

## **2024 Bypass Trust & Multi-Generation Trust Overview**

As follows is a brief discussion of basic estate planning, bypass and multi-generation trusts.

A **Will determines how your assets are distributed upon your death**. Obviously, a husband and wife each need a will. Additionally, everyone needs a **Durable Power of Attorney, Durable Power of Health Care and Directive to Physicians**. **The “power” documents allow someone to make financial and health care decisions on your behalf in the event of your incapacity**. The Directive to Physicians expresses whether or not a person wants to be kept on life support, whether they wish to be resuscitated etc.

If a person dies in the year 2024, they can leave up to \$13,610,000 to anyone at their death without estate taxes being incurred. This figure is adjusted for inflation on an annual basis. Most people approach this as a death only event. These asset transferal limits also apply to transfers made during your lifetime. This can open up gifting opportunities.

Typically, for a husband and wife the first item to consider once you develop a Will is Trust provisions. Probably the most common for a husband and wife is a Bypass (or Credit Shelter) Trust. For example, assume husband and wife have a \$27.22 million estate. Furthermore, assume husband dies this year. The Bypass Trust gets funded after husband’s death and allows \$13.61 of the \$27.22 million joint estate to be placed in trust for the remainder of the wife’s lifetime. (NOTE: current estate exemption figures are set to sunset (to approximately \$8 million per person) on Dec. 31, 2025, absent new federal approval.)

The wife is the beneficiary of the Bypass trust and can also be the trustee of the trust. The trustee is the decision maker and the one who is legally obligated to see that the trust rules are properly followed. The beneficiary (wife) can withdraw all of the income produced by this Bypass trust for any reason and can spend the principal for items which typically fall under the categories of health, education, maintenance and support.

**The Bypass trust is not exposed to estate taxes in the beneficiaries’ estate and is not exposed to the beneficiaries’ creditors**. Since it is no longer exposed to estate taxes in this generation it can grow quite large with only income taxes being assessed. Once the beneficiary dies the assets of the Bypass trust will be distributed either outright or into other trusts for subsequent beneficiaries.

To further complement your estate plan the Bypass trust is many times partnered with a **Multi-Generation Trust**. Functionally, this type of planning allows the IRS to be held at arms-length for many generations from an estate tax perspective.

Anyone can leave up to \$13.61 million into a Multi-Generation Trust to collectively benefit many people. As such, a husband and wife can each leave up to \$13.61 million combined (\$27.22 million total) in a multi-generation manner. A parent who establishes this type of trust can effectively leave money in a protected manner for children, grandchildren and even into the great grandchildren’s generation. Given this, the Multi-Generation Trust is a very effective tool to manage and protect wealth for multiple generations.

As with the Bypass trust, **the Multi-Generation Trust is protected from creditors as well as ex-spouses (in the event of divorce)**. Furthermore, these **assets are not exposed to estate taxes** in estates of any of the beneficiaries. Additionally, the beneficiary can access the principal of the trust for health, education, maintenance and support items.

One final comment on the Multi-Generation Trust is that it is very important to recognize that this type of trust does not have to be funded only at death. For instance, if a husband and wife are actively gifting to a child outright they could modify their plan to make the gifts to a Multi-Generation Trust for the child’s benefit. By managing gifting in this manner the parents reduce their estate, pass wealth to their child and the child has the protection afforded by the Multi-Generation Trust. Furthermore, while the parents are gifting into the Multi-Generation Trust the parents can serve as trustee of the child’s trust effectively giving the parents tremendous control over the gifted assets and the management of the trust itself.

Furthermore, while the parents are gifting into the multi-generation trust, the parents can serve as trustee of the child's trust effectively giving the parents tremendous control over the gifted assets and the management of the trust itself. Check with a lawyer (preferably one who is Board Certified in Estate Planning & Probate Law) to make sure the language in your estate plan still applies with the current exemptions. If some plans aren't adjusted, you could inadvertently leave little to your spouse or face an unexpected estate tax hit.

Many people's Wills don't reflect their current inheritance wishes because of a major life change. Furthermore, if a bank or trust company is the executor of your estate, you might have a new executor due to consolidation in the banking industry. Make sure you trust that executor's judgment.

### **Beneficiary or Transfer On Death Designations**

Every IRA, 401(k), pension, life insurance policy, annuity etc. has an opportunity for you to name a beneficiary of that account. It is important to understand that **beneficiary designations SUPERSEDE the language in your Will.**

**Retirement Plans--401(k)s and IRAs:** Department of Labor regulations allow retirement plan assets to be inherited—either outright or in trust. Assume your will states that your IRA assets are to go to your children. If you instead name your estate as your IRA beneficiary, your IRA assets will ultimately pass to your children—but, not before your heirs pay potentially costly, and unnecessary, income taxes. By simply coordinating your primary and contingent beneficiary designations with the wishes in your will you can avoid these problems and potentially avoid immediate taxation upon your death.

The Department of Labor will allow an IRA or 401(k) balance to be inherited directly by a non-spouse without incurring the full brunt of income taxes.

If a non-spouse inherits retirement plan assets, they will be subject to “required minimum distributions” each year. This is true whether your heirs receive retirement assets in their name or in trust.

Concerns also arise from designations like Pay-On-Death, Transfer-On-Death and Joint With Rights Of Survivorship on different accounts (especially bank accounts). These need to be properly coordinated with your Will and final wishes as these designations will supersede the language in your Will.

**Trust Planning**—if you want your heirs to inherit retirement plan assets and still have the benefit of a Marital Trust or Generation Skipping Transfer trust—you must make sure the beneficiary is properly worded. Usually, if retirement plan assets are to be left in trust the beneficiary will need to be styled somewhat in the following manner: “The Testamentary Trust, Established Under the Will of John Doe, For the Benefit of Fred Doe.” Normally, we request specific beneficiary language from the attorney that drafted the estate plan to ensure they are correct.

### **Gifting**

This year the Annual Gift Tax Exclusion is \$18,000 per year per person. That means you can give \$18,000 to any person without any gift taxes being assessed against that gift. Married couples can “split” gifts meaning your spouse could effectively gift to the same person \$18,000 (for a total of \$36,000 between the two gifts).

In addition to the \$18,000 annual gift tax exclusion, an individual can give away a total Lifetime Gift of \$11.4 million (or at death—but not both), which is also free of gift taxes. In both instances, these gifts can remove assets from your estate when evaluating estate tax consequences.

Another consideration is making gifts for Health Care or Educational related purposes. If you are inclined to make gifts for Healthcare or Education, you must make the check directly out to the institution. If you do write the check directly to your grandchild's university (for tuition in example) that gift is in addition to the \$15,000 gift which can be made each year.

As such, it is important to remember that you can make unlimited gifts for purposes of Healthcare or Education.