The Power of Trusts

A New Guide to Trusts for Asset Protection, Estate Tax Avoidance, and Legacy Management

First Edition

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INTRODUCTION

"Prepare an umbrella before it rains." – A Malay Proverb

Few people enjoy thinking about end-of-life matters. At the same time, it can bring incredible peace of mind to know that our loved ones are going to be protected and our final wishes honored after we're gone. The key to achieving that peace, however, is creating a solid estate plan.

Trusts are one of the most underappreciated – yet most powerful – estate planning tools. Thanks to the notorious term "trust fund baby," many people believe that trusts belong exclusively to the realm of the ultra-wealthy, and never bother to investigate the tremendous value they can offer people of various financial levels.

In reality, the *average* value of a trust is $250,000, according to IRS statistics. That's hardly a figure that suggests extraordinary wealth. Indeed, trusts can help almost anyone gain greater control over their assets. Trusts allow you to protect your assets during your lifetime and ensure that your trustee distributes them to your intended beneficiaries in a timely, efficient, and private manner. Well-structured trusts can also reduce or eliminate estate taxes. Finally, they can enable you to build a strong legacy that can last for generations.

We work with clients of all wealth levels who have structured trusts suited their unique desires, needs, and circumstances. We wrote this book to help you better understand the different types of trusts available and how these legal documents can protect the financial future of your families and loved ones. It's our goal to help you become both familiar and comfortable with the concept of trusts so you can make informed decisions should you decide that a trust is right for your situation.

Here's a brief chapter-by-chapter look at the information this book will teach you.

Chapter One: A Crash Course on Trusts

This chapter introduces you to the world of trusts in straight-forward, easy-to-read language. First, you'll learn key terminology that will allow you to understand the essential components of a trust. Afterward, you'll review five basic trusts and learn how they work. To help you gain a clear vision of how trusts function in estate planning, we provide vivid, concrete examples. By the end of the chapter, you should have a firm understanding of a range of trusts, including the advantages and drawbacks of each.

Chapter Two: Key Tax Implications

One of the greatest benefits of trusts is that they can reduce or eliminate estate taxes, leaving more assets for your beneficiaries. This chapter explores the implications of the Tax Cuts and Jobs of 2018 for trust-makers and discusses how trusts can minimize generation-skipping, gift, and estate taxes.

Chapter Three: Trusts and the Future.

Many trust-makers look beyond protecting their immediate beneficiaries and seek to establish a legacy that will benefit descendants far down the line. In this chapter, we discuss how you can ensure your legacy with Legacy/Dynasty Trusts.

Chapter Four: Frequently Asked Questions on Trusts & Estate Planning

Trusts aren't the only estate planning tool, of course, nor are they appropriate for every asset. Here, we answer common questions about how trusts compare to other forms of estate planning, such as wills, powers of attorneys, and life insurance. We'll also educate you on general estate planning best practices to avoid challenges to your estate and ensure that all your assets are distributed as intended.

Chapter Five: Survival Guide Section

Whether you're setting up a trust for yourself and your spouse, trying to preserve your legacy, or triaging your planning because of an event such as an illness or incapacitation, we'll give you ideas, tools and insights to regain a sense of control over your life. We'll also provide you with useful resources to help you deal with the various challenges you may face while establishing a trust.

Chapter Six: Your Support Team

To ensure that your trusts are well-structured and will achieve your goals, you need a talented, experienced, and reliable support team. We discuss the qualities you should look for in a trust company, trust and estates lawyer, and trustee, and the red flags that say 'run.'

We hope this book gives you new insight into the many ways trusts can preserve, protect, and control assets for your loved ones and allow you to breathe easier when thinking about the future.

CHAPTER ONE: A CRASH COURSE ON TRUSTS

"I have found that among its other benefits, giving liberates the soul of the giver."
– Maya Angelou

First things, first: what is a trust? Even if you're already familiar with the concept, it's a good idea to review commonly used trust terms and definitions before delving into the different types of trusts and how they function.

Basic Trust Definitions and Vocabulary

A trust is a legal arrangement that allows a person (the grantor) to transfer the rights or ownership of their assets to another person or organization (the trustee) to hold for the benefit of a third party (the beneficiary). All trusts must be composed of these three parties, plus the assets inside the trust. Let's take a closer look at each component.

The Grantor

The grantor (also known as the settlor, trustor or trustmaker) is the person who creates the trust. Grantors have the responsibility to decide upon the type of trust desired, appoint a trustee, name the intended beneficiaries, and properly transfer assets to the trust. Depending on the type of trust selected, the grantor may designate herself trustee to retain control over the income and assets of the trust during her lifetime.

The Trustee

The trustee is the person or organization the grantor designates to hold assets on behalf of beneficiaries. Trustees have a serious and substantial role. They must always act in the best interest of all the beneficiaries (called a “fiduciary duty”) and refrain from self-dealing or conflict of interests. Among other things, they’re also tasked with efficiently managing and prudently investing the assets under the terms of the trust and being personally involved in any decision making regarding the assets. Most important, all their actions must be honest, moral, and conducted in good faith. If a trustee fails in any of these responsibilities, the beneficiaries may sue them for breach of fiduciary duty.

A successor trustee is a person named in the trust to take over if the first trustee cannot fulfill her duties.

The Beneficiaries

The beneficiaries of the trust are the intended recipients of the trust’s assets. They receive the assets as instructed by the grantor according to the trust’s terms. Beneficiaries do not typically have any duties, other than potential tax responsibilities, but have several rights. These rights include the right to an accounting of the assets, to information about the trust, and to remove a bad trustee.

The Assets

The assets, of course, are fundamental to the trust. A grantor may fund a trust with only one asset or several, although the type of assets allowed in a trust depends upon the trust's nature. Grantors frequently fund trusts with items such as a cash bank account, nonretirement investment and brokerage accounts, personal property (such as motor vehicles, jewelry, books), real estate, business interests, royalties, copyrights, and trademarks, and more.

Funding a Trust

A trust cannot function correctly unless it is "funded" with the right assets. Funding a trust means re-titling the assets in the grantor's name to the name of the trust or naming the trust as beneficiary for those assets that require a beneficiary designation. For example, if you want to include your car in a trust, you must change the title from your name to the trust's name. If you don't take that step, the car will remain your legal property, outside of the trust.

If you do not fund your trust in the right manner, courts will not consider the intended assets part of the trust, no matter how explicit your intention to place them there. Assets outside the trust will most likely have to pass through probate.

Four Common Types of Trusts

Although dozens of types of trusts exist, we'll discuss here the four of the most common: revocable, irrevocable, testamentary, and charitable trusts. While each has the same "three-parties plus assets" structure, they often serve different purposes, may go into effect at different times, and offer diverse benefits.

1. Revocable Trusts

A revocable trust (aka, a “living trust”) is one is that goes into effect while upon its execution. In other words, you, the grantor, create the trust and give the trustee immediate responsibility for managing the assets during your lifetime. Upon your death, the assets directly pass to the beneficiaries according to the trust’s terms.

The main benefit of a revocable trust is the grantor’s ability to retain control over it. You have the right to change or revoke the trust at any point in your lifetime and may appoint yourself trustee of the trust’s assets. Such authority ensures that you may manage and invest the assets until you become incapacitated or die. If you become incapacitated, a successor trustee will take over your responsibilities until you recover or pass away.

The revocable trust is also appealing because its assets aren’t subject to probate, the court process of validating a will after the grantor’s death. Probate can be both lengthy and complicated, and cause delays in the flow of assets to the beneficiaries. By contrast, trust assets pass directly to the beneficiaries upon the death of the grantor. This direct flow can help to ensure that the beneficiary has no interruption in their lifestyle or difficulty paying creditors. In addition, because the trust doesn’t pass through probate, its terms do not become a matter of public record. Your family is thus able to maintain its privacy.

2. Irrevocable Trusts

An irrevocable trust is one where the terms cannot be altered, amended, or revoked. The grantor permanently gives up ownership of any assets transferred to the trust. Only in rare circumstances and with the express permission of all beneficiaries may a grantor change these terms.

The main advantage of an irrevocable trust is its tax benefits. Because the grantor has given up ownership of the assets, the property is no longer part of the grantor's taxable estate. The grantor is thus relieved from tax liability for any income the assets might generate during her lifetime, and the assets are not included as part of the grantor's taxable estate after the grantor's death. Although technically a grantor may serve as trustee of their irrevocable trust, most lawyers strongly advise against it because it could expose the grantor or estate to tax liability, defeating the primary benefit of the trust.

An irrevocable trust can go into effect during the grantor's lifetime (a living trust) or after the grantor's death (a testamentary trust). An irrevocable living trust does not have to go through probate, providing a compelling advantage over an irrevocable testamentary trust, which does.

Irrevocable trusts are generally attractive to high net-worth individuals looking to reduce their estate taxes. It's also a form favored by professionals vulnerable to lawsuits, such as doctors or lawyers. When a grantor irrevocably transfers assets to a trust, the property remains safe from the reach of creditors or lawsuits because they belong to the trust, not the grantor.

The disadvantage of the irrevocable trust is that the grantor loses both legal ownership and control over the assets. If you have a change in relationship with a beneficiary or later need income from the assets, it can be difficult to accept that the trust may not be changed.

3. Testamentary Trusts

A testamentary trust (a “will trust”) is one that goes into effect only after the grantor has died. At this point, the named trustee takes control of managing the trust assets until the beneficiaries are entitled to the assets under the trust’s terms. Unlike the living trust, a testamentary trust is a provision of a last will, not a separate legal document.

Testamentary trusts are favored by people who want to control how their beneficiaries use the assets. It is particularly beneficial for families that have minor children or disabled relatives who would not be ready to take control of the assets upon the death of the grantor. For example, the trust distributes a portion of the assets annually until a minor child reaches majority or an age specified by the grantor.

A testamentary trust may also provide certain tax benefits as the trustee can distribute or divide the assets in the most tax favorable manner.

The disadvantage of a testamentary trust is that because it is part of the will, it must go through probate before the trust becomes active and the beneficiaries can begin to receive the benefits.
Furthermore, this kind of trust is irrevocable, which means it can’t be changed or altered.

4. Charitable Trust

A charitable trust is an irrevocable trust where the grantor (now called the “donor” in these circumstances) transfers assets to an existing charity or to create a charitable foundation. The charity serves as trustee and is responsible for holding and investing the property. The donor can receive numerous benefits from a charitable trust, although to receive certain tax benefits, the charity must be an IRS-qualified, tax-exempt organization.

There are two types of charitable trusts. The first is called the Charitable Remainder Trust (CRT). In this “split-interest” trust, the trustee pays the donor or another named person an annual percentage of the income the trust generates (an “annuity”), for a pre-determined period. Once this period ends, usually after the donor dies, the property transfers to one or more charities.

The second type of charitable trust, a Charitable Lead Trust (CLT), is considered the inverse of the CRT. In a CLT, the donor establishes the trust but retains control over the assets. The trust generated income goes to the charity or is divided between the charity and the donor’s beneficiaries. After the term period ends, the remaining trust assets flow to beneficiaries of the donor’s choosing – usually non-charitable beneficiaries such as family members.

Charitable trusts allow you to help support a worthy cause while creating a lifetime income for you or your chosen beneficiaries. Such trusts can also give a significant income, estate, and capital gains tax break to heirs, beneficiaries, and, sometimes, to donors.

Other Types of Trusts

Some thirty types of trust exist but all are variations of the four trusts described above. Some of the more popular types of trusts include:

Marital Trusts: This type of irrevocable trust allows a grantor to transfer assets to a surviving spouse tax-free. Assets transfer into the trust upon the first spouse's death, and any trust-generated income transfers to the surviving spouse. After the surviving spouse's death, the remaining assets pass to the couple's heirs.

Minor's Trust: This trust passes assets to a young person and provides a trustworthy adult to manage those assets until the child reaches a specific age chosen by the grantor (usually 18, 21 or 25).

When the minor reaches that age, he or she assumes full control of the assets. The arrangement secures the assets for the minor and the grantor receives no income from the trust's assets.

Special Needs Trusts: As the name implies, this trust benefits individuals with special needs. The trust may be either a "third-party" or a "first-party" trust. Both types of trust are intended to hold assets given or bequeathed to such a special needs individual, but the third-party trust only goes into effect once the individual has exhausted their government benefits. In a first-party trust, the special needs person may benefit from the trust assets while receiving government benefits.

Generation-Skipping Trusts: This trust holds assets for a grantor's grandchildren (or even generations further down the line) instead of children. This structure helps diminish the estate taxes that would occur if the grantor's children inherit the assets. We will discuss trusts formed for future generations in Chapter Four, which covers legacy trusts in detail.

Split Interest Trust: This is a kind of charitable trust where the income first goes to the beneficiaries of the trust, and the remainder flows to a designated charity.

Life Insurance Trust: Under most circumstances, life insurance proceeds become part of your taxable estate. To avoid this, many people establish an Irrevocable Life Insurance Trust (known as ILIT), an irrevocable trust structured to own a life insurance policy.

Medicaid Trust: This is an irrevocable trust that protect your assets from nursing care costs. You must set it up at least 5 years before entering a nursing home or applying for long-term care. It is essential to have a lawyer knowledgeable about this specific type of trust because it must be properly worded to be effective. The Administration on Aging affirms that this is the only type of trust exempt from rules regarding trust and Medicaid eligibility.

If none of these trusts address your circumstances, be sure to speak with a qualified trusts and estates attorney to help you find a trust structure that suits your needs and goals.

CHAPTER TWO: KEY TAX IMPLICATIONS

"Death, taxes and childbirth!
There's never a convenient time for any of them."
— Margaret Mitchell

One of the most common reasons to create a trust is to maximize the wealth transfer between generations, i.e., to make sure your beneficiaries receive the most assets possible. This is where potential tax savings through trusts comes in.

When properly designed and executed, trusts can have incredible estate tax advantages, most notably because of the federal government's allowance of tax-free giving — up to a certain amount — during life and after death. To ensure you're doing your best to take care of your loved ones once you're gone, you must understand how to best maneuver through the various applicable taxes on property transfers between individuals both in life and after death.

Most notably, the federal government collects estate and gift taxes on certain property transfers between individuals as well as taxes on a generation-skipping tax (GST) on transfers from grandparents to grandchildren that skip the intervening generation. To maximize the tax benefits of trusts, then, it is imperative to understand how these three – the estate tax, the gift tax, and GST tax – work together.

Estate Tax

The federal government applies an estate tax, sometimes called a “death tax,” to those estates whose gross value exceed a certain threshold; the personal estate tax exemption permits each individual taxpayer to transfer property up to certain amount without incurring any federal estate tax liability.

To determine whether an estate owes estate tax, the executor of the estate must first calculate the value of the “gross” estate. The gross estate includes all property in which the decedent had an interest.

This may encompass real estate, personal property, mortgages, cash, stocks and bonds, notes and certificates, and life insurance policies. If the decedent owned property as a joint tenant with a spouse, one half of the value of the property is included in the gross estate of the deceased spouse.

Some deductions that may apply against the gross estate value include the following:

- Funeral expenses
- Charitable bequests
- Certain taxes, debts, and administrative expenses.

In addition to the personal estate tax exemption, it is important to recognize that the federal government has also built in a marital deduction through which one spouse’s estate can pass tax free to the surviving spouse without facing any estate taxes. In order to qualify for the marital deduction, the receiving spouse must be a U.S. citizen and also must receive the property interest directly upon the other spouse’s death.

Once calculated, if the value of the gross estate reaches the limit of the lifetime exclusion amount, a representative of the estate must file an estate tax return to determine the amount of estate tax due and then pay the taxes out of the estate.

As an example, let's say John dies with an estate valued at $30 million and through his will leaves $15 million to his wife Sara and $15 million to his son Bob. None of the amount left to Sara would be subject to estate tax assuming she meets the requirements stated above (that she is a U.S. citizen and received the property interest in the bequest directly upon John's death). Of the $15 million left to Bob, however, a portion would be subject to estate tax — $15 million minus the IRS lifetime estate tax exclusion for that year.

This example, of course, assumes that John's estate may still claim the full value of the lifetime estate tax exclusion upon his death. The numbers would change, however, if John had already used up some of the lifetime exclusion through gifts, discussed more fully below.

Gift Tax

Congress didn't want individuals to be able to escape paying estate tax by simply giving away all their wealth during their lifetime, and so the gift tax was born. Accordingly, certain property transfers during an individual's lifetime may be subject to gift tax, with the following exceptions:

- Gifts to a spouse
- Payment of tuition or medical expenses on behalf of someone else
- Charitable contributions

- Gifts valued at $15,000 or less to any one individual in a single calendar year (note that this amount is as of 2020, but it does change)

The lifetime exclusion amount that applies to gifts is the same that applies to the estate tax and works in conjunction with it, which means that the amount of gifts given within the lifetime of an individual reduce the available estate tax exemption amount upon their death.

Notably, the gift tax does not directly apply to trusts, but the value of gifts you give away during your lifetime could count against how much of the lifetime exclusion your estate has available at your death.

Using the above example, if John had “used up” $2 million in gifts during his lifetime, that would have reduced the amount of the estate tax exclusion available to his estate upon his death. In that situation, then, an additional $2 million of the bequest to his son would be subject to estate tax.

Generation-Skipping Transfer Tax (GST)

In another case of Congress wanting to avoid individuals’ wealth escaping taxation, the legislative body enacted the GST tax in 1976 so that families couldn’t avoid estate tax by simply making gifts or bequests directly from grandparents to grandchildren or greatgrandchildren, skipping the parents’ generation between them.

The GST tax applies a flat tax of 40% on generation-skipping transfers that exceed the allowable amount — again, the same amount as the estate tax lifetime exclusion. Essentially, the GST tax is designed to catch any inheritances that would have otherwise escaped taxation.

A GST trust, also called a dynasty trust, is a useful estate planning tool for affluent families especially, though you do not need to be exceptionally wealthy to take advantage of using one. The main disadvantage to creating a GST trust is that it must be irrevocable, which means that you cannot change its terms or cancel it once it is in place. Whether you are comfortable giving up control over the assets placed in trust depends on your familial situation, but other than that, there is generally little disadvantage to creating a GST trust.

Note that the GST tax doesn't apply only to grandchildren or greatgrandchildren under the law, however, but rather to all "skip persons," which encompasses other family members and unrelated individuals who are at least 37.5 years younger than the giver. Trusts may also be "skip persons." Generally, anyone with a "beneficial interest" in the trust, which means having a present and immediate right to the trust's principal and interest.

Just as with gift taxes, a donor can give away up to $15,000[1] a year per person without incurring any GST taxes.

So-called "direct skips" in excess of $15,000[2] must be reported to the IRS yearly and count against the donor's estate's lifetime exemption.

Accordingly, using the above example, if John had given gifts directly to his son Bob's children throughout his life above the

[1] Please note this amount is for 2020 and is subject to change.
[2] Please note this amount is for 2020 and is subject to change.

yearly thresholds, those amounts would be deducted from his estate's available lifetime exemption.

Tax Cuts and Jobs Act

The Tax Cuts and Jobs Act of 2017 (TCJA) became effective on January 1, 2018 and its provisions will remain in effect until 2025 unless Congress changes the law in the meantime. Among the most publicized aspects of the TCJA were its provisions to lower the corporate tax rate from 35% to 21% and to eliminate the corporate alternative minimum tax. But for trust makers, there was so much more in the Act to learn about, including the decrease in overall trust tax rates, marked increases in the estate and gift tax lifetime exclusion amount, and the much-discussed Section 199A qualified business income deduction.

Let's start with the new income tax rates for estates and trusts, which are the following for the tax years beginning 2018-2025:

- Income $0 to $2,600: 10% of taxable income
- Income $2,601 to $9,300: $260 plus 24% of the amount over $2,600
- Income $9,301 to $12,750: $1,868 plus 35% of the amount over $9,300
- Income over $12,751: $3,075.50 plus 37% of the amount over $12,750.

Before the TJSA, the lowest tax rate for trusts was 15% while the highest was 39.6%. As you can see, the TJSA made income taxes directly on trusts less burdensome.

The TJSA also changed the inflation index that applies to tax bracket figures so that it uses the chained Consumer Price Index (CPI), which is more complicated than the old CPI but which generally means a lower adjustment for inflation.

Next comes the estate and gift tax lifetime exclusion amount that taxpayers may give away from their estates tax-free. Before the TCJA, the exclusion was $5.49 million, but the Act currently allows an individual to transfer $11.58 million (as of 2020) and a married couple to transfer $23.16 million without having to pay estate taxes. The amount will continue to be adjusted for inflation.

Note that the highest tax rate for estates remained at 40%.

The other substantial effect of the TCJA on trusts is through Section 199A, which provides a 20% deduction for the qualified business income of small business owners, trusts, and some real estate investors, subject to certain limitations.

The IRS treats non-grantor trusts as pass-through entities (PTE) so long as they distribute or are required to distribute their "distributable net income." In this situation, the trust receives a deduction for the distributions and the beneficiaries pay income tax on them. With Section 199A, the trust may be eligible for a 20% deduction.

One important thing to keep in mind here is that a trust's income is not comprised solely of qualified business income; it also includes W-2 wages and the unadjusted basis of the qualified trade or business. Trust creators must understand how to make distributions to take most advantage of the Section 199A deduction.

While creating multiple trusts that each hold the threshold amount may seem like a good idea to take full advantage of the qualified business income deduction, the IRS has submitted Proposed Regulation Section 1.643(f)-1, which states the agency will aggregate any two or more trusts that have substantially the same grantor(s) and “primary” beneficiary or beneficiaries and when “a principal purpose for establishing such trusts or contributing additional cash or other property to such trusts is the avoidance of Federal income tax.” For the purposes of the Section 199A deduction, the IRS will treat such multiple trusts as a single entity.

One last consideration regarding Section 199A is that it may not be a fixture in the tax code for long. When Republicans lost control of the House of Representatives in November of 2018, efforts to incorporate it more permanently fell short. As of 2020, the deduction – like the rest of the TCJA – is set to expire after December 31, 2025. Of course, there’s no guarantee that any of the provisions will even stay in place that long with a presidential and more congressional elections coming up.

Final Thoughts on Key Tax Implications

As you can see, the tax implications of trusts can be a complex subject with a lot of moving pieces, particularly since rates and brackets can — and do — change with some frequency. A reliable, effective estate planner will keep your plan up to date and ensure that you are maximizing the assets will be left to your beneficiaries. That said, it’s never a bad idea to keep yourself as informed as possible on the latest developments in tax laws so you can feel even further in control of your estate and your own peace of mind.

CHAPTER THREE: TRUSTS & THE FUTURE

"Legacy is not what I did for myself.
It's what I'm doing for the next generation."
–Victor Belfort

When you've worked hard to amass your wealth, you want to ensure that your descendants will continue to benefit from it. But if you don't take steps to protect it, taxes, creditors, or a host of other circumstances can whittle away your fortune until little remains. There's no better vehicle than a legacy trust to safeguard your wealth and family's financial security.

What is a legacy trust?

A legacy trust (also known as a dynasty trust) is an irrevocable trust that allows you to pass your assets to future generations. Unlike most trusts, which pass the assets to beneficiaries outright, a legacy trust restricts the beneficiaries' access to the trust assets to preserve the property for as long as legally and feasibly possible. If the grantor funds the trust sufficiently, and the trustee manages it competently, the trust can provide financial support to multiple generations. Many wealthy American families, from the Kennedys to the DuPonts, are continuing to benefit from legacy trusts their ancestors established decades ago.

The potential duration of a legacy trust varies according to state law. Many states have adopted the common law "rule against perpetuities," which limits the length of a legacy trust. Under this rule, a legacy trust must terminate and distribute its assets no later than 21 years after the death of the last surviving individual who is alive at the time the trust was created. This period is generally estimated to be about 90 years.

Several states, such as South Dakota Nevada and Wyoming have abolished their rules against perpetuity and permit a legacy trust to continue as long as the funds of the trust last. Such trusts can last hundreds of years or even longer. If you are extremely affluent, you may want to consider choosing a trust company in a jurisdiction with no or an extremely lengthy statutory limitation on the trust's length.

The benefits of a legacy trust

A legacy trust offers numerous benefits. Among other things, it can allow multiple generations to save on estate or transfer taxes, and protect the assets from creditors, lawsuits, divorce, or imprudent financial decisions. It can also give a grantor peace of mind to know that they've given their descendants the gift of financial security.

Tax Savings

For most grantors, the most appealing aspect of a legacy trust is that it can save a substantial amount of money on taxes. In normal circumstances, assets that pass from parent to children are subject to federal gift, estate, or other taxes with each successive generation. A legacy trust means that the assets will be taxed once, only at the moment the grantor creates the trust. As a result of such tax avoidance, the assets will not only escape diminution, compound interest will cause them to grow as time passes.

Thanks to the TCJA, legacy trusts' tax benefits hold particular significance for massively affluent families.

The TCJA dramatically increased the amount of the tax exemption for gifts made between 2018 and 2025. The base estate and gift for individuals is currently $11.8 million for individuals and $22.36 million for couples. Because this law is set to expire in 2025 unless renewed by Congress, wealthy families should establish legacy trusts prior to that year to take advantage of the higher exemption rate.

Tax Savings Illustration

To illustrate these tax advantages, consider the following scenario. Let's say a Parent passes $20 million to her Child without creating a legacy trust. Under current laws, $11.8 million is exempt from federal estate tax, leaving $8.2 million subject to tax. If the IRS taxes the funds at the top rate of 40 percent, it receives $3.28 million, leaving Child $ 16.72 million.

Assuming a growth rate of 4 percent, let's say the Child is able to pass $17.38 million to the Grandchild without a trust, $5.58 million will be subject to estate tax (assuming the current favorable exemptions remain in place), giving the IRS $2.23 million and the Grandchild $14.72 million. With all the same assumption in place, if the Grandchild passes $15.3 million to the Great-Grandchild, the IRS will take $1.40 million, leaving Great-Grandchild $13.72 million. Over the years, the federal government receives $6.91 million from the initial body of assets.

Now, consider the scenario with a legacy trust in place. The Parent places $11.8 million estate tax-exempt dollars in a legacy trust. The trustee carefully invests it, and the amount grows to $20 million by Parent's death. Because the $20 million trust is not part of Parents' gross estate, the entire $20 million passes to the Child. If the assets grow at a rate of just 4 percent over the next generation, a trust worth $20.8 million will pass to the Grandchild. Assuming all the same rates for the next generation, the Great-Grandchild benefits from a trust worth $21.63 million, and so on.

These examples clearly show that legacy trusts preserve a far bigger chunk of assets for descendants than passing the funds without one. The scenarios also demonstrate that it's critical to take advantage of the exemption rates of the TCJA before 2025. There's no guarantee that these rates will continue after that year, and if the exemption rates fall back to $5 million or thereabouts, the federal government will get a significantly larger share of your money.

Note that the TCJA only applies to federal taxes, not state or local taxes. The majority of states impose a tax on trusts, with some notable exceptions being New Hampshire, Alaska and Nevada. Annual income tax on trust assets may also apply. For this reason, it's essential to consider establishing the trust in a state with the most advantageous tax benefits.

Protection of Assets

Legacy trusts are also an excellent tool for preserving the body of assets for the long-term. Because the trust funds belong to the trust and not individual beneficiaries, the funds generally remain beyond the reach of most divorce settlements, litigation, malpractice or creditor claims.[3]

In addition, the grantor can structure the terms of the trust in a manner that best preserves the assets. Legacy trusts are irrevocable, which means that grantors cannot control the trust assets directly. However, when creating the trust, the grantor can establish how the trustee shall manage the trust, and dictate how, when, and whether beneficiaries, across the generations, will access distributions. This power allows the grantor to work to protect trust assets "from beyond the grave."

For example, the trust terms can tie asset distribution to a particular age. If you think it prudent, the beneficiary may only begin to access the assets starting from age 25 in the hopes that they will be able to responsibly handle the funds by then. You can also choose to release different percentages of the assets in age-related stages (e.g., at 18, 25 and 35), releasing the largest share at the most mature age.

Some legacy trusts include an "incentive provision" that allows for the distribution of funds only if the beneficiary is drug-free, or graduates from college, or has a job. You can also mandate that distributions may only go towards specific expenses, such education
(whether primary school, trade school or university), medical insurance or health emergencies, or the down

[3] Narrow exceptions to this rule exist. Some state laws allow the trust to be breached by a beneficiaries' child or former spouse if they have a judgement order against the beneficiary for support or maintenance. A state or the U.S. government might also be entitled to breach the trust if the beneficiary is a creditor. It's important to check the asset protection laws of the intended situs of the trust to learn about potential exceptions.

payment for a home. These specific restrictions can help prevent beneficiaries from squandering their inheritance or encourage them to act in accordance with family values.[4]

Grantors who want to allow for more flexibility over the years can give the trustee substantial discretion over when to distribute the funds. The trust terms might state, for example, that the trustee may issue distributions for the “health and well-being” of the beneficiaries, or business endeavors. In this way, the trustee can exercise their own judgment in when to distribute funds and ensure that beneficiaries are not abusing the family wealth.

Disadvantages of a Legacy Trust

The main disadvantage of a legacy trust is that it’s irrevocable. Once the trust is executed, the grantor no longer has legal ownership over the assets and cannot change the terms. This loss of control can be problematic when there is a change in family or financial circumstances or has become outdated. The grantor has the nearly impossible task of trying to look into the future to account for different potentialities and solve possible problems long before they arise.[5]

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[4] A grantor can’t make unfettered restrictions. For example, trust limitations cannot violate the Constitution or require the beneficiary to break any state law.

[5] Under rare circumstances, the beneficiaries make amendments to the trust through a state’s trust “decanting” laws. However, but this is very difficult to achieve and should not be relied upon as a fall back.

The other big disadvantage of a legacy trust is the cost. Complex legacy trusts tend to be particularly expensive to set up and maintain. In addition to the attorney's fee, you must consider trust management fees, investment management fees, and well as fees associated with filing a tax return for the trust. However, for many people, the benefits of a legacy trust far outweigh the disadvantages.

CHAPTER FOUR: FREQUENTLY ASKED QUESTIONS ABOUT TRUSTS

"One of the fastest ways to find the solution to an issue or a challenge you are facing is to ask the right questions." – Anne Burrell

The decision to create a trust is a weighty one and inevitably comes with a great deal of questions. In this chapter, we anticipate and answer some of the most common questions about trusts. Because individual circumstances differ, you will likely need to consult with an attorney about situations that are specific to you.

General questions

1. Should I have a trust or a will?

The answer to this question depends on your circumstances. If you have a large or complicated estate, would like to avoid a hefty estate tax, or want to keep your distributions private, then a trust might be in your best interests. If you have a small estate or would prefer court supervision in distributing your assets, then a will might be preferable. In some circumstances, you might have both.

2. What are the main advantages of a trust over a will?

The most significant advantage of a trust over a will is that trust assets are not subject to probate. Probate is the sometimes lengthy and expensive process in which a court proves the will "valid." Circumventing probate means that your beneficiaries are likely to receive the assets faster, which can allow them to pay bills without interruption or maintain their lifestyle. Trusts also are private documents, and your distributions to beneficiaries will remain private. By contrast, the contents of a will are part of the public record.

3. Do I still need a will if I have a trust?

Sometimes a will does not necessarily replace a trust and vice-versa. Depending on your assets, you may need both instruments to fully protect your assets and ensure that they're distributed according to your wishes. In most cases, a "pour-over will" is recommended when you have transferred most of your assets to a trust. A pourover will is an instrument that captures any qualified assets that you haven't transferred to or included in a trust, whether intentionally or unintentionally. You should speak to a lawyer to find out whether a pour-over over will makes sense for your situation.

4. What kind of assets can be included in a trust?

Most assets that can be retitled can be included in trust, including: cash accounts, tangible personal property, real estate, nonretirement investment and brokerage accounts, stocks and bonds certificates, non-qualified annuities, business interests, funds owed to you, royalties, copyrights, trademarks and patents, gas and oil rights, and more. You can also put life insurance policies into the trust. *Remember that you must change all titles, deeds, and beneficiary designations to the name of the trust to include these assets.* Your trust will be worthless if you do not fund it.

Certain assets cannot be included in a trust, including qualified retirement accounts, health and medical savings accounts, and uniform transfers to minor accounts, among others. Consult with your attorney discuss the merit of including a particular asset in your trust.

5. What happens if I forget to transfer certain assets to the trust before passing away?

Funding your trust is an essential step in creating a trust. If you do not transfer title of the assets to the trust, these assets will be left out, even if you've clearly expressed your intention to include them. Courts will treat assets that fail to make it into the trust as part of your pour-over will, if you have one, or, will pass them to your legal inheritors.

Failing to fund your trust can have a number of consequences. Among other things, those assets not included in the trust will have to pass through probate, which will cause a delay in their distribution. The assets also might not pass to the beneficiaries you intended. If you don't have a pour-over will, the assets will flow to your legal heirs, who might be different from the beneficiaries named in the trust.

Trusts

Revocable/Living Trusts

6. Can I be my own trustee in a revocable trust?

Yes. Being able to serve as trustee is one of the big advantages of having a living trust. In this way, you retain control over your assets until your death or incapacitation. You should nonetheless name a successor trustee to ensure that someone will continue to manage your assets smoothly if you are not able.

7. Can I transfer property in and out of the revocable trust?

Yes. The authorization to make changes to your trust is another significant advantage of a revocable/living trust. If you appoint yourself trustee, you will still have control over the assets and can change them at will. Keep in mind that it is not as simple as striking out a provision or clause in adding or divesting of a trust of certain assets, but it can be done.

8. When should I update my revocable trust?

Consider updating your trust when:

- there's been an addition to your family or a death that might affect distributions
- if you get married, divorced, or remarried

- your assets have changed substantially (whether an increase or decrease).
- you move to a different state or country
- your trustee or successor trustee becomes incapacitated or dies
- when changes in the laws make certain distributions impossible or unfavorable
- if your spouse qualifies for Medicaid.

9. Can I avoid taxes with my living trust?

No. Because the grantor can change or terminate a living trust at any time and retains control of the assets, you remain responsible for federal, state, and income tax generated by the assets. In other words, the government treats the assets as if they are the grantor's own property even though they belong to the trust. If you are looking to save taxes, consider creating an irrevocable trust.

10. Does a living trust protect assets from creditors?

No. Because the grantor can change or terminate a living trust at any time and retains control of the assets, the law views the property as belonging to the grantor. An irrevocable trust, however, protects assets from most creditors.

Irrevocable trusts

11. Why should I consider an irrevocable trust?

An irrevocable trust permanently transfers legal ownership of assets to the trust. Consider making an irrevocable trust when you seek to save money on estate taxes, protect assets from creditors, or wish to create a long-term trust for descendants (legacy trust). Because a grantor cannot change this kind of trust, the IRS does not consider its assets part of the grantor's estate. Accordingly, they don’t include these assets in the grantor’s taxable estate after the grantor’s death.

12. Are there any circumstances where an irrevocable trust can be modified?

An irrevocable trust can be modified or changed only in specific and limited circumstances. For example, depending on the state, such as New Hampshire, an irrevocable trust sometimes may be "decanted." A trustee or beneficiary might be able to decant a trust to move it to a situs with more favorable tax laws or put the assets into a new trust with modified language. A court may also modify or revoke a trust if unforeseeable circumstances, such as a change in federal or state laws, impede the trust's original intent. But a grantor should generally assume that once made, an irrevocable trust cannot be changed.

Trustees

13. Who can be named as trustee?

You can name any adult 18 or older, whether a family member, trusted friend, lawyer, accountant, or financial advisor. You can also appoint an organization as trustee. Note that just because you can appoint anyone, doesn’t mean that you should.

14. How should I choose my trustee?

Your trustee should be a trustworthy person who is mentally and morally qualified to handle the responsibilities of being a trustee. We discuss the attributes of a good trustee in great detail in Chapter Six.

15. Do I have to pay my trustee?

Yes, usually. Being a trustee is a role of enormous responsibility and requires a substantial amount of work. Most courts find, therefore, that they should be paid a "reasonable" fee for their services. Most states don't have a guideline for the amount an estate should pay a trustee, so grantors often use state compensation rules for the executor of a will. Usually, the payment amount is calculated as a small percentage of the total value of the estate. In this case, you might pay the total value of the assets in the trust. Alternatively, you might decide to set forth an hourly rate in the trust document.

16. Does the situs of my trustee matter?

Yes, particularly for irrevocable trusts. The situs of the trust is the state in which your trustee administers the trust. The laws of that state, therefore, govern your trust. Many grantors choose to appoint a trustee in states that offer the best tax and asset protection or located in a state that has abolished or modified the Rule Against Perpetuities. But you should also consider factors such as state tax on the trust, court jurisdiction over the trust, and ability to modify or decant the trust.

Beneficiaries

17. Who can be the beneficiary of my trust?

You can choose almost any living person, whether adult or minor, to be a beneficiary of a trust. Beneficiaries may be a spouse, child, friend, relative, or even yourself, in some circumstances.

18. Whom *should* I choose as the beneficiary of my trust?

Choosing your beneficiaries can be a difficult decision. Married couples often choose their spouse; parents often choose their children. Nonetheless, there may be myriad reasons why you prefer to leave your assets to someone else entirely. In making your decision, you may want to consider how your choice will impact the beneficiaries – emotionally, financially, and practically – as well as how it may affect family relationships or friendships. Ultimately, of course, the choice is yours.

19. Can I change my beneficiaries after the trust is created?

It depends. A grantor may change the beneficiaries of a living trust any time before the grantor's death. If you are co-grantor of a trust with your spouse, however, you and your spouse must agree to the change in beneficiary in writing. Under rare circumstances, a grantor may be able to add or remove a beneficiary, or a class of beneficiaries, of an irrevocable trust. State law dictates this change and usually must occur, if at all, with the authorization of the court and the other beneficiaries.

20. How can trust assets be distributed to beneficiaries?

The grantor has numerous options for distributing the assets. You might pass the property to the beneficiaries outright, after your death. You might decide to stagger the distributions, release the funds only at a certain date, when the beneficiary attains a specific age or at another triggering event. Your goals and state law would be the main determinants in your decision.

21. One of my intended beneficiaries is financially irresponsible. How can I make sure this beneficiary doesn’t squander the assets?

Grantors can control how different beneficiaries use trust assets. One of the most popular methods is putting a “spendthrift” provision in the trust. This provision can limit the circumstances under which the beneficiaries –or one particular beneficiary – may access the trust funds. For example, you may decide to restrict the use of the funds for the beneficiary's basic living expenses, education, or medical bills. You can also make the release the assets contingent on certain conditions, such as being drug-free or having a job.

As an extra protective measure, you can ensure the beneficiary cannot use the trust funds as collateral for a loan. You will need to work with a knowledgeable lawyer to make sure that the provision is specific enough to prevent squandering of the funds, yet not so restrictive that the beneficiary can't have access to the funds when truly in need.

CHAPTER FIVE:
YOUR SURVIVAL GUIDE

“The beauty is that through disappointment you can gain clarity, and with clarity comes conviction and true originality.” - Conan O’Brien

Human beings are planning machines. We evolved to adapt to complex challenges in our environment — to think through them strategically, often leaning on others in the process. These skills, as much as anything, make us who we are. However, we’re not born knowing best practices. We know to protect ourselves from loud noises and tigers. But our natural intuition is close to useless when it comes to problems like keeping our email inboxes clear.

To that end, in this chapter, we’ll explore tested strategies, tactics, and insights to help you get your bearing. Whether you’re in “proactive planning mode” — for instance, setting up a trust as you and your spouse near retirement — or you’re in “reactive planning mode” — for instance, getting a grip after a medical diagnosis — we’re here to help. We want you to feel more in control.

Section 1: *From Uncertainty to Clarity*

Uncertainty is at the root of much of our stress. It is, fundamentally, why we plan. Maybe your college age son is a “wild child”. Now that he’s out of the house, he’s beyond your ability to monitor. His lack of judgment creates uncertainty for you. Will he say something dumb to the wrong person and get in trouble? Will he be able to fend for himself when you're gone? Will he burden your other children?

If you do not address these hidden worries, they have the potential to destroy your peace of mind. Fortunately, you're not without resources. Let's examine some tools you may use.

- **Journaling.** The poet E.M. Forster once wondered, *"*How do I know what I think until I see what I say?" There's magic in articulating your unconscious or preconscious thoughts on paper. Here's how to use a private journal to achieve clarity.
    - **Free writing.** Set a timer for 15 minutes. Plunk yourself down in front of your keyboard or use a pen and paper if you prefer. Then just write. Don't give yourself any target or agenda. Write whatever comes up. But write diligently for a full 15 minutes. You'll almost certainly discover fascinating insights about what's *really* on your mind, and you can use this information to act.
    - **Give yourself prompts.** Try this exercise every day to break through a tough problem. For instance, maybe you're feeling anxious about the future for some nebulous reason. You can't figure out what's bothering you. In your journal, write the following prompt: "the future would be totally okay, as long as…" Then, every day, open your journal and write a new sentence to complete the phrase. Do this for two weeks. Make sure each

answer is unique, and just write whatever pops into your head. This process will prompt your unconscious to give insight.

- **Brainstorm a "top 20" list.** This is a related exercise. It's a useful way of accessing your creativity. Start with a problem or opportunity. Perhaps you're scared because your spouse just got diagnosed with a medical condition, and you don't know how to support her. In your journal, write down 20 ways to help her (and help yourself). As with the last exercise, avoid repeating yourself. List 20 unique ideas. This process will engage your creativity and help you discover resourceful ways around problems.
- **Express gratitude.** Research from Harvard University and elsewhere suggests that the simple act of recording a few positive things in a journal every day can boost your level of happiness. This process changes your focus. It gets you to focus on what you have, rather than what you lack, and this more abundant mindset is generally better for problem-solving. Each morning or evening, set aside a few minutes to write down three small things about the day that made you grateful. Take time to remember those moments and how they made you feel. Really savor those memories and concentrate on them.

- **Root Cause Analysis.** What's *really* causing you stress and anxiety? The more clarity you have when it comes to the fundamentals, the more efficiently you can course correct. This is because life is full of imbalances. The 19^{th}

century economist, Vilfredo Pareto, recognized this truth and came up with a rule of thumb that became known as the "Pareto Principle" (also known as "80/20 Rule"). Essentially, in many systems, 20% of causes lead to 80% of effects. This ratio is approximate — the point is that imbalances exist everywhere. For instance:

- Around 20% of the people in a country will hold 80% of that country's wealth;
- You wear 20% of your clothes 80% of the time; ○ 20% of people are responsible for 80% of all divorces; ○ 20% of your problems cause 80% of your stress; ○ And so on.

From a practical perspective, then, you want to identify the essential 20%. As you plan your estate and think about the future, how do you know what's really important? Here's a simple exercise to get clarity. It's called the "5 Whys". Invented by engineers at Toyota to optimize manufacturing, the 5 Whys uses symptoms as a ladder to locate their root cause. You start with an annoying problem and ask yourself why it's occurring. Then you ask why *that* issue is occurring. Keep drilling down like this, five times or more if needed, and you'll find the root cause. Then you can constructively address it. Here's an example:

- *PROBLEM: I'm worried that our 25 year old son will squander all the money we plan to leave him and wind up homeless and suffering.*

- *WHY ARE YOU WORRIED? Because he's been fired from his last two jobs, and he shows no interest in a career.*
- *WHY DO YOU THINK THAT'S HAPPENING? Because for whatever reason, he hasn't picked up enough life skills to take care of himself, and we don't know how to help.*
- *WHY DON'T YOU KNOW HOW TO HELP HIM? Because we've never been able to break through to him, and we don't know anyone who can help us.*
- *WHY DON'T YOU KNOW ANYONE WHO CAN HELP YOU? Well, frankly, probably because we've kicking the can, and we haven't made it a priority to get out in front of it.*
- *WHY HAVEN'T YOU MADE IT A PRIORITY TO GET HELP PLANNING FOR YOUR SON'S FUTURE? Truth be told, it's because we're scared and confused about what to do.*

This short exercise led from an external problem ("our son can't take care of himself") to an internal revelation ("we're scared and confused about how to help him"). In general, it's much easier to fix internal problems than it is to try to change other people. In this case, by focusing on eliminating the fear and confusion, you'll be far more likely to solve the real issues.

Getting Things Done. Bestselling productivity author, David Allen, developed a useful system for getting control in uncertain times that he dubbed "Getting Things Done" or GTD for short. Per Allen, we feel stress when we fail to surface and deal with life's "open loops" — unmet commitments we've made to ourselves or others. His system is too complicated to explain in depth, but here's a quick overview. First, to deal with lack of clarity, he recommends doing a "brain dump". On a piece of paper, write down anything and everything on your mind, from concerns about your business taxes and succession to where you want to travel in Europe to worries about the ant colony in your backyard. Write everything down. Your mind is for having ideas, says Allen, not for holding them. Once you've cleared your head in this fashion, you can process, organize, review, and act upon this list of your open loops. They will no longer have as much control over you. You can see the forest for the trees. Even better, you'll see that your list of commitments isn't endless. You may have a lot on your plate, but the work is not infinite. With this knowledge, you can prioritize intelligently. GTD isn't about doing more — rather, it's about clearing your head, so you can feel good about what you're *not* doing.

Section 2: ***Staying in Peak Physical Shape.***

Whether you're already healthy and happy, or you're struggling with an ailment, you owe it to yourself to make healthy choices. Exactly how to do this, however, can be tricky. We all know that we should "eat well and exercise". But what does "eating well" look like in practice? On a meta level, how can you sort useful information from quackery? Here are some general thoughts:

- **Take Ownership of Your Health**. It's your body and your life. Do your research, find trusted medical professionals who can help you, leverage technology to fight your own bad habits, and learn what works for you. Don't mindlessly follow the conventional wisdom. It's often based on surprisingly bad science. In the 1950's, for instance, University of Minnesota researcher, Ancel Keys, convinced the nation that dietary fat and cholesterol were an unmitigated evil—the key culprits in heart disease. Later analysis showed that Keys used shoddy methods, throwing out data that didn't fit his worldview, and bullied people into accepting his point of view. Modern science has since refuted Keys' ideas about heart disease, and now fat is back on the menu. (Ironically, Keys himself ignored his own advice, ate plenty of fat, and lived until 100.) The point is that it's important to think critically about health claims you read in the media.
- **Take a Holistic Approach to Wellness**. Obviously, diet plays a major role in health. What you eat matters. What you don't eat also matters. Even *when* you eat can influence your metabolism profoundly. A good diet seems to work best in concert with other best practices. For instance, get enough safe sun (but don't burn); get adequate sleep; reduce your stress levels; and exercise intelligently. Avoid too much sugar and refined carbohydrate. If you suffer from type 2 diabetes or metabolic syndrome, be especially mindful to limit foods that stimulate blood sugar and insulin levels. Remember also that we are social beings. Especially as we get older, maintaining strong bonds with friends and the community can keep you engaged, nurturing good feelings, and protect your body as well.

- **Be Your Own Patient Advocate**. Work with your doctor to perform adequate due diligence. Knowledge is power. For instance, most people know that getting their cholesterol checked can shine a light on their heart disease risk. However, lipid panels only measure *indirect* markers of disease, such as HDL and LDL cholesterol and triglycerides. Another test, the coronary artery calcium scan, on the other hand, has the ability to measure calcium build up in the arteries themselves. This test is a strong predictor of mortality not just from heart disease but from other diseases as well. Make sure you and your doctor work as a team to identify your risks, and take intelligent, vigilant action, if needed, to address your health challenges.

Section 3. *Adopt a Posture of Never Ending Improvement*

In Japan, there's a fascinating term of art called *kaizen*. Loosely translated, it means "never ending improvement." As you deal with whatever threats and opportunities the future presents, embrace this mindset of kaizen. When challenges arise, meet them with your full attention. Use them to grow and improve. Consider these resources:

- **Therapy.** We're not meant to deal with our problems on our own. Sometimes, we need trusted counsel. The right advisor can help us identify our blind spots and navigate around them; find resources to manage internal struggles that never seem to go away; and just provide an empathetic ear.

- **Habits.** As Aristotle observed millennia ago, your habits determine your destiny. So, choose habits that will support your vision for yourself. For instance: meditate regularly, contribute to the community, brighten someone's day every day, minimize social media consumption, etc.
- **Assessments.** Understanding your own strengths, weaknesses, work style, and desires can help you navigate your world. What do you love to do? What are you naturally great at doing? Pay attention to these things, using tools like the Kolbe Strengths Finder. The clearer you know yourself and how you best operate, the easier it will be to get what you want.

Connections. Personal development coach, Jim Rohn, once suggested that "you are the average of the five people you spend the most time with." This idea may or may not be scientifically accurate. But Rohn's basic premise is worth considering, since we evolved to be highly sensitive to social cues. Pick and choose your company discerningly. Nurture your closest relationships, and also cultivate loose ties. Thanks to the internet, you can learn from amazing people around the world through TED talks, podcasts, YouTube lectures, blogs, books, and beyond. Other people can help you shine, and you can also pay it forward—make your legacy one of contribution and altruism.

CHAPTER SIX:

YOUR SUPPORT TEAM

Creating a trust is a complex endeavor, involving a delicate balance of laws, finances and desires. The ultimate goal is to ensure that your wishes are honored, throughout your life and afterward. But your trust will only be as effective as the team that helps create it. To get true peace of mind, you must have a trust and estates team with the highest level of skill and knowledge, who are able to work capably with you and each other.

In this chapter, we examine the three key members of your trust and estates team – your attorney, trustee, and financial advisor – to help you understand the level of service you should seek and expect.

Choosing a Trust and Estates Lawyer

A skilled attorney is absolutely essential to creating an effective trust. The last thing you want is to go through the expense and trouble of establishing a trust, only for a beneficiary to challenge the validity of the trust (or a portion of it) after your death. Your attorney must ensure that your trust complies with state and federal law and is consistent with public policy.

Moreover, your attorney must have the knowledge and skill to structure the trust such that it carries out your wishes in the manner that you desire. The miswording of certain terms or an ambiguous phrase can result in consequences that you neither want nor expect. Your lawyer has sole responsibility for such details, thus you should be confident in your choice.

Here are several considerations to take note of when hiring your trust attorney:

Experience. The experience of your lawyer is of paramount consideration. A relatively inexperienced attorney can draft a simple will, but trusts require the expertise of someone who has drafted a wide range of trusts, and handled a diversity of complex family structures, financial situations and taxable estates.

In determining the experience of your attorney, look to whether their practice is primarily devoted to trusts and estates. An attorney whose law practice's main focus is trusts and estates will stay atop of current laws and tax changes that can affect both the creation and the maintenance of a trust. They're more likely to know the subtle nuances and wording that make the difference between an effective trust and one that risks getting invalidated.

It's also important to identify the number of years the attorney has practiced in the area of trust and estates law. The longer the attorney has practiced in this area, the more likely they'll have handled a broad range of trust-related situations and circumstances. Ideally, your attorneys will have practiced long enough to see their trust documents go into effect when a grantor becomes disabled or dies and have witnessed the effectiveness of their drafting skills. They should also have practiced long enough to have amended and tweaked revocable trusts and gained the particular knowledge that such actions entail.

Finally, you should examine the nature of your attorneys' experience. What are the sizes and nature of the estates they typically handle? Have they ever faced any challenges to trust documents they've drafted? What kind of trust vehicles have they created? Have they ever handled any estates similar to yours? The bottom line is that you should feel confident that your attorney has the experience to proficiently anticipate and handle any nuances or challenges involved in your particular trust.

Post-Drafting Services. Once your lawyer has drafted your trust, there's still more work to be done to ensure that it's valid and carries out your wishes as planned. For example, a revocable living trust must be funded while you're still alive to have any value. A lawyer may draft a perfect trust, then leave it to you to go through the arduous process of ensuring that your assets are retitled in the trust's name.

Ideally, the lawyer responsible for drafting the trust will also assist you in funding the trust. The lawyer may offer his or herself own time toward the funding or have a team dedicated to funding assistance. It may cost a little extra, but it is worth it to have such professional help at this critical step, especially when the team that created the trust takes charge of the funding. The team should already be familiar with your trust and the assets you intend to include in it.

You should also look for an attorney who is available to conduct annual or semi-annual reviews of the trust and will make any updates to the trust that may be necessary. Revocable trusts may need adjustment as family circumstances, laws and other circumstances change. Retaining an attorney to be on guard for such changes and immediately notify you of situations that may affect your trust can be invaluable.

Cost. Before signing on the dotted line, be certain that you thoroughly understand your attorney's fee structure. Each attorney may have a different approach to charging for trusts: some may bill by the hour; others may have a flat project fee. Some may have a combination approach, charging a flat fee for the basic drafting of the trust, but charging an hourly rate for research, court filings, or other necessary acts. You should have a frank discussion with your potential attorney about exactly what their fee covers, where you might run into additional expenses, and how and when they'll notify you if they project estimated costs to change.

Your lawyer should also provide clear information about their billing process. You should understand precisely when to expect to receive a bill, whether the bill will be itemized, when your payment will be due, and whether there will be penalty charges if you don't pay on time. Don't be shy about asking what process is in place for clients who disagree with charges on the bill.

Personality fit. People often become so focused on the experience or price of a potential attorney that they forget to consider, or they downplay the importance of, whether the attorney has a personality that is compatible with theirs. But it's essential to trust and have otherwise positive feelings about your attorney.

Dealing with end-of-life matters isn't easy. Most of the time, you'll be sharing deeply personal and sensitive information and having to confront questions that you may find emotionally difficult. You'll want to work with an attorney with whom you feel comfortable and who you find makes the process easier, not harder.

Look for an attorney who communicates in a manner that you appreciate, both in terms of tone or regularity. Before hiring the attorney, ask about their communication policy. You should have an idea of how often you'll hear from them during the drafting process, how quickly they return phone calls or emails, and whether they provide a timeline for important events.

Also try to assess how well the attorney will work with others. Depending on the nature of your trust, the attorney may have to work with your financial planner, trustees, and beneficiaries. Will the attorney communicate effectively, promptly and professionally with these persons? Having an attorney that is sharp and professional but also has good people skills can be important to the seamless creation, maintenance and execution of the trust.

Choosing a Trustee

Choosing the right trustee to manage your trust is as important as picking the right lawyer, if not more so. Your trustee carries the weighty responsibility of protecting and investing the trust assets properly throughout the trust's life and distributing the assets in precise accordance with the trust's terms.

Too often, people appoint friends or family member they trust to act as trustee without giving much thought toward whether that person has sufficient experience to execute the duties competently, or even whether they have interest in the role. A bad trustee can be disastrous for your beneficiaries and could result in life-changing financial consequences for them that you never intended or foresaw.

Let's evaluate seven key qualities your trustee should possess:

Integrity. You may trust a potential trustee with your life, but do you trust that person with your money? How does that person handle bills, finances and debts? Do they often have good intentions but fail to follow-through? Has the person consistently made good personal and financial decisions? Might the person be tempted to self-deal from the trust? If you have a smidgen of doubt about the trustworthiness or reliability of your trustee, keep moving.

Impartiality. A trustee has a fiduciary duty to remain impartial in dealing with beneficiaries. This duty does not mean the fiduciary must treat them equally but must protect each of their respective interests with equal diligence. For example, if a parent gives one child beneficiary significantly greater access to trust funds over another child, the trustee must adhere to these terms, regardless of the trustee's or beneficiaries' personal feelings about the matter. The trustee must be able to rise above any favoritism or animosity they feel towards particular beneficiaries and make decisions in the best interest of all the beneficiaries. You must ask yourself whether your potential trustee is capable of this.

Investment/Management experience. Trustees should understand tax, investment, accounting and legal issues, and be comfortable discussing such topics with professionals. You might think that because a person is a business owner, lawyer, or banker they might be well-qualified to be a trustee, but this is not necessarily true. The best way to find out whether the trustee has the requisite experience is to discuss the specific responsibilities of the role with them and assess whether the person has had relevant experience.

Availability. Being a trustee is a significant, long-term time commitment. You need to be certain that a potential trustee is willing and able to commit to these duties. Consider the age and health status of the potential trustee, and whether there's a significant risk that they'll pass on before the beneficiaries. Never appoint anyone as trustee without having a serious conversation about whether they are willing to take on the role. Also, be sure to name a successor trustee in the trust document who will take over if the first trustee cannot serve.

Good communication skills. Trustees must remain in regular contact with the beneficiaries. They are required to send periodic reports, updates and information about the trust assets and distributions to the beneficiaries. They should also be ready to answer any questions about the trust and do the necessary research to find answers. If the trustee is not a good communicator or is disorganized, these responsibilities could pose problematic for the beneficiaries.

Steady temperament. Sometimes the terms of the trust or personality clashes can cause tension between the trustee and one or more beneficiaries. Your chosen trustee should be able to handle strained relationships with equanimity and have the skills and emotional intelligence to avoid inflaming the situation while adhering to the terms of the trust.

Detail-oriented. The role of a trustee involves a great deal of organization and attention to detail. Your chosen person should be able to understand the terms of your trust and execute these terms in the letter and spirit of your instructions.

Appointing an Individual Trustee vs. a Corporate Trustee

Individual Trustee

When deciding whom to appoint as trustee, many grantors hesitate over whether an individual trustee or corporate trustee would be better for the trust. The best decision, of course, depends on a variety of factors that differ across trusts and circumstances.

The following charts show some the respective advantages and disadvantages of individual and corporate trustees.

Individual Trustee vs. Corporate Trustees

Individual Trustee

Advantages	Disadvantages
It's more likely that they understand your wishes, family dynamics or changing financial circumstances than a corporate trustee.	**They might not have the knowledge or skill to make investment decisions or manage the trust in a manner that fulfills your wishes.**
It's more likely that they will care about the well-being of the beneficiaries and want to do the best job possible for their sake.	**Their personal feelings about individual beneficiaries may affect their impartiality.**
It may be less expensive.	**The trust may incur additional expenses for outside experts, such as financial advisors or**

	lawyers.
	A close relative serving as trustee might nullify certain tax saving benefits.

Corporate Trustees

Advantages	Disadvantages
Professional trustees are experienced in managing trusts, understand record-keeping requirements and trust related legalities.	**It requires significant time to vet and select the right corporate trustee.**
Professionals are experienced in trust investments and government compliance rules	**They are more likely to be more expensive than an individual.**
Professionals are more likely to be impartial and objective.	**They are less likely to have a deep understanding of your wishes and interpersonal dynamics of the beneficiaries.**
A corporations has or has easy access to the resources needed to manage complex trusts.	

Certain types of trusts are better suited to a particular trustee than others. For example, it may be more advantageous to appoint a corporate trustee for a legacy trust, as the trust may last for 90 years or more. Having trust company to manage the trust will offer a certain degree of consistency in its administration across the generations.

If you have a relatively simple Minor's Trust, you might prefer to have a close family member or close friend serve as trustee – if they meet the seven attributes listed above – as it may give you more peace of mind to have someone who truly cares for your children and family to administer the trust.

Choosing a Financial Advisor

It's a smart idea to consult with a financial advisor or planner in creating your trust, especially if the trust involves large sums, has a complicated structure, or is a legacy trust. A financial advisor will work with your attorney or tax advisor or accountant to ensure the trust achieves the financial goals desires.

You may want to use the same advisor to manage and invest the assets once the trust is executed. In such cases, your selection should be included as a trust term otherwise choosing an investor will become your trustee's responsibility. Because the financial advisor has enormous control over the funds, it is critical to feel confident about the person or firm's trustworthiness and ability.

Here are the main considerations for selecting a financial advisor:

Experience. A good financial advisor should have substantial experience helping clients design the financial aspects of trusts that balances control and flexibility. As with a trust attorney, it's important to consider the number of years the advisor has spent working with trust clients and how much of their practice is devoted to advising on trust issues.

Qualifications. Confirm that your financial advisor has all the requisite qualifications. Financial Planners should have a certificate from the Certified Financial Planner Board of Standards

Cost. Costs of financial advisors can vary widely with the nature of the trust and the advice and investments necessary. In searching for an advisor, ask whether the individual or firm has a fee schedule that discloses both expected and unexpected fees.

In particular look for:

Commission costs: Most stockbrokers earn commissions for each trade, which ranges from $5 to $30 per trade. https:// budgeting.thenest.com/much-average-stock-brokers-commission-31078.html

Percentage fees: Many full-service advisors and brokers charge a fee for their service. Such fees are often 1 to 2 percent of the total amount of the portion of trust assets that they manage. Other advisors base their fees on the market value of the trust portfolio and a percentage of the income earned by the portfolio.

Hidden fees: Many clients are shocked to find their bill much higher than expected thanks to hidden fees. Potential hidden fees many include a charge if the trustee decides to change investment firms or an "inactivity: fee when the broker makes no trade for the trust during a specific period, usually one year.

CONCLUSION

Ensuring your loved ones are in good financial shape after you're gone is one of the best gifts you can give them. It's also one of the best things you can do for yourself while you're alive as you can rest easy knowing they will be taken care of. Careful estate planning can get you the peace of mind you deserve, and for many people, trusts are an integral part of those plans.

After reading through this book, we hope you feel more comfortable about the concept of trusts and how they can benefit you, your loved ones, and your estate. The best time to begin planning for you and your loved ones' futures is now while you're clear headed and in full control of your finances; this way you can be assured that your decisions are well considered and just plain smart.

Remember: Trusts aren't only for the wealthy, so even if you think you don't have enough assets to worry about taking care of them, it's better to consult a professional to make sure you're doing everything you can to protect them during your lifetime and make sure they are distributed the way you prefer after your death.

No one trust will suit everyone's needs. Whether you're most concerned with avoiding or eliminating estate taxes or creating a long-term legacy for your beneficiaries, a trusted advisor can work with you to pinpoint your goals and devise a strategy to help get you there. Setting up the kind of trust that will best address your concerns doesn't have to be time-consuming or complicated.

Our business is more than just trusts, of course, so we know that often times a comprehensive estate plan encompasses several effective and valuable tools such as wills, living wills, powers of attorney, and life insurance policies. Together we can implement the best overall strategies for your estate so that you are free to simply live your best life.

About the authors

Attorney John T. Gosselin focuses on estate planning, business law, real estate law and other fiduciary services including trust administration. With over 25 years in Elder Law practice, John brings the experience necessary to guide clients through all aspects of estate planning, asset protection, and Elder Law matters. John received a BA in international politics and economy from Middlebury College and a JD from New England School of Law. He also studied global economics at L'Institut des Etudes Politiques de Paris. John is admitted to practice law in Massachusetts and New Hampshire and the Federal District of Massachusetts and is fluent in French. He is a licensed real estate broker in Massachusetts and New Hampshire, a licensed life and health insurance producer in Massachusetts as well as a licensed life settlement broker in Massachusetts. John is the author of "Massachusetts Elder Crisis Law: How you can help your parent or loved one." He is a member of the Massachusetts Bar Association, New Hampshire Bar Association and the National Academy of Elder Law Attorneys (NAELA). He is the founding attorney of Gosselin & Kyriakidis, PC and is Chairman of the Board of Darwin Trust Company. He is an advisory council member of Zoo New England and also serves as a corporate for Winchester Hospital and Cambridge Savings Bank. John is the custodian of Darwin, a red tricolored Australian Shepherd who was the inspiration behind the naming of Darwin Trust Company.

Melissa Sommer (CFA, CPA) is Co-founder, Chief Executive Officer and President of Darwin Trust Company. Prior to her role with Darwin Trust, she was President and Chief Executive Officer of First Financial Trust, NA where she was responsible for the investment strategy of a national chartered trust company with $400 million under management through over 800 client relationships. She also served in portfolio management roles at Bank of America's US Trust and Columbia Management Group and State Street Global Advisors. She also served as a senior fixed income research analyst at Salomon Brothers, Inc. and as an audit supervisor at Coopers & Lybrand. Melissa received a BBA in Accounting and English from the University of Notre Dame and a MBA with a concentration in finance from the University of Notre Dame Graduate School of Business. She serves as a member of the CFA Institute, Boston Estate Planning Council, Boston Security Analysts Society Women in ETFs and AICPA. Melissa also is the regional representative of The University of Notre Dame Monogram Club and is a former advisory board member of the University of Notre Dame Mendoza School. She is a commission member for the City of Newton Parks and Recreation Department. Additionally, she is a member of the volunteer staff for the Pan-Mass Challenge for which she and her family have rode and volunteered for over 20 years. Melissa also fosters dogs prior to their going to their forever homes with her husband and 3 children.

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