditors can reach assets transferred to the trust. Conversely, lesser control means less chance your creditors can successfully attack the trust assets.

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Fear is like fire: If controlled it will help you; if uncontrolled, it will rise up and destroy you. Men's actions depend to a great extent upon fear. We do things either because we enjoy doing them or because we are afraid not to do them. This sort of fear has no relation to physical or moral courage. It is inspired by the knowledge that we are not adequately prepared to face the future and the events it may bring – poverty perhaps, or injury or death.

John F. Milburn

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