



Use the Proper Tools to Fix a Broken Trust

An irrevocable trust has long been a key component of many estate plans. But what if it no longer serves its original purpose? Is it too late to change it? Depending on applicable state law, there may be options to fix a broken trust.

How trusts break

There are several reasons a trust can break, including:

Changing circumstances. A trust that works just fine when it's established may no longer achieve its original goals if a family's circumstances change.

New tax laws. Many trusts were created when gift, estate and generation-skipping transfer (GST) tax exemption amounts were relatively low. Today, however, the exemptions have risen to \$11.18 million, so trusts designed to minimize these taxes may no longer be necessary. Without the worry of transfer taxes, the higher income taxes often associated with these trusts become a more important factor.

Mistakes. Potential errors that can sometimes occur include naming the wrong beneficiary, omitting a critical clause from the trust document, including a clause that's inconsistent with the trust's purpose, and failing to allocate GST tax exemption properly.

Some of the ways to fix them

If a family has trusts that need to be adjusted, there are several tools that can help, depending on the applicable law in both a trustee's state of residence and the state where the trust is located. While an expert should be consulted before fully evaluating your options, potential tools include:

Reformation. The Uniform Trust Code (UTC), adopted in more than half of the states in the US, provides several tools for fixing broken trusts. Non-UTC states may provide similar options. Reformation gives the trustee the opportunity to ask a court to rewrite a trust's terms to better align with the grantor's intent. This tool is available if the trust's original terms were based on a legal or factual error.

Modification. This tool may be available through court proceedings as well, if unanticipated circumstances arise that require a trust to be revised in order to achieve its purposes. Some states permit modification — even if it's inconsistent with the trust's purposes — with the consent of the grantor and all the beneficiaries.

Relocation. In some cases, it may be possible to fix a broken trust by changing its situs and moving it to a jurisdiction whose laws are more favorable. The UTC may allow a trustee to relocate a trust to an appropriate jurisdiction if doing so would be in the beneficiaries' best interests.

The rules regarding the modification of irrevocable trusts can be complicated and vary dramatically from state to state. There are also risks associated with revising or moving a trust, including uncertainty over how the IRS might view the changes. Consulting with your advisor is highly recommended to help ensure a trustee has the opportunity to discuss all these potential benefits and risks, and that they design the best solution. For more information, contact your Anchin Relationship Partner or Tamir Dardashtian, a principal in Anchin Private Client, at 212.840.3456 or info@anchin.com.



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