

CALAMOS<sup>®</sup>  
WEALTH  
MANAGEMENT



# FAMILY MATTERS

Insights on key topics—  
through a multi-generational lens.

TOPIC:

## TRUSTS & ESTATES:

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Intergenerational planning and communication

Trust and estate planning requires care—and communication.

Too often, the motivations behind planning decisions go misunderstood by beneficiaries. This edition of *Family Matters* explores why “trusts don’t imply mistrust.” We then touch on a common situation requiring extra care: financial accommodations for family members with special needs. The final section lays out pitfalls to avoid.

We created the *Family Matters* insight series to spark ideas and spur conversation among family members on a wide range of important financial topics. They’re purposely written as a primer for more in-depth discussions with your Calamos Wealth Management advisor on how the matters presented will apply to you and your family’s unique situation. We hope you find that the multi-generational lens by which topics are covered promote pass-along readership to multiple family members. Your Calamos Wealth Management advisor is available to all members of your family to provide guidance on matters you care about most.

*When 58-year-old Stan Black meditates, he no longer has to imagine his best possible self—he figures he’s already there. After a serious stroke led to a health scare two years ago, he’s worked hard to get in the best shape he’s been in since business school. And, in a huge vote of confidence, his employer’s compensation committee just approved a new deferred compensation plan that basically guarantees income for the rest of his life. Every bit as important, he and his partner finally got past their dispute over adopting kids, freeing them up to travel and allowing Stan to focus all his paternal energies on his amazing niece, Lexi.*

## WHY TRUSTS DON'T IMPLY MISTRUST

*Stan and Lexi bonded when she was just a toddler. He essentially adopted her for a year-and-a-half while his sister dealt with an addiction that ultimately landed her in rehab. She lost her medical license and might have lost much more were it not for some clever estate planning by their late father that provided a financial safety net in the form of an inheritance that was shielded from an aggressive malpractice lawyer.*

Trusts are one of the most misunderstood items in the financial planning toolbox. Years of Hollywood movies where benefactors impose strict conditions on beneficiaries before they can access funds have given many people the wrong idea. Trusts are not typically set up because the benefactors don't trust the beneficiaries, says Terry LaBant, Head of Wealth Strategy Services. Rather, they are set up because benefactors don't trust everybody else.

LaBant tells the story of a client who left his grown son a considerable sum in a trust without ever completely explaining why. That left the son, an established professional with significant assets in

his own right, confused and more than a little irate. "We told him, 'Your father admired you a lot and he didn't do this to penalize you—he did it to protect you because you're successful,'" says LaBant. The son, however, was having none of it and moved swiftly after his father died to merge the trust into joint household accounts, at which point the assets therein became community property. Fast forward a few years and he was embroiled in a divorce and—*notwithstanding that courts generally don't subject inheritances to divorce (except for child support)—the judge awarded half the assets from the trust to the ex-spouse.*

"He would have benefitted from a Family Matters conversation when the parent was still alive," says LaBant. "Kids need to understand that a trust can be a blessing and not a curse."

## WHEN BENEFICIARIES HAVE SPECIAL NEEDS

*Sometimes Stan thinks he needs Lexi even more than she needs him. That's saying a great deal, considering the life challenges posed by her diagnosis of mild Asperger's. Stan is hopeful his sister can pull her life together, but regardless, he knows he wants Lexi to be taken care of—always.*

For those involved in caring for individuals with disabilities, planning for the future often takes a back seat to planning for the next eight hours. A survey published in the April 2018 edition of the *Journal of Intellectual and Developmental Disabilities* asked parents about 11 items related to planning for their child's long-term needs, such as identifying a successor to the current family caregiver, researching residential programs or establishing a special-needs trust. It found that more than 12% of the respondents had taken none of these actions to ensure that their child's needs would be met if the parent or other caregiver died or was otherwise unable to continue assisting the adult or minor child with disabilities.

It's a big, complex undertaking. "When it comes to estate planning, I like to point to the proverb that says 'the best time to plant a tree is last year and the second best time is right now,'" says Mark Sagen, Senior Investment Consultant. "That's even more the case when there are special needs individuals involved."

For beneficiaries with special needs, there are distinctive considerations when it comes to estate planning, Sagen explains. An important concern for many is not jeopardizing the beneficiary's access to need-based state and federal assistance they may already be receiving. That usually means setting up a trust specifically structured to pay for needs not covered by government benefits.

In some cases, parents will bequeath funds they consider earmarked for the care of their special needs child to that child's sibling. But Sagen cautions that it's a good idea to legally formalize the arrangement. "If the sibling who's responsible for managing and disbursing the funds is sued or has a financial setback or gets divorced, those assets that were meant to be used to care for the special needs child are at risk," he says.

When clients are planning for the long-term care of loved ones with special needs, Sagen says it's key to find attorneys that specialize in the field and then work with them as a team to create trust structures that will optimize inheritance without jeopardizing benefits and withstand the test of time.

## ESTATE PLANNING PITFALLS

*The stroke hit Stan like a lightning bolt. Before he even left the physical therapy facility he began in earnest to get his long-neglected financial affairs in order. It's taking longer than he thought it would.*

When individuals finally recognize the stakes, they're usually in a hurry, says Richard Gotterer, CFP, Senior Wealth Advisor. But, he warns, it takes time to put together a solid estate plan. A quick interim step that they can take as they assemble a professional team is naming recipients for the contents of bank and brokerage accounts with, respectively, "pay-on-death" and "transfer-on-death" designations. Gotterer explains that these "POD" and "TOD" designations free up the assets for immediate transfer, even as real property and other assets are dealt with in probate.

In the big picture, for a comprehensive estate plan, assets are typically divided into three categories—probate, trust and contractual. Gotterer warns that an often-overlooked aspect is making sure the title on assets matches where the benefactor wants them to go after they die.

- i) Any asset that is titled in the name of the deceased alone goes into probate and, Gotterer warns, may be there for a period of time.
- ii) Assets that are titled to a trust transfer almost immediately upon death. Such assets are shielded from the probate process and, importantly, public scrutiny, since probate is an open process.
- iii) The third category are contractual by nature and can include assets such as retirement plans, life insurance and annuities. These items can generally be transferred by designating beneficiaries with the other party to the agreement, thereby bypassing probate. Part of the estate planning process should be a review of beneficiary designations for contractual assets to make sure they are current.

Gotterer notes that there may be good reason to designate a trust as a beneficiary of certain contractual assets, including IRAs, where they can enjoy protection from creditors and other benefits associated with trusts. He cautions, however, that

trusts that hold IRAs and other tax-advantaged assets must include a “look-through” provision where the IRS can determine the ultimate beneficiary. The look-through step is sometimes neglected and that can have the consequence of forcing a lump-sum payout of assets that were meant to be stretched over several years.

## Summary

Estate planning takes time and effort, but it’s never too late to start and even the simplest steps taken today can reduce loved ones’ stress and provide clarity around intentions for years to come.



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