



LIFETIME GIFT PLANNING

Creating a trust but concerned about it being irrevocable?

Three considerations for building flexibility into your trusts

When the Tax Cut and Jobs Act of 2017 (TCJA) was passed, it included a doubling of the federal estate, gift, and GST tax exemption amounts to \$10 million, adjusted for inflation. As a result, in 2025, those exemptions are \$13.99 million per individual. While the increased exemptions provide a significant incentive to review existing estate planning and consider implementing new planning strategies, it's critical to consider the need for flexibility so that trusts can adapt to changing times, circumstances and tax laws. Maximum flexibility can help the next time the law or family circumstances change – and they will.

1) Trustee discretion

In a fully discretionary trust, no beneficiary is entitled to any distribution. They must wait for the trustee to exercise its distribution powers. Full discretion differs from more restrictive trustee responsibility in several ways, including:

- It gives the trustee the broad authority to respond to evolving needs and circumstances.
- With full discretion, trustees decide if, when, and how much to distribute.

2) Decanting

Decanting is a relatively easy and cost-effective way to modify a trust by distributing assets from an existing trust to a new trust. It is allowed in many states and provides flexibility in a number of ways, including:

- The new trust can reflect changing family circumstances, have more favorable terms, or allow investment terms to be broader.
- The new trust can also address terms in the existing trust that are incorrect, inappropriate, or insufficient to accomplish the grantor's goals.

3) Trust protector

A trust protector is a person who has powers over the trust but is not the trustee. Trust protectors are growing in popularity for several reasons, including:

- They can address trust issues and solve problems that weren't—or couldn't have been—anticipated at creation.
- They often have the power to remove or replace trustees, change beneficiaries, veto investment decisions, change administrative provisions, or change trust situs.

Just as your family circumstances can change over time, so can your wealth. Without the right provisions, court involvement may be required to make changes to an existing trust. Therefore, it's important to think about what flexibility you may want to incorporate into your estate planning documents before they become irrevocable. **For more information, visit our *Lifetime Gift Planning* resource page.**

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