



CHUBB REPORT

Is Your Trust A Paperweight? BY HEATHER R. CHUBB

You love your family and only want the best for them. So you go to a lawyer and have a trust prepared. You feel a weight lift from your shoulders and cross “do estate plan” off your list and feel like all your ducks are in a row. Your plan is placed on a shelf or in a drawer and you don’t think about it again because “it’s done”.

This scenario plays out countless times each year, but if this is all you do, you and your family may be in for a rude shock! The “set it and forget it” mindset is nothing more than false security and a recipe for disaster. Why? Because life is all about change.

You may never have stopped to think about it, but your trust was created based on a snapshot of your life at the time in conjunction with the estate laws, overlaid by some good guesses. So how can you expect your trust to work for you when you need it if things have changed?

Every year something about your situation will change, and every three to five years you can count on some major change happening. It might be your relationship with the people in your life. You might have more children, lose a loved one, move away from friends, end friendships and start new ones. You might have a life altering accident. You could hit the lottery or otherwise make it big, or receive an inheritance. You buy property and sell property, open new accounts and close others. This is to say nothing of our ever changing laws.

You might ask, if my plan’s not up to date how bad could it be? Let’s look at a few simple questions.

What if your assets are not owned the right way? It’s an unfortunate reality today that many lawyers do their clients a disservice by not emphasizing the importance of transferring ownership of your assets to your trust – it doesn’t happen automatically even if you

have a schedule of assets attached to the trust. If they are not owned by your trust and something happens to you – either you become incapacitated or you die – your family could be looking at a probate with all its associated costs and time delays. This will cost your family a big bunch of money and time. Some of your assets, or maybe all, if you never put anything in your trust, may not be available for your family to use immediately and since anyone can go look at your probate file at the courthouse (and in some counties online!) the public will know what you own. Now, your will (you did get a will with your trust didn’t you?) might give everything to your trust, but if you don’t have a will or it was not coordinated with your trust, or your assets were held jointly with someone else your assets may not go where you want them to. All of this will make life messy for your family as they mourn your loss by appointing an executor to resolve any disputes over your estate.

What if you have a beneficiary that is financially immature or has substance abuse issues and your plan leaves the assets outright to him? Best case, the money is spent in a very short period of time and what you worked so hard for is simply squandered. Worse case, your beneficiary uses the money in a way that is harmful to him. I once spoke with a woman whose father died and left an inheritance to her son (his grandson). The young man had a severe substance abuse problem and mom was concerned that if he had a ready source of cash he would buy drugs and overdose in a short time. She wanted to know if there was anything that could be done to put strings on the money.

Continued on page 2 . . .

At that point there were only two choices, and both needed the cooperation of the substance abusing son. The first choice was to seek a conservatorship, but the young man would need to consent – highly unlikely and it is questionable whether the court would even grant the conservatorship under these circumstances. Second, the son could set up a revocable or irrevocable trust for himself and have someone else as trustee, but then his access would be limited, again not something he would be likely to agree to. If grandpa had a better understanding of the implications of his plan or had updated it based on more recent information about his grandson the funds could have been protected and potentially used in a way to improve this young man's life.

What about assets that have beneficiary designations? These assets are not owned by your trust and therefore not controlled by your trust, unless your trust is the beneficiary. Typically these assets include retirement accounts, life insurance, and annuities, but could also include bank and investment accounts. Two problems occur with these assets. First, you may have forgotten who your beneficiary is, and second, you may have named the wrong kind of beneficiary. I see both of these mistakes frequently.

When you are young and just starting out or are unmarried there is a tendency to name your parents or siblings as beneficiaries. But then you marry and frequently forget to change the beneficiary designation to your new spouse. If something happens to you the current beneficiary designation controls and your spouse is left out.

If you are married and do change the beneficiary there is a tendency to name your spouse and then your minor children. If you divorce and forget to change the beneficiary your ex-spouse will end up with the asset. There are many cases on just this topic and the result is not pretty. The new spouse and/or the existing kids are left out and the ex-spouse takes it all.

What about naming minor children? Well, sounds good, but because children under the age of 18 cannot legally manage assets the probate court gets involved and a guardianship must be created. If you did not name a guardian the judge will choose for you. AND your kids will get the money when they turn 18. Think for a minute about the first thing an 18 year old is going to do when they get their hands on the money. That's right, a new car, probably a fast car and likely a whole heap of trouble. Use your imagination.

If your child is not a minor but a *person with special needs* the situation is still not pleasant. If your child receives government benefits (SSI, Medi-Cal/Medicaid, etc.) their benefits will be taken away until their inheritance is spent! If the assets had been given to this child in a special needs trust they would have been able to keep their government benefits and use the funds to improve their quality of life.

And let's not forget about those financially irresponsible or substance abusing beneficiaries. There goes your hard-earned cash!

Finally, what if the law changes? I have seen plenty of these cases, too. A plan that was created in the 1980s or even early 1990s was based on estate tax laws with much lower limits than what we have today. At that time, an estate over \$600,000 would pay estate tax (this includes your retirement and life insurance). Compare that to today where no tax will be paid until your estate is over \$3.5 million. Many older plans included estate tax planning that required the trust to split into 2 pieces, with one of those pieces being irrevocable or unchangeable. This strategy is fine and even desirable if you need to minimize estate taxes or want some asset protection (provided the right language is also included), but what if your estate is no longer taxable or what if you never understood what your plan did from the beginning. Now your spouse dies and you are stuck with an outdated plan that doesn't really fit your situation that you never understood and creates more headaches than it fixes.

If your plan is not up to date it is nothing more than a big paperweight.



Written by Heather R. Chubb, Life Transition Lawyer, speaker, mom and Sandwich Generation Kid. Heather makes it easy for your family to talk about and plan for tough subjects like money, death and taxes, and other life transitions. Visit her online at www.chubblawfirm.com.

There's No Place Like Home for the Holidays . . . Unless You Are Feuding With Your Family!



As family members anticipate gathering together during the holidays, many look forward to that with joyful excitement. Others start to feel tension

and even dread, especially when their families are having difficulties over decisions about lifestyles and healthcare for aging or incapacitated family members.

These conflicts can divide families and create incredible stress, turning the holidays into something to endure rather than to enjoy. Why does this happen with previously loving family members who clearly have mutual concern for a family member's welfare? Here are a few possible explanations.

- Adult children may have lived apart for decades and have little experience working together but are now forced to do so to care for their elders.
- Under pressure, long-standing tensions and feelings of inequity can erupt into family discord. For example, old sibling rivalries may re-surface ("Mom Always Liked You Best!"), prompted by visits, plans for distribution of possessions and wealth, and end-of-life decisions, which can become sources of family strife.
- Other causes of such family strife are greed, selfishness, and mental illness.

The "flash point" of conflict frequently occurs when one sibling shoulders the bulk of care-giving responsibility. A 2001 study published in *Conflict Resolution Quarterly* reported that close to 40 per-

cent of adult children caring for a parent described "serious conflict" with a sibling.

How do people typically handle these kinds of conflicts? Not well...if they try to handle it by sweeping it under the carpet, blowing up, or getting drunk. There are better options! **Elder Mediation** can be a "breath of fresh air" for such families. Elder Mediation is a guided conversation with a neutral third-party designed to reach agreements acceptable to all. It is voluntary, confidential, fair to all parties, and focused on preserving relationships while creating lasting resolution to conflict.

In **mediation**, all decisions are reached by mutual agreement with the help of the mediators who then translate the agreement into a written and enforceable contract between the parties. Mediation is usually charged by the hour for the mediators' time, and fees vary from about \$125 per hour to \$350/hour for each mediator plus expenses for travel and administrative and clerical services. As many mediators work in teams, the process is moved along efficiently unlike a lawsuit that can involve extensive delays in reaching a settlement that may, in the end, leave more harm done than good. In litigation there is a "winner" and a "loser." In mediation, the goal is always a "win/win" outcome.

Is mediation cost-effective? The unequivocal answer is "Yes!" Considering the alternatives of doing nothing and/or ruining relationships or adding immeasurable stress to one's life by going to court, the answer is clearly YES!

Written by Elder Mediators and Consultants John E. Roe, Ph.D. License # PSY 5769; MFC 6551 and Barbara E. Thompson, M.A. License # MFC 21925, partners in The Discovery Group's Mediation Services: "Resolving Conflicts While Preserving Relationships." 4120 Cameron Park Drive, Suite 402, Cameron Park, CA 95682-8480, (530) 676-4555.

Pumpkin Tea Bread

This is a favorite from my childhood (and makes a great gift!). The smell of this bread baking says holiday to me. Enjoy!

| | |
|-------------------------|--------------------------|
| Beat well: | |
| 3 cups flour | 1 teaspoon baking soda |
| 2-1/2 cups sugar | 1/2 teaspoon salt |
| 2/3 cup oil | 1 teaspoon cinnamon |
| 3 eggs | 1 teaspoon ground cloves |
| 16 oz. pumpkin (2 cups) | 1 teaspoon ground ginger |
| | 1 teaspoon baking powder |

Add chopped nuts and raisins (or cranberries) if desired.

Put in ungreased tube pan and bake at 350°F 1 hour 15 minutes or until toothpick comes out dry.





11211 Gold Country Blvd, Suite 101
Gold River, CA 95670
916.635.6800

INSIDE THIS ISSUE:

| | |
|------------------------------|---|
| Is Your Trust a Paperweight? | 1 |
| Home For The Holidays | 3 |
| A Little Holiday Cheer! | 3 |



The holidays are upon us already and the end of the year is looming. There are some big doings at The Chubb Law Firm. We will be moving our office at the first of the year! As my practice has matured and evolved I've become very focused about the experience I want to provide my clients and was running into some issues in my current space. Cheryl's coming with me (I couldn't do this without her) and we'll have a new friendly voice to answer the phone. It's a really exciting time as the space is coming together. Who knew there were so many decisions to make? Oh, wait, I did. After doing our home remodel I had a really good idea what to expect. But are always things you didn't anticipate. My biggest challenge has been choosing colors and getting the warm, homey feeling that I envision. When we're all settled in I plan an office warming party and you're invited!

For now enjoy this special time of the year. While the holidays can feel stressful as we all try to do too much it can also be magical. Take time out to spend with those you love, cherish the time together, and create some fond memories. Also take time to think about all the things you have to be grateful for and how you can make a difference in other's lives. We are bringing back a tradition at our house by hosting a holiday get together and asking our guests to bring a filled stocking to donate to the children at the Mustard Seed School. If you're not familiar with Mustard Seed it is a school for homeless children whose primary goal is to prepare and enroll them into public schools. It gives us great joy to be able to share what we have with those who are struggling. I hope you too can find a cause close to your heart.

All my best,

P.S. Here are the links for more information on the Mustard Seed School - <http://sacloaves.org/programs/mustardseedschool> - and the Christmas Stocking give away—<http://sacloaves.org/holiday/stockings>.

P.P.S. Carson's boy scout troop is having a pasta feed in January—details are on the flyer inside.

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