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*Estate, Trust, Tax and  
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## SPECIAL REPORT

### - Outright vs. In-Trust Distribution to Heirs -

In each estate plan, the decision must be made whether the recipient of the inheritance is to receive their inheritance outright or if it is to be held for the recipient's benefit in some type of trust arrangement. In looking over the last decade, it seems to us leaving assets outright to an heir has become much more risky as divorces, lawsuits and financial hardship have fallen on many Americans. Additionally, taxes are becoming an even greater threat to many as inheritances are reduced by estate taxes over one or more generations. Here are a few statistics worth pondering:

#### **Divorce rates:**<sup>1</sup>

- Almost 49 percent of marriages end in divorce.
- First marriages ending in divorce have an average duration of just under 8 years.
- 60 percent of all divorces are related to individuals age 25 to 39.
- There were more than 21 million divorces in the year 2000. In the same year, 58 million couples were married and lived in separate households.
- In 1990, the average age for a male in a second divorce was 40.4 years; for a female in a second divorce the average age was 37.3 years.
- The divorce rate of first time marriages is almost 10 percent less than the divorce rate for second marriages. Nearly 60 percent of second marriages end in divorce.
- Over a 40 year period, 67 percent of first marriages terminated in a divorce and 50 percent of these divorces took place within the first 7 years.
- Every year more than 1 million children are affected by divorce.

#### **Bankruptcy statistics:**<sup>2</sup>

<u>Year</u>	<u>Total</u>	<u>Business Filings</u>	<u>Non-Business Filings</u>	<u>Consumers as a % of total</u>
2002	1,577,651	38,540	1,539,111	97.56
2003	1,660,245	35,037	1,625,208	97.89
2004	1,597,462	34,317	1,563,145	97.85
2005	2,078,415	39,201	2,039,214	96.81
2006	617,660	19,695	597,965	96.81
2007	850,912	28,322	822,590	96.67
2008	1,117,771	43,546	1,074,225	96.10
2009	1,473,675	60,837	1,412,838	95.87
2010	1,593,081	56,282	1,536,799	96.47

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**Civil lawsuits** are prevalent throughout our country. According to one Internet post<sup>3</sup>, your chances of being sued are 1 in 4 and there are 80-90 million lawsuits (of all types) being filed every year.

**Americans with disabilities** who rely on asset-based assistance, such as Supplemental Security Income (SSI) and Medicaid are substantial. In fact, 54 million Americans suffered from a disability in 2010.<sup>4</sup> Of those, 11 million need assistance daily to meet their living needs.

Between lawsuits from creditors of all types, as well as divorces, any inheritance you consider leaving to an heir is subject to the risk of being depleted, either voluntarily or involuntarily by the heir. In the case of a divorce, an inheritance can be treated as separate property and not subject to division by a Court, but the appreciation in the inherited assets can be considered marital property, causing complications when the divorce court is forced to intervene to divide the couple's assets.

In more and more estate plans, we are recommending the assets not be distributed to the heir outright, but instead leaving all or a large portion of any distribution to an heir in trust.

What does leaving a distribution in a trust mean? A trust is a legal arrangement wherein a Trustee (who is an individual or financial institution) manages the assets for the Trust Beneficiary or Beneficiaries, and distributes them in accordance with the wishes of the trust creator (sometimes referred to as the Settlor). The creator can place whatever restrictions he or she wishes to make regarding distributions from the trust.

There are a multitude of types of trusts to choose from depending upon your circumstances. Here are a few types:

- Trust with inherited assets that are established to avoid having the inheritance considered as an available resource for public benefit purposes (Special Needs Trust).
- Trust used to help manage assets for those recipients who are not financially savvy and perhaps subject to being easily influenced by "friends" or business associates (Asset Protection Trust).
- Trust established to protect assets from being subject to future estate taxes (Dynasty Trust).
- Life Insurance Trust (ILIT) used to keep insurance proceeds from being included in the decedent's estate as well as the future beneficiary's estate.

The type of trust you may wish to create for your heir or heirs depends upon his or her needs. An estate does not have to meet a threshold size for qualifying to set up a trust. We have established trusts to hold assets valued at under \$5,000, with a family member as a trustee to protect assets for the heir and to ensure the assets are being used as the trust creator wishes.

**Bottom line:** Before you decide to distribute assets outright to any heir, review the types of trusts you could create to hold the inherited assets. It is important to select the most appropriate type of trust to ensure your wishes are fulfilled and the inherited assets are not dissipated against your wishes, either voluntarily or involuntarily by your heir.

<sup>1</sup> Divorce Rate 2011 (<http://divorcerate2011.com/divorce-statistics/>) 9/23/2011

<sup>2</sup> American Bankruptcy Website ([www.abiworld.org](http://www.abiworld.org)) 9/23/2011

<sup>3</sup> Glyn Norman ([www.glynnorman.articlealley.com](http://www.glynnorman.articlealley.com))

<sup>4</sup> U.S. Census Bureau (<http://www.census.gov/prod/3/97pubs/cenbr975.pdf>)