

legally speaking

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WILLS, TRUSTS & ESTATES: PLAIN & SIMPLE

“Decanting” Trusts – Sometimes you can change the terms of an Existing Trust

Sometimes, the terms of an irrevocable trust (one that cannot be amended or revoked) were fine at the time the trust was created, but subsequent events or circumstances make the terms of the old trust impractical, unwanted, or obsolete. So, what can be done?

In New York, we have a law that we call our “decanting” law. Just like decanting wine (which is more fun, of course), under New York law, a Trustee can “pour” the assets of an old existing trust into a newly created trust which has new terms. The types of changes that can be made depending on the terms of the old trust.

There are many reasons to decant a trust, such as: to lengthen the term of a trust, to change trustees, to remove beneficiaries, to correct mistakes in the old trust. For instance, grandma’s old trust may provide for a lump sum payment to Junior when he reaches age 30. Now, Junior is approaching 30 and has a severe substance abuse problem. The trustee and the other beneficiaries are worried that Junior is going to spend the money like crazy, hurting himself as he goes. The trustee can decant the old trust into a new trust that extends the term of the trust, thus protecting Junior. For some trusts, beneficiaries can even be removed by decanting.

If you or a relative have created a trust that is now outdated, or you are the trustee of an old trust, it is wise to review the terms of the trust to determine whether circumstances have changed such that the terms of the trust should also be changed. If so, discuss with your estate planning lawyer whether decanting the old trust should be considered.

If there is a trusts and estates topic that you would like to know more about, please feel free to email me at patricia.marcin@rivkin.com and I will do my best to cover it in a future column.



Patricia C. Marcin is a partner at the law firm of Rivkin Radler LLP concentrating in trusts, estates, and tax law. Patricia has lived in Lloyd Harbor since 2005 with her husband John. They have two sons, Sam and Matt. Their faithful dog, Blizzard, still lives at home.



Joining Rivkin Radler are (from lower left): Maureen Glackin, Jean Hegler, and Bernadette Kasnicki. (Standing from left): Patricia Marcin, Louis Vlahos and Joseph La Ferlita

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