Use a noncharitable purpose trust to achieve a variety of goals

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Generally, trusts must have one or more human beneficiaries, but there's an exception for certain "purpose" trusts. One type of purpose trust that you may be familiar with is the charitable trust. But don't overlook the noncharitable purpose ("NCP") trust as a potential tool for achieving your estate planning goals.

What is an NCP trust?

Historically, trusts were required to have human beneficiaries. Why? Because, for a trust to be valid, there must be someone to enforce it. Charitable trusts were the exception: The attorney general of the relevant jurisdiction was authorized to enforce the trust in the public interest.

Over the years, however, many U.S. states and a number of foreign jurisdictions have enacted legislation that authorizes NCP trusts. These trusts may be used to achieve a variety of purposes, such as maintaining family residences, personal property and gravesites and funding a family business.

A trust may be an NCP trust even if the grantor's children or other heirs will ultimately receive trust property as "remaindermen." Suppose, for example, that you create an NCP trust to maintain and exhibit your art collection. After a specified time period, the trust terminates and the collection is distributed to your children. The fact that your children will receive the art once the trust has fulfilled its purpose doesn't change its character as an NCP trust. Nor does it render the trust valid or enforceable absent an applicable NCP trust statute.

To be valid, an NCP must meet certain requirements. Most important, it must (1) have a purpose that's certain, reasonable and attainable, (2) not violate public policy, and (3) be capable of enforcement. Typically, an NCP trust is enforced by a designated "enforcer" — someone whose job is to ensure that the trust's purpose is fulfilled and who has the authority to bring a court action — and/or a "trust protector," who's empowered to modify the trust when its purpose has been achieved or is no longer relevant.

Which jurisdiction should you choose?

Choosing the right jurisdiction for an NCP trust is critical. The permitted uses of NCP trusts, as well as their duration, vary significantly from state to state, as do the powers of a trust protector or enforcer. Most states limit an NCP trust's duration to a term of 21 years, although some permit longer terms or even "dynasty" NCP trusts of unlimited duration.

Of course, 21 years may not be sufficient for certain purposes, such as supporting a family business or caring for horses or other animals whose life expectancies exceed 21 years. If your state doesn't have an NCP trust statute, or if its requirements fail to meet your needs, you may be able to set up a trust under the laws of another state or even a foreign country. To do so, you must establish a connection with that jurisdiction, such as appointing a trustee who resides in the jurisdiction or moving trust assets there.

Seek professional help

Be aware that NCP trusts raise a variety of income, estate, gift and generation-skipping transfer tax issues. We can assess your situation to determine if an NCP trust is right for your estate plan.

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com