



WILLS, TRUSTS & ESTATES:

— PLAIN AND SIMPLE —

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

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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 which 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 depend 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If you or a relative have created a trust that is now outdated, or you are the trustee of an old trust, it is wise to review the terms of the trust to determine whether circumstances have changed such that the terms of the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.

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