

## The Demand Trust

### As An Alternative to UTMA's and UGMA's the Demand Trust serves as an Optimal Vehicle for a Structured Gifting Program

*Q: What is the advantage of creating a demand trust as the vehicle for a gifting program for my children or grandchildren?*

*A: Demand trusts, also known as "Crummey Trusts," offer those who wish to start a gifting program for their children or grandchildren significant advantages over other traditional gifting tools such as UTMA/UGMA accounts and minor's trusts. The advantages of the demand trust fall into the categories of asset protection and control over trust distributions.*

Depending on state law, a demand trust provides beneficiaries with asset protection for the duration of the trust. To achieve this, the demand trust must be drafted to give the trustee discretionary distribution powers over trust income and principal for the health, education, maintenance, and support of the beneficiaries. Because the beneficiary does not have a right to the trust assets, except during the brief demand period, the trust assets are normally untouchable by creditors, including ex-spouses, as long as the assets are held in the trust. A demand trust, because of its flexibility, gives the donor greater control over their gifts than UGMA/UTMA accounts or minor's trusts. Donors, through powers vested in the trustee or instructions within the trust, can control the timing of distributions to combat fears of the donee's immaturity, inexperience, or lack of respect towards money. The donor's fear that a substantial gift can "demotivate" a minor can also be laid to rest through proper trust instructions. The document can include instructions for specific uses of trust assets, e.g. a college education for the beneficiary.

Another advantage pertains to the selection of who is in charge of the gift for the minor. If the custodian of an UGMA/UTMA account, or trustee of a minor's trust, has a legal obligation to support the minor, then the custodian has a general power of appointment over the account taxable in the custodian's gross estate under section 2041 if he or she dies before complete distribution of the account or trust. Rev. Rul. 56-484 and Rev. Rul. 59-357. Such is not the case with a properly drafted demand trust. Also, if the custodian or minor's trust trustee is the donor, the property is includible in the donor's gross estate under section 2036 if he or she dies before complete distribution of the account or trust. If a grandparent wants the minor's parents to be trustees, draft the demand trust to include ascertainable standards guiding the trustee's distributions. The trustee then does not have to worry about the minor's assets being included in his/her estate. See Rev. Rul. 73-143



turning eighteen or twenty-one years of age. In fact, if desired by the trustmaker, the beneficiaries of the demand trust could never get complete control over the trust assets. In the demand trust, payment by the trustee of income or principal can be made discretionary.

These highlights provide some ammunition to convince clients that a demand trust is truly the optimal vehicle for a structured gifting plan.

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