

Ask a trust officer:

Trust decanting

DEAR TRUST OFFICER:

My brother and I are trust beneficiaries. The trust was established more than ten years ago, when our father died, so we've been told it's irrevocable; it can't be changed. But we need a change; this trust structure isn't working out for us. Is there some way that we could at least split it into two separate trusts, so we can each go our separate way?

—IRRECONCILABLE DIFFERENCES

DEAR IRRECONCILABLE:

There is a technique called “trust decanting” that may offer you and your brother a way to separate your trust interests. The idea is to pour the assets from an old, unsatisfactory trust into a new trust—or even multiple trusts—that better meets the needs of the trust beneficiaries.

Trust decanting has been used successfully to:

- Correct a drafting mistake;
- Clarify ambiguities in the trust agreement;
- Correct trust provisions, due to mistake of law or fact, to conform to the grantor's intent;
- Update trust provisions to include changes in the law, including new trustee powers;
- Change the location of trust administration for administrative provisions or tax savings;
- Combine trusts for efficiency;
- Allow for appointment of a special trustee for a limited time or purpose;
- Change trustee powers, such as investment options;
- Transfer assets to a special needs trust;
- Adapt to changed circumstances of beneficiary, such as substance abuse and creditor or marital issues, including modifying distribution provisions to delay distribution of trust assets;
- Divide a “pot trust” into separate share trusts;

State laws on trust decanting vary. You'll need to consult with an estate planning attorney to learn more about your specific situation and the remedies available to you.

Your Trust Officers,
Suzanne Chilcott & Jon-Myckle Price

Do you have a question concerning wealth management or trusts? Send your inquiry to Suzanne at suzanne@secfedbank.com or to Jon-Myckle at jmp@secfedbank.com. You can also give us a call at 574-722-6261.