



Tips from Your Financial Coach

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Decanting

What is decanting?

An irrevocable trust is essentially a trust that cannot be changed or modified without court approval. And in many instances, the price of obtaining court approval is neither time nor cost-effective. This reality leaves the grantors, beneficiaries, and trustees of outdated and inefficient irrevocable trusts without many options.

Until now.

In December of 2012, the State of Michigan passed legislation that allows a trustee of an irrevocable trust the power of “decanting”.

In general, decanting is defined as the process of gradually pouring from one vessel into another. The term is most commonly used when referring to pouring from a wine bottle into a decanter with the objective of separating the wine from any sediment in the bottle, and also allowing the wine to breathe.



In the estate planning world this term can also be applied to the process of “pouring” assets from one trust into another with the intent of creating a more desirable product.

The principle of decanting is supported by the notion that a trustee who has the power and discretion to distribute principal or income from the trust also has the authority to distribute trust assets into another trust that has different terms.

Due to this new interpretation of law, a trustee is now able to “pour” an antiquated trust that isn’t working as initially intended into a new trust that will more effectively benefit the named beneficiaries and remaindermen.

In what situations would decanting be used?

There are various reasons that you would want to change the terms of an irrevocable trust. Some of those reasons include:

- 1) To rectify outdated and inflexible trust provisions
- 2) To add or change beneficiaries
- 3) To correct drafting errors without going to court
- 4) To convert to a special needs trust
- 5) To split a trust for many beneficiaries into separate trusts for each beneficiary
- 6) To change trust governing law
- 7) To change trust fiduciaries or how they are appointed
- 8) To make modifications when family circumstances change
- 9) To merge trusts and therefore reduce administration costs
- 10) To add or change an investment advisor
- 11) To extend the term of the trust



DEFINITIONS:

Irrevocable Trust

A trust that does not allow changes to be made without court approval

Trustee

The person or entity responsible for adhering to the provisions of the trust

Grantor

A person who establishes a trust

Decanting

The process of transferring assets from one trust into another trust with new terms and conditions

Discretionary Distribution

The ability for a trustee to use his or her discretion in making distributions to beneficiaries

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What trust conditions must be met for decanting to be an option?

In order to take advantage of this new statute in the State of Michigan, five conditions must be met:

- The assets to be decanted must be held in an irrevocable trust (the first trust).
- The provisions of the first trust must not prohibit decanting.
- The first trust must allow the trustee the discretion to make distributions.
- The beneficial interests of the trust beneficiaries must not be materially changed by utilizing the process of decanting.
- Decanting must not negate or be inconsistent with any tax benefits of the first trust.

Additionally, most states that have adopted the decanting statute are required to notify the beneficiaries, but the actual guidelines for doing so vary from state to state.

The State of Michigan requires written notice be provided to the settlor, if living, and to trust beneficiaries at least 63 days prior to decanting.

What can decanting mean for you?

The primary purpose of establishing an irrevocable trust is to remove assets from a grantor's taxable estate, while concurrently benefiting the grantor's chosen beneficiaries either now or at a time in the future. These trust beneficiaries may be the grantor's spouse, children, other individuals, or a charity.

But what course of action does a trustee have when the intended benefit to the beneficiaries is not happening or is not likely to happen? Due to the decanting law in the State of Michigan, the trustee now has a profoundly useful tool; the trustee can elect to "pour" assets of the old trust into a new trust with revised terms.

Decanting is a newly adopted statute in Michigan, and there are many things to consider before electing to utilize this process. Above all else, you do not want to do any harm to the trust beneficiaries. By transferring assets into a new trust, you do not want to create a current or future taxable event that ultimately harms a beneficiary. It is important to fully consider all possible consequences associated with the decanting process.

If you feel that an irrevocable trust that you have an interest in or a responsibility to is unlikely to accomplish its intended goals, please contact your Tri-Star Trust Bank advisor to further analyze if decanting is an appropriate option for you.