A common estate-planning mistake is failing to take full advantage of trusts. Substantial amounts of family wealth are too often unnecessarily and irretrievably eroded away because trusts are not being used with the frequency and duration that they should be.

This may occur because the donor fails to recognize the potential exposure and risks of outright ownership — an “in trust” gift or inheritance could avoid those risks. Another common reason for the under-utilization of trusts is lack of understanding about the flexibility of the trust vehicle and the availability of control mechanisms that can enable beneficiaries to enjoy the trust property in a manner virtually tantamount to ownership.

Better than Inheriting Outright
Donors who believe their children are or will be capable of owning the property outright but who don’t wish to use a traditional trust, can use a beneficiary-controlled trust. The primary characteristics of a beneficiary-controlled trust are as follows:

- Distributions of income and principal are totally discretionary, rather than being mandated.
- The child would be given a power to “re-write” (a special power of appointment) the trust for future generations.
- The trust continues perpetually for the child’s lifetime and then to successive generations without diminishment from exposure to the IRS or other claimants.
- When the ages of projected maturity are attained, instead of receiving mandated outright distributions, the child or other future descendant is put in control of the trust.
- Rather than making distributions to the beneficiary who would then acquire the assets, it is recommended that assets be acquired (including a business) as an investment of the trust.
- Tax Savings
As a general rule, the earlier the trust is created in the life cycle of an asset or investment, the greater the benefits in tax savings. Creating a beneficiary-controlled trust early also enables the benefactor to place the initial seed money for funding a favorable business or investment opportunity into a trust rather than have an individual own it. Nowhere is this opportunity shifting more productive than with new ventures or startup businesses.

Remember that the dual benefits of creditor protection and tax savings are available only if someone else, such as a parent or grandparent, sets up the trust. To place the philosophy and utility of the properly designed trust in perspective, if the parents of a venture capitalist had the foresight and desire to create a trust for him or her with the initial seed money used to acquire his or her interest in a successful company, his or her entire holdings in that company would be outside of the transfer tax system and thus inaccessible to creditors and divorce judgments. With proper drafting, the foregoing may be accomplished even if he or she is a trustee of the trust, manages the trust assets, and is in control of the trust.

Most traditional trusts distribute the assets when the beneficiary reaches a certain age or ages, with the last distribution terminating the trust. According to modern trust theory, assets held in a trust are far more advantageous and greater in value than if those same assets were held outside a trust because of the protection they enjoy against creditors. Thus, instead of terminating at certain ages, or upon a beneficiary’s death, the beneficiary-controlled trust continues perpetually with the next succeeding primary beneficiary being placed in full control at the proper time.