

TRUST CONNECTION

A Monthly Report on Trust News and Information

Can you keep a Secret?

Trusts are becoming commonplace because of tax benefits, protection from lawsuits and the ability to control the ultimate recipients of family wealth. But grantors of trusts frequently state they do not want to rob their children and grandchildren of the incentive to work and to provide for themselves. Grantors fear that if beneficiaries realize a trust fund will provide income to them without effort, they may not engage in worthwhile activities.

For this reason, a grantor may want to reduce or eliminate the information provided to a trust beneficiary. Historically, this has not been possible because a trustee was obligated to inform and report to beneficiaries, providing them with a copy of the trust and accountings of all trust property, liabilities, receipts, and disbursements including the amount of the trustee's compensation, a listing of the trust assets and their current market value. Failure to do so was a breach of the trustee's duty.

This obligation applied to all trustees, regardless of whether it is a surviving spouse, parent, friend or institution. But questions remained: When is the trustee obligated to provide such information? Must the trustee volunteer information to the beneficiary or does the trustee simply have to provide information upon the beneficiary's request?

Now the answers depend on state law. Almost all states require a trustee to provide the information if a beneficiary asks, but many states allow the grantor to limit or eliminate this requirement through a specific trust provision.

Currently, about seventeen states specifically authorize a grantor to eliminate the duty of a trustee to provide information to the trust beneficiaries. In effect, the grantor can create a

"secret trust" in these jurisdictions. The trustee does not have to report and provide information about the trust or even inform the beneficiaries of the existence of the trust.

Seven additional states, concerned that there should be someone with sufficient information about the trust to protect the beneficiaries' interests, adopted provisions for trust reporting to be given to a third party on behalf of the beneficiaries. These jurisdictions permit the trust grantor to designate a surrogate to receive and request information in lieu of the beneficiaries.

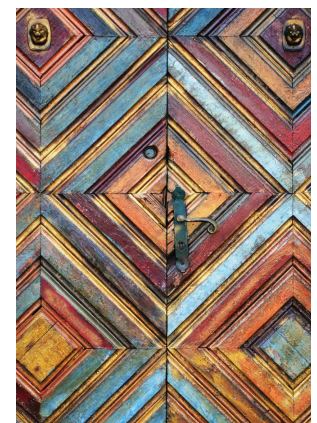
Conclusion

The trustee's duty to keep beneficiaries informed of the trust and its administration is a long-standing fiduciary obligation. But the evolution of this duty creates opportunities for a grantor to create a secret trust. To learn more about secret trusts and if they are available in your state, contact me today.

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