

## Trust Decanting: Flexibility and Danger



You may be familiar with the term “decanting” in terms of fine wine. You “decant” a wine by pouring it from its original bottle into a new vessel to aerate it and release the flavor. When you are talking in terms of decanting a trust, you basically pour the assets from an old trust into a new one to release them from overly confining terms that no longer make sense. Two examples:

- The original trust was set up to invest in only CDs or Treasury Bills at a time when they earned a high rate of return. Trustees may want to invest in a more diversified portfolio.
- Add or change a beneficiary due to changes in the family.

In the past, a trustee who wanted to modify certain aspects of an irrevocable trust had to get a court order to reform the trust, an often lengthy and expensive process. Decanting allows families to modify trust terms that are outmoded or obsolete.

Decanting, modifying and reforming trusts are increasingly utilized as estate planning techniques as a result of changes in laws, family circumstances or the desire to change trust administrators. Decanting to change even irrevocable trusts is also becoming more common.

The decanting power provides a great deal of flexibility, but it is also fraught with inherent dangers. On the one hand, decanting can be used to comply with the laws of a new jurisdiction, achieve tax benefits and increase asset protection. On the other hand, decanting can have the effect of enabling a trustee of an irrevocable trust to “rewrite” the trust.

With differing state laws relating to decanting (and new laws expected), counsel must stay abreast of and understand the differences between jurisdiction. Crafting documents to incorporate flexibility for decanting is important.

The attorneys at Winn, Beaudry & Winn will prepare estate plans for clients which incorporate decanting provisions, where appropriate, to provide for amendment of irrevocable trusts. They are prepared to review the appropriateness of decanting in a certain situation and highlight the differences in the laws of various states.