The Trust Solution

Can you imagine cutting your children out of your will? While most of us have had the thought cross our mind (possibly when they were teenagers), few of us would *seriously* contemplate disinheriting our children. But a friend of mine found herself disinherited — and by accident, no less.

Her father, Herb, married Marjorie late in life. Marjorie had adult children from her first marriage. When Herb died, my friend discovered that his will had left everything to Marjorie. Nothing too unusual here, since Marjorie needed the income from Herb's assets to maintain her living arrangements. When she died everything went to her children, and nothing to my friend or her three siblings. Without any ill will or evil intention, Herb had disinherited his own children.

It is very common for people to make wills leaving everything to their spouse, with a proviso that the estate go to their children if the spouse dies first. This is usually done because the surviving spouse will require all of the combined assets to live on, particularly if the amounts are modest or living expenses are high. This causes no problems as long as his children and her children are the same people. But when each comes into the marriage with children (and assets!) from a prior union, trouble can result.

Fortunately, there is a ready solution to this problem. A trust is a legal entity that can be created either during one's lifetime (called an *inter vivos* trust) or in a will (a testamentary trust). Instead of leaving all of his possessions to his second wife, Herb could have directed in his will that they be transferred to a trust for Marjorie's benefit.

A person creating a trust (called the settlor) names three other parties:

- the trustee, who is responsible for overseeing administration, including investment of the assets, disbursement of the income and disposing of the assets when the trust is wound up;
- the income beneficiary, who receives the income from property invested in the trust for as long as he/she lives;
- the remainder beneficiary, who receives the remaining assets when the trust is concluded.

The assistance of an experienced lawyer is required to set up most forms of trust.

Trusts can also be useful in situations other than second marriages. Some people have spouses or children who may not be capable of making good financial decisions on their own. Appointing a trustee to make these decisions can be both prudent and kind. Testamentary trusts are common in the wills of people who have children under the age of legal majority (18 years) at the time.

A specialized form of trust is called a charitable remainder trust. In this case a family member is named as income beneficiary, but the church or another charity is named as remainder beneficiary. A loved one enjoys the income from the assets as long as he/she is alive, but the assets themselves are transferred to a charity upon their death. Through the use of this vehicle a donor can be generous to both family members and the church. Plus, there are significant income tax advantages that make this form of planned gift especially attractive to people with high net worth.

For more information on charitable remainder trusts, call Lutheran Planned Giving at 1-888-308-9461.