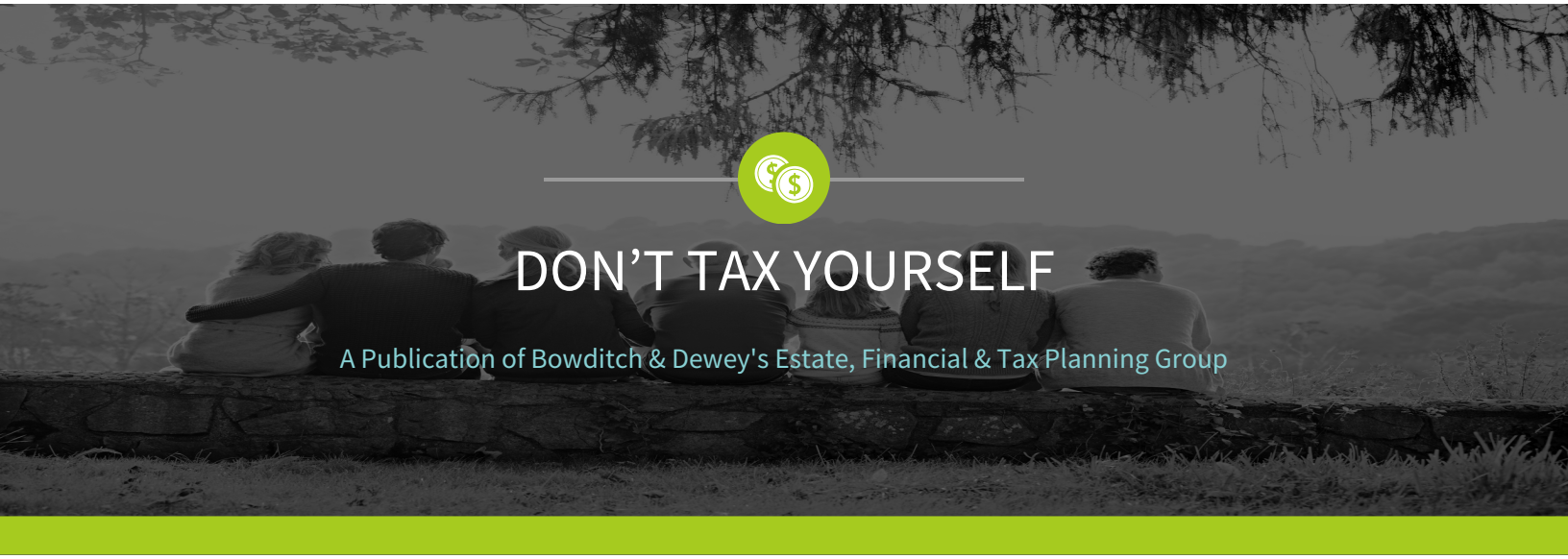

DON'T TAX YOURSELF

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Fox and Family? Lessons from the Murdoch Family Trust

BY CHARLES R. HUNSINGER • OCTOBER 1, 2024

Irrevocable trusts can be effective for estate planning, but they can also create problems. This blog post will draw lessons from the case of Rupert Murdoch, the billionaire owner of Fox News and News Corporation, who is presently attempting to amend an irrevocable trust. The trust, created in the context of Mr. Murdoch's divorce from his second wife, controls Fox and News Corporation, with Mr. Murdoch holding the controlling voting share.

Mr. Murdoch has six children, four of whom have voting power in the Murdoch Family Trust. Mr. Murdoch's children are from three of his marriages and range in age from 66 to 21. The four oldest children are each involved in the Murdoch Family Trust and have at various times been involved in the family business. Mr. Murdoch has four votes and each of his four older children have one vote during his lifetime. The trust further provides that once Mr. Murdoch dies, each child will gain one of his votes, leaving each child with two votes. Now, however, Mr. Murdoch is attempting to amend or alter the Murdoch Family Trust to ensure that his son, Lachlan, has control over the trust assets: Fox and News Corp.

However, the Murdoch Family Trust is irrevocable, which means that amending the trust is not as easy as simply crossing out the old provisions. The New York Times has reported that the trust has a clause permitting it to be amended "solely for the benefit of all [Mr. Murdoch's] heirs." The trust can only be amended through a Nevada probate court proceeding. Mr. Murdoch is arguing that his son Lachlan must have control over the Murdoch Family Trust in the trust beneficiaries' best interests. This is premised on the idea that his children will be unable to agree on the direction in which to take these businesses, that only Lachlan has the vision to maintain Fox's conservative editorial bent, and that such conservativism is in the best interests of Fox and News Corporation's continued success and thus the financial wellbeing of the trust beneficiaries. Mr. Murdoch must show the court that he is acting in good faith and for the sole benefit of the beneficiaries.

While the Murdoch family is wealthier than most of us could ever dream of being, there are lessons here for individuals and families in creating their estate plans, particularly when they have blended families.

The first lesson is that irrevocable trusts are not generally amendable. Thus, prior to creating an irrevocable trust, the

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person creating the trust (known as the settlor) should be absolutely certain that the trust reflects their goals and purposes then and into the future. Further, the settlor should be aware that the beneficiaries of an irrevocable trust will remain the beneficiaries of that trust, even if they subsequently have a falling out with the settlor. Notably, in Massachusetts, even if the settlor and the beneficiary divorce, the trust is not automatically revoked by divorce, unlike a revocable trust.

There are two ways to change an irrevocable trust: first is through reformation or rescission, if the settlor made a mistake in the drafting, or second, through decanting. Reformation is when a court authorizes a trust to be "reformed" to be sure that it does what the settlor originally intended and rescission is the cancellation or termination of a trust, which can be sought when the trust is believed to be a mistake, invalid, or unenforceable as a result of fraud, undue influence, lack of capacity of the settlor, or other misconduct. Decanting is a technical process involving transferring the property owned by the trust into another trust. All of these options are complicated and either require or are likely to lead to court proceedings. If you find yourself involved with an irrevocable trust that is no longer working as intended, consult with experienced trust counsel.

The second lesson here is that people who remarry or who are in blended families should be extra attentive to the disposition of their assets. When Mr. Murdoch created this trust in 1999, his two youngest daughters were not yet born. Prior to creating an irrevocable trust, think about whether you want to create a closed or an open beneficiary class. A closed class means that all of the possible trust beneficiaries are known at the time the trust is created, for example, if the trust specifically names the beneficiaries. An open class means that beneficiaries who fit the qualifications can be added, for example, if the beneficiary class is defined as "all my children," children born after a trust is created are automatically beneficiaries. If you think there is a chance that you will have more children in the future, plan for that in the drafting of the irrevocable trust or other estate planning instruments.

The final lesson here is that no matter how well written an estate planning document is, there is no way to prepare for every eventuality. Here, for instance, Mr. Murdoch created a conservative media empire. Now, three of the four children to whom he planned to leave the empire reportedly do not agree with Mr. Murdoch's politics. Mr. Murdoch could not control whether his children would grow up to be conservative or liberal, just as other parents cannot necessarily be certain that their children will use their legacies for their intended purpose or in line with their values.

In summary, prior to creating an irrevocable trust, it is important to consider precisely what it is that the trust is intended to accomplish. It is also important to consider whether the beneficiaries themselves are capable of following or intend to follow the settlor's intentions. Here, the trust does not seem to have contained any instruction to the beneficiaries to maintain the editorial direction of Fox or News Corporation. Mr. Murdoch may face an uphill battle convincing a judge that he is acting in good faith when he did not include a term in the trust instructing the beneficiaries about the editorial direction of either of the companies in the first place. Regardless of the potential pitfalls, an irrevocable trust, when done right, can be a key piece of a comprehensive estate plan.

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