

# Pitfalls for Family Trustees

By [Timothy J. Kay](#) and [Deborah Mallgrave](#)

Modern estate plans are built around the establishment of trusts and avoidance of probate. Many families find that one unintended consequence of avoiding probate is more litigation over increasingly complex estate plans that must be administered for many years after death.

Sibling rivalries have been known to erupt when parents are no longer around to mediate and soften the blows. Following the death of parents, family members sometimes relitigate childhood grievances and adopt irrational positions on matters of money. Discontent can intensify when one favored family member is appointed successor trustee of the family trust and conflict is built into second marriages and blended family situations. Hard won experience offers estate planning strategies to help manage your family dynamics long after you're gone.

## Compensation for Care

Consider alternative plans for your care and identify them in your estate plan. For example, if a family member helps with your care, minimize future fighting by spelling out the compensation for that help. If shared living arrangements are anticipated, consider how living expenses should be paid. Keep in mind those family members not providing care may suspect the caretaker is taking advantage of you.

## Give Family Members Something to Lose

Cutting the adversarial family member out of the trust does not always prevent fights. It can actually create them. A disinherited family member has nothing to lose by challenging the trust or will. Consider giving all family members, especially those likely to create problems, a piece of the pie and they may decide the fight is not worth the risk of losing the portion they have been given.

## Amend Your Trust From Time to Time

Multiple trust amendments can make it harder for beneficiaries to challenge your trust after your passing. To void provisions in the initial trust,

the challenging beneficiary must work in reverse chronological order to demonstrate each amendment is void before attacking the original trust.

## Require Trustee to Keep All Beneficiaries Informed

Disputes often arise from lack of transparency with the trust beneficiaries. Under California law, a trustee is only required to provide an accounting to current beneficiaries once a year. Contingent beneficiaries are entitled to no information until they start receiving distributions (although they may be able to complain about a trustee's actions before then). Providing monthly or quarterly accountings or account statements to all beneficiaries keeps everyone informed, may reduce suspicions and can shorten the period for raising any complaints from three years to 180 days.

## Specify Trustee Fees

Disputes can arise over fees paid to a family trustee for managing what are perceived as the family's assets. Consider your family's assets and dynamics at the outset to set a fee that will be viewed as fair and unlikely to cause jealousy or disputes.

## Appoint a Corporate Trustee

If the trust assets require significant management or if your family is especially contentious, then consider designating a corporate trustee as a co-trustee, or giving your family trustee the ability to designate one. A corporate trustee can provide a layer of protection for the family trustee and neutrally navigate family feuds. Corporate trustees will charge for their services, but their involvement may help avoid far more costly litigation.

Knowing your family and anticipating rivalries in your estate plan can help minimize family fights after you're gone so those who are left can enjoy your gifts and you can rest in peace. Share your concerns with your estate planner, who may be better able to plan your estate with that important information.

## Conclusion

Knowing your family and anticipating rivalries in your estate plan can help minimize family fights after you're gone so those who are left can enjoy your gifts and you can rest in peace. Share your concerns with your estate planner, who may be better able to plan your estate with that important information.

*“Knowing your family and anticipating rivalries in your estate plan can help minimize family fights after you're gone...”*

## About Snell & Wilmer's Private Client Services Practice

At Snell & Wilmer, we strive to help high net worth individuals, executors, trustees and beneficiaries accomplish specific objectives and achieve overall sound wealth management and protection. Our attorneys have experience with estate planning and litigation, charitable planning, establishing private family foundations and public charities, business succession planning and international estate planning. We rely on our firsthand experience with estate and gift tax laws, our commitment to confidentiality and our reputation for providing high-quality representation to offer our clients comprehensive wealth management services that are tailored to their individual needs. For more information about Private Client Services visit [www.swlaw.com/services/private-client-services](http://www.swlaw.com/services/private-client-services).



**Tim Kay** is a Certified Specialist in Estate Planning, Trust and Probate Law, California Board of Legal Specialization. He is a partner and co-practice group leader in the firm's Private Client Services practice group. Tim's practice is concentrated in tax, trust, and estate matters with emphasis in estate planning, trust and probate administration, and estate and gift taxation. He employs advanced estate planning techniques, including grantor retained annuity trusts, family partnerships, limited liability companies, charitable remainder trusts, defective grantor trusts, insurance planning, and the creation, qualification and funding of public charities and private foundations. Reach Tim at [tkay@swlaw.com](mailto:tkay@swlaw.com) or 714.427.7400.



**Deb Mallgrave** concentrates her practice in business and trust litigation. She represents individuals and companies in both small and complex disputes, involving business competition and contracts, trusts, real estate, and various intellectual property matters, including patent, trademark, and trade secret claims. Reach Deb at [dmallgrave@swlaw.com](mailto:dmallgrave@swlaw.com) or 714.427.7431.

Plaza Tower | 600 Anton Boulevard | Suite 1400 | Costa Mesa, CA 92626  
Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | **Orange County**  
Phoenix | Reno | Salt Lake City | Tucson | Washington, D.C.

Snell & Wilmer  
LAW OFFICES

[www.swlaw.com](http://www.swlaw.com)

Snell & Wilmer is solely responsible for the content of this article.