# Tips By E-Mail: "Control" of a Trust - What Does It Mean?

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Our documents stipulate when "control" passes to the final heirs (after the trustors are both deceased). When control is created, whether at one time (e.g., age 25) or in stages (e.g., 1/3 portions at ages 25, 30 and 35), several things change in terms of how the heir's trust will be administered.

1. The heir may serve as sole trustee, having all investment and distribution rights.

2. Distributions may be made for the heir's health care, maintenance, support and education, as the heir determines appropriate.

3. The heir may appoint assets (i.e., make distributions from the trust) to other persons (with some limitations).

4. The heir may determine how the assets pass at his or her death, as long as they don't pass to the heir's estate or creditors.

The intent is to give the heir wide latitude in controlling his or her inheritance without subjecting it to the heir's creditors (including a divorcing spouse) or transfer tax.

Because of the delicate balance between "control" and "protection" each heir should seek legal counsel on how to best handle his or her trust share. The heir may determine that the wisest course is to select an "independent Trustee" (instead of serving as his or her own trustee) in order to provide greater protection of the trust. On the other hand, the heir may determine that the "control" factor is more important than the "protection" factor and choose to retain sole trusteeship. The trust is designed to give each heir the flexibility to make decisions which suit his or her particular circumstances.

When the "maximum control" option is selected for a surviving spouse, the same issues exist. The spouse will have a great deal of flexibility in determining how to administer the trust. When "protection" is the overriding consideration, the surviving spouse (or other heir) should consider choosing an independent third party as trustee or as co-trustee.