

Keeping a Trust a Secret Could Violate State Law

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Many wealthy individuals and families appreciate a level of discretion and secrecy when it comes to their wealth, and many times they find it advantageous to keep certain details private. When an estate plan includes one or more trusts, it is understandable to want to keep them a secret. For example, there may be a concern that if children or other beneficiaries knew about the trusts, they might spend recklessly or neglect educational or career pursuits. Despite all good intentions, however, the law in many states requires trustees to disclose certain information to beneficiaries.

Disclosure requirements

For instance, the Uniform Trust Code (UTC), which has been adopted by more than 20 states, 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 one's children or others designated to receive distributions from the trust, as well as contingent beneficiaries, such as one's 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 children as beneficiaries and, instead, granting a spouse or someone else a power of appointment over the trust. The power holder can still direct trust funds to any children as needed, but because the children are not beneficiaries, the trustee is not required to inform them about the trust's terms or existence. The disadvantage of this approach is that the power holder is under no legal obligation to provide for the children for whom the benefits were originally intended.

Before taking action, it is important to check the relevant state law. Some states allow waiving of the trustee's duty to disclose, while others allow the naming of a third party to receive disclosures and look out for beneficiaries' interests. In states where disclosure is unavoidable, alternative strategies should be explored. For any questions regarding trusts in estate planning, please contact your Anchin Relationship Partner or a member of Anchin Private Client at [212.840.3456](tel:212.840.3456) or info@anchin.com.