

**Presentation to:**

**Central Ohio Financial Planning Association**

**Ways To Utilize Trusts  
for Family Planning**

**Presented by:**

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# Opening Comments



**7 cases where trusts  
were used by a family.**



Each case will cover:

- Facts of the case
- Desired outcome
- Actual outcome
- A trust could have...

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# Case # 1

## How Do I Protect Me From Me?

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### Facts:

- Tommy, his wife, Laura, and 3 kids
- Tommy drinks - too much
- Off to jail – but first a 6 pack and a lottery ticket
- Tommy has a “get out of jail free card”
- I’m free – I wonder if Leo still has my lottery ticket?
- I’ll only tell a couple of close friends and family
- The fun never ends
- Where is my front door?



# Case # 1

## **Desired Outcome:**

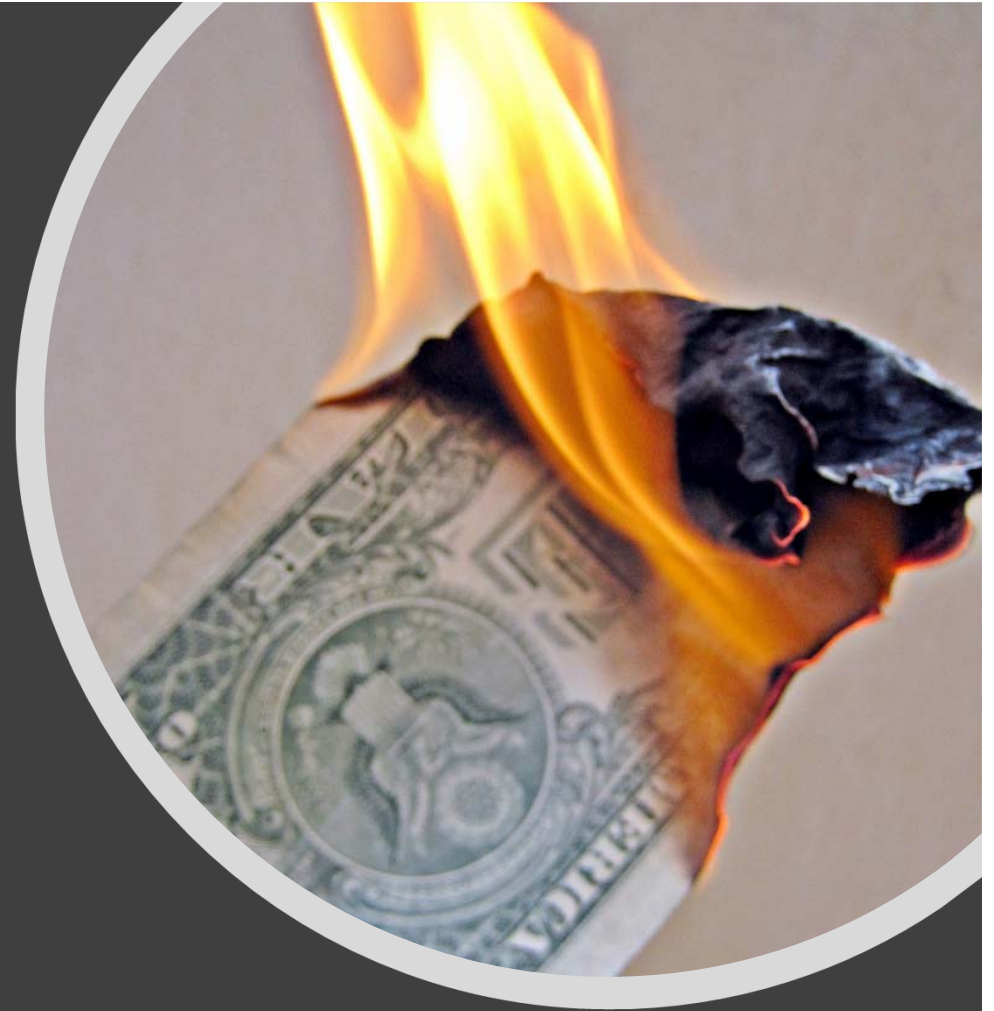
Tommy and his family would place their assets in a trust. This would provide an annual income and protect their assets. The attorney recommended a second trust to help others and a Corporate Trustee because the family wasn't used to having an endless source of money.

## **Actual Outcome:**

Tommy didn't take the bank or attorney's advice. He put off a decision to move forward with the trusts. In a span of two years he lost 4 million dollars and his family.

## **A Trust Could Have...**

Created an income stream for life, funded his children's education, and put aside funds for friends and family. The Corporate Trustee would make decisions as to who gets what (based upon the terms in the trust). Anger would have been directed at a trustee and not Tommy.



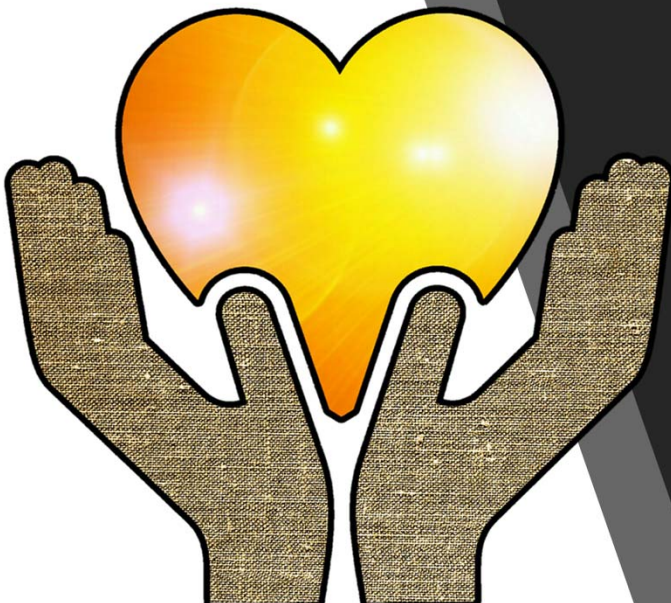
# Case # 1

## How Do I Protect Me From Me?

### Facts:

"I've always wanted to dedicate my life to helping others" – Lynn

- Church - School Mission Trips
- A new man – let's get married
- We will always be go-givers
- Living in Africa
- Four new grandchildren
- Helping others in Southern Ohio
- I'm shocked – what's next ?



# Case # 1

## **Desired Outcome:**

Lynn's mother, the grantor, wanted to provide for her new grandchildren. She figured Lynn and her husband could fund their own lifestyle. The grantor was afraid Lynn and her husband would give away any money controlled by them.

## **Actual Outcome:**

Lynn's mother created a trust to be funded when she passes away. Before her death, Lynn's mother will be the trustee. The families were stunned when Lynn developed breast cancer. This presented a number of issues. However, the children will have resources for their health and education as a result of the trust. Lynn's mother is supplementing Lynn's care and providing resources to the family during this difficult time.

## **A Trust Could Have...**

The grantor made an excellent decision to create the trust to provide funds for the grandchildren's health and education. Lynn and her husband would not have been disciplined enough to create a fund for the children.





# Case # 2

## My Loving Shelby

Does anyone remember Lassie, Mr. Ed, Marley or Bambi?

National Geographic and other channels offer many popular animal shows – The Dog Whisperer, Dr. Pol, Dr. K's Exotic Animals, The Zoo and many more. We love our pets!

We know famous pets are normally well cared for. What we don't know is what happens to pets when owners are no longer able to care for them.

What can be done to protect the future of our pets?







## Case # 2

### Facts:

- A recent Facebook post about a dog named Shelby
- Ann, whose mother had advanced lung cancer, was looking for a home for Shelby
- The dog was thin and malnourished
- Ann was quite frantic as her mother needed care and had a dog
- I don't know what happened as I only saw the one post
- My guess is this type of situation happens quite often
- Luckily we have Columbus Humane



# Pet Trust Information

The State of Ohio enacted a law in 2006 regarding pet trusts. Ohio Revised Code 5804.08 states a trust may be created for the care of an animal or animals alive during the settlor's lifetime. The trust terminates upon the death of the animal, or upon the death of the last surviving animal covered by the trust.

## **Desired Outcome:**

A safe and loving home for animals like Shelby. Owners have choices but often can't give away their animals. An owner can set up a Pet Trust or can make future arrangements for the pet.

## **Actual Outcome:**

I wish I knew.

## **A Trust Could Have...**

It's unlikely unless the pet has great value a Pet Trust will be put in place. Arrangements can be made in advance if the advisor or family has a discussion early in the planning process.

# Case # 3 - Hamilton

## Facts:

- Hamilton was born with spina bifida
- Many health challenges early in life
- Hamilton has a loving family – originally all in on Hamilton's care
- Family middle class – paycheck to paycheck
- Parents were good about consulting professionals
- As Hamilton grew up he had no disability in his mind
- Age 18 one tough year – close to death
- Divorce and resentment
- Medical malpractice – welcome \$450,000
- What next?







## Case # 3

### **Desired Outcome:**

The family always wants the best for Hamilton. The family also wants to make certain they have resources for the other two children. The parents, listening to their attorney, want a Special Needs Trust. They want it to coordinate with his government benefits so he gets the best available care at all times.

### **Actual Outcome:**

Through an attorney, they structured Hamilton's financial life so he can take advantage of all available resources. This includes a Special Needs Trust. Unfortunately, the constant need to focus on Hamilton caused other life issues for the family. The girls often went without and the marriage ended in divorce. Hamilton and his sisters were raised in a happy single-parent household.

### **A Trust Could Have...**

Will provide for Hamilton and give him the best care and other comforts in life available. With a Special Needs Trust, the proceeds from the lawsuit go directly to the trust and protect his government benefits.

# Case # 4 – What Do You Mean I Can't Have It All Now?

## Facts:

- Carole met the most wonderful man
- She wants a small wedding (for 350 of her closest friends) - \$\$\$\$\$
- Dress shopping – off to New York City - \$\$\$\$\$
- Guests mean remodeling my home - \$\$\$\$\$
- What do you mean my resources are limited?
- My attorney will be calling you
- “You’ve ruined my life” but...





# Case # 4

## Desired Outcome:

The grantor was aware of his daughter's extravagant lifestyle and knew without protection the money would go fast. He created an Irrevocable Trust to provide Carole with an income for life. Carole can get principal distributions for health and other "necessary" items. The term "necessary" was described in the trust. A corporate trustee was required.

## Actual Outcome:

The previous trustee rarely, if ever, said no. For Carole, any expenditure was "necessary". The constant distributions put her future income in jeopardy. The attorney who drafted the original document removed the original trustee and appointed a new trustee. When presented with lavish requests for the wedding, the new trustee sat down with Carole and created a reasonable budget. Carole, whose immediate reaction was to call her attorney, found he was in the same camp as the new trustee. Carole ultimately had a nice wedding, albeit smaller, and was able to remodel her kitchen. The new trustee, in its fiduciary duty, had a discussion with Carole and her attorney to set clear expectations for the future.

## A Trust Could Have...

The original corporate trustee should have set proper expectations quickly after assuming the role. They had a fiduciary duty to follow the terms of the trust. The grantor put the trust in place for the benefit of Carole. Carole could have eventually run out of funds and filed a lawsuit against the original corporate trustee for neglect. Communicating proper expectations with a beneficiary is mandatory. It would have helped Carole understand the purpose of the trust is to provide income for her lifetime. A trust was appropriate for a spender like Carole and when used properly it will last as intended by the grantor.



# Case # 5 - That's Not What Donald Really Wanted!

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## Facts:

- Donald and Claire – second marriage for both
- Both have adult children from previous marriages – Donald three sons and Claire, one daughter
- The crazy downtown warehouse - Donald loves to collect stuff
- The tree
- What Claire gets isn't what Claire expects
- The boys anger goes away
- The day the attorneys arrive
- The watch
- The day the attorney's bills arrive





# Case # 5

## Desired Outcome:

Donald's goal was to provide for Claire while making up with his children. He would take care of Claire and her daughter by giving her a house and \$250,000 through a trust he created. The sons will get the remainder of his estate.

## Actual Outcome:

Donald didn't tell anyone what he had in mind with his estate. This created a mob scene from day one. Claire insisted it was Donald's intent for her to receive the entire estate. Claire hired an attorney and the battle began. Donald, of course, did create a trust for Claire which funded upon his death. He assumed Claire would take care of her daughter with this new trust. The warehouse was full of collectibles. The actual estate was valued at just over \$5 million. The legal battle lasted for two years. They finally reached a settlement which provided Claire an additional \$50,000. Just when they thought it was over, the youngest son asked, "where is dad's watch?" Oh boy, more legal bills. After six more months Claire admitted she had the watch and handed it over. The real winners in this case were the attorneys as the legal bills were close to \$30,000.

## A Trust Could Have...

Donald did create a trust for Claire which was helpful. He also allowed Claire to decide what happens with that trust after she passes. He didn't create trusts for his children as he felt guilty from years of neglecting the boys in favor of Claire and her daughter. While thinking of his children was good, it wasn't good for his youngest son who has addiction issues. The sizable estate will cause big issues for the family going forward. Additionally, Donald may not have been able to stop Claire's anger, but if he communicated his plans to everyone prior to his death, they may have saved money on legal bills.





## Case # 6 - We Thought Our Kids Would Be Charitable Like Us

### Facts:

- Mom and Dad, Jane and Andy, spoil their children
- The children have no idea of the value of a dollar
- We are blessed with wealth
- Jane and Andy stay busy working and socializing – keep kids busy with money
- The accident
- Jane and Andy were always charitable, didn't involve the children
- Trusts were in place – Louis and Meg receive 75% of estate – charity 25%
- No way Mom and Dad would give away our money – must have had dementia
- Turn loose the attorneys

# Case # 6

## **Desired Outcome:**

The purpose of the trust, created by their estate plan, was done in part to make Louis and Meg understand money isn't everything. While Louis and Meg would receive a significant sum of money allowing them a wealthy lifestyle, the money directed to the charity was to show the kids life is often about helping others. The charity, which was dear to Andy and Jane, would receive a significant gift allowing them to focus on their current mission.

## **Actual Outcome:**

Anger. The kids, upon learning of the parents plans, immediately hired an attorney. They argued the parents suffered from dementia when they agreed to the gift. After an expensive legal battle, the courts ultimately affirmed the parents trust to be valid. There were no winners in this case except the attorneys. The kids remain angry today but are forced to work with a Corporate trustee named in the trust.

## **A Trust Could Have...**

In this case, the trust was put in place to do what the parents couldn't or wouldn't do. It provided money for a cause they supported for years and provided the kids with a significant income so their lifestyle would see little change.

Jane and Andy, could have used some type of charitable remainder trust allowing the kids a greater income while possibly providing a larger future gift to the charity. While the children still would have challenged the estate, at least the charity may have been further ahead in the end.



**Damon Howarth – Trust Officer & Team Leader**

Damon earned his Bachelor’s degree in Accounting from the University of Dayton. He is also a graduate of American Bankers Association Graduate Trust School with high honors. He is currently a member of the Columbus Estate Planning Council, the Tri-County Estate Planning Council, where he served as President from 2015-2016. Other memberships include Professional Council of the Columbus Foundation, the Professional Advisors of the Community Foundation of Delaware County and the Professional Advisors group of the Catholic Foundation. Damon volunteers for TAASC (Adaptive Adventure Sports Coalition.)

**David Lundregan – Trust Officer, Business Development Officer**

David has a Bachelor of Arts Degree from Capital University. He is a graduate of the Securities Industry Program at the University of Pennsylvania Wharton School of Business. He holds the designation of Certified Wealth Strategist from Cannon Financial. David led the Private Bank Team at a major bank for 18 years prior to joining Park. He is a member of the Professional Advisors group of the Delaware County Foundation and has served on a number of boards including Mid-Ohio Foodbank, Hilliard Education Foundation, Hilliard City Schools and The Lincoln Theatre. He is a member of Dublin A.M. Rotary where he currently serves as Liaison to the Dublin Food Pantry.



## About Park National Bank:

- Established in 1908
- Corporate headquarters in Newark, Ohio
- Serving Columbus area since 1979
- 11 community banking divisions
- David Trautman, 5<sup>th</sup> President/CEO since 1927

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# Top 10 Tips Every Estate Planner Needs to Know About Special Needs Trusts

- 1. Don't disinherit the family member with special needs.** Instead draft the Special Needs Trust as a common law pure discretionary trust with precatory supplemental needs language.
- 2. Carefully consider the division of assets among the children, as well as allocation of administrative expenses and taxes among the shares of the estate.** If parents of a child with Special Needs either created a stand-alone 3<sup>rd</sup> party Special Needs Trust during their lives or provided for the establishment of one upon death, include a tax appointment provision in parents estate plan and indicate whether or not state or federal estate taxes attributable to the inclusion of the Special Needs Trust in the estate of either parent should be charged against the Special Needs Trust.
- 3. Choose the trustee of the Special Needs Trust carefully, as trustee will be given sole and absolute discretion.** Family members are often a poor choice, at least if they do not have a professional or corporate co-trustee.

# Top 10 Tips:

4. **Ask the parent to prepare a letter of intent to assist the trustee of the Special Needs Trust.** It serves as a blueprint, providing valuable information concerning the daily life and health care needs of the child with Special Needs. This is especially important when a new caregiver steps in. The letter of intent also provides information concerning day-to-day activities, unique likes, dislikes, needs, preferences, and other critical information concerning the child with Special Needs – all of which is helpful to the trustee and the child’s caregiver.
5. **Include contingent special needs provisions in your trust documents to deal with the possibility of a future beneficiary having special needs or a disability.**
6. **Include language in a parents revocable living trust that permits the trustee to make non-support distributions to or for the benefit of a child with Special Needs during a parents own period of incapacity.**
7. **Include language in a parents POA to permit the agent to make discretionary non-support distributions to or for the benefit of a child with Special Needs, and to establish the Special Needs Trust for the benefit of such child.**



# Top 10 Tips:

8. **Review all of the parents assets and beneficiary designations to make sure no funds or resources could pass directly to the child with special needs, ensuring that all of his or her share would pass to the Special Needs Trust.**
9. **Consider Life Insurance as a funding method for the Special Needs Trust.** A second- to- die policy that pays upon death of both parents is often very affordable. However, if the life insurance is owned by an ILIT that includes Special Needs Trust provisions for a beneficiary with a disability, make sure that this beneficiary does not have a Crummey withdrawal right during periods when he or she is receiving means-tested benefits.
10. **Retirement plans are probably the most inefficient method of funding Special Needs Trusts.** If nevertheless retirement benefits are to be paid to the Special Needs Trust – do not use a conduit trust, as the minimum required distributions would negatively affect means- tested public benefits. Either pay the entire income tax liability up front or use the plan participants remaining life expectancy.

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# Special Purpose Trust Types:



- Asset Replacement Trust
- Bypass Trust
- IRC Sec 2503(c) Trust for Minors
- Special Needs Trust
- Dynasty Trust
- Grantor Retained Income Trust (GRIT)
- Grantor Retained Unitrust (GRUT)
- Grantor Retained Annuity Trust (GRAT)
- Intentionally Defective Grantor Trust (IDGT)
- Qualified Personal Residence Trust
- Irrevocable Life Insurance Trust (ILIT)
- Qualified Terminable Interest Property (QTIP)
- Rabbi Trust
- Secular Trust