

Concealing a Trust Could Run Afoul of State Law

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You may have good intentions in keeping a trust a secret from its beneficiaries. Perhaps you have concerns that if your children or other beneficiaries know about the trust, they might set aside educational or career pursuits. Be aware, however, that the law in many states forbids this practice by requiring trustees to disclose certain information about the trust to the beneficiaries.

More states enforce the Uniform Trust Code

The Uniform Trust Code (UTC), which has been adopted by 34 states (and the District of Columbia), 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.

Consider a power of appointment

One way to avoid UTC 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.

Turn to a professional for help

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. To ensure that you understand all of the intricacies involved, consult with a trusted advisor.

For more information, or assistance in thoughtfully crafting wealth and estate plans with your needs and goals in mind, contact your Anchin Relationship Partner or a member of Anchin Private Client at 212.840.3456 or info@anchin.com.