# BENEFICIARY SUB-TRUST

The Beneficiary Sub-Trust, also called an Inheritance Trust, is a relatively new estate planning tool which became available for Arizona Trusts in 2009 when Arizona adopted the Uniform Trust Code, a model code developed by national trust law experts.

The law includes several new administrative tools that can improve the administration of trust based estate plans.

Prior to the enactment of this legislation, the traditional way that trust property was distributed to beneficiaries was by legally retitling the property from the name of the Trust to the name of the beneficiary.

The new law gives trustors a second option which has a number of advantages over the traditional distribution of trust property.

An Arizona trust can now authorize and direct the then acting trustee to first establish a trust for the benefit of each beneficiary and then to allocate and distribute each beneficiary's share of the original trust property to the new trust, which we call a beneficiary sub-trust.

The general provisions of the main or original trust are also applicable to each beneficiary sub-trust. Specific provisions for administration of each beneficiary sub-trust can be included in the main or original trust agreement.

Under current Arizona law, inherited property that is titled in a beneficiary sub-trust is protected against creditor claims. No matter what kind of financial difficulty the beneficiary may experience, creditors cannot reach the property while it is held in the beneficiary sub-trust.

Inherited property that is titled in a beneficiary sub-trust is protected against spend down requirements for a beneficiary applying for or receiving certain need based government benefits. Some programs, such as Medicaid, severely limit the amount of property and income that a person can have while maintaining eligibility for benefits.

However, property held in a beneficiary sub-trust that was inherited from another person is not treated as property belonging to the beneficiary. It can be designated to supplement but not to replace such government benefits.

Since Medicaid can provide substantial lifetime financial and health care benefits, this can be a very valuable estate planning technique to retain property for the benefit of the beneficiary and ultimately for the benefit of a spouse, children or other beneficiaries designated to receive any property remaining in the beneficiary sub-trust when the original beneficiary dies.

An adult beneficiary who has the proven ability to manage property can be given control of the beneficiary sub-trust. The beneficiary can be designated to act as Trustee with complete control over the property titled in the beneficiary sub-trust. The beneficiary can be given authority to name other trustees, to designate other beneficiaries and the authority to amend or restate some or all of the provisions of the beneficiary sub-trust.

The beneficiary sub-trust may also restrict the power of a beneficiary, such as a minor child, an incapacitated beneficiary or a beneficiary who is unable to properly manage the inherited property.

The Trustor may designate a third party to be Trustee, may place restrictions on the distribution of trust property for the benefit of the beneficiary, may specify the purpose for which trust property can be distributed, such as education, travel, purchasing an automobile or home, and may determine the disposition of property remaining in the beneficiary sub-trust when the original beneficiary dies.

Inherited property that is titled in a beneficiary sub-trust is protected from the property division claims of a divorcing spouse. Inherited property that is distributed directly to the beneficiary may inadvertently become marital property, subject to division by the court.

The new 500 year rule against perpetuities that determines the maximum life of a beneficiary sub-trust makes planning for the benefit of multiple generations possible as long as there is property held in the trust.

Provisions for beneficiary sub-trusts can be included in traditional revocable living trust based estate plans as well as in retirement trusts designed to meet IRS requirements for the administration of retirement accounts such as IRAs and 401(k) plans following the death of the original account owner.

The beneficiary sub-trust described above cannot be used to shield a person's own property from the claims of creditors or divorcing spouses or from spend down requirements of need based government benefit programs.