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Katina Pantazis, P.A.

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Preserving Accumulated Wealth for Our Survivors

Katina Pantazis, Esq.

Katina Pantazis, P.A.

13710 N US HWY 441
Ste 500
The Villages, FL 32159
(352) 600-2987
Office@lawkppa.com

Adam Smith noted 234 years ago in *The Wealth of Nations* that "riches seldom remain long in the same families." The goal of estate planning, in my opinion, is preserving accumulated wealth for the security of our survivors. Certainly now, with the economic uncertainty that lies ahead, our survivors are going to need all the help we can give them.

Most revocable trusts are promoted solely for the purpose of avoiding probate. These "will substitutes" direct the successor trustee to *distribute* the reaming trust estate to the named beneficiaries in *lump sum, free of trust.* That approach offers protection from the expense and delay of probate, but it does not offer protection to beneficiaries from their inabilities, disabilities, creditors and predators.

The key to protecting you beneficiaries is not to give them unfettered control of their inheritance. Keep their inheritance in trust for their long term benefit. Give an independent trustee discretion to determine how much and when to make distributions. An independent trustee will provide or obtain professional portfolio management and avoid some of the problems caused by your beneficiaries' inabilities or disabilities. Giving the trustee discretion to make distributions, or not to make them, will offer protection against your beneficiaries' creditors, including future ex-spouses, and predators.

A discretionary distribution trust also offers you the opportunity to shape the behavior of younger beneficiaries by offering incentives for the achievement of certain goals: graduate from college, get a distribution to help with the purchase of a car or furniture for an apartment buy a house, get a distribution for the down payment; get married, get a distribution for the wedding and for setting up housekeeping; and so on. You can provide that distributions of principal will begin when the beneficiary reaches retirement age. Of course, you should include a provision for distributions in the event of a bona fide hardship or emergency.

You can use a discretionary distribution trust to pay tuition for grandchildren and more remote descendants, to pay a beneficiary's health insurance premiums, deductibles and out-of-pocket medical expenses, and provide income replacement to the beneficiary for participation in employer sponsored medical and retirement plans.

You earned the wealth you have accumulated; you made scarifies to save it; and you exercised restraint in investing it. In this uncertain economy, the asset protection provisions of your estate plan may be your most important legacy.