

# Keeping a trust a secret could violate state law

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If your estate plan includes one or more trusts, you may have a good reason for wanting to keep them a secret. For example, you may be concerned that, if your children or other beneficiaries knew about the trust, they might spend recklessly or neglect educational or career pursuits. Despite your good intentions, however, the law in many states requires trustees to disclose certain information to beneficiaries.

## Disclosure requirements

One example can be found in the Uniform Trust Code ("UTC"), which more than 20 states have adopted. The UTC requires a trustee to provide trust details to any qualified beneficiary who makes a request. The UTC also requires the trustee to notify all qualified beneficiaries of their rights to information about the trust.

Qualified beneficiaries include primary beneficiaries, such as your children or others designated to receive distributions from the trust, as well as contingent beneficiaries, such as your grandchildren or others who would receive trust funds in the event a primary beneficiary's interest terminates.

## Use a power of appointment

One way to avoid the disclosure requirements is by not naming your children as beneficiaries and, instead, granting your spouse or someone else a power of appointment over the trust. The power holder can direct trust funds to your children as needed, but because they're not beneficiaries, the trustee isn't required to inform them about the trust's terms — or even its existence. The disadvantage of this approach is that the power holder is under no legal obligation to provide for your children.

Before taking action, it's important to check the law in your state. Some states allow you to waive the trustee's duty to disclose, while others allow you to name a third party to receive disclosures and look out for beneficiaries' interests. In states where disclosure is unavoidable, you may want to explore alternative strategies. If you have questions regarding trusts in your estate plan, please contact us.

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