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Modern Trust Concepts

Traditional trust design and administration is changing, giving Grantors more flexibility and control that includes preferred investment management, family involvement, roles for trusted advisors and reduced trustee and advisor liability.

Modern trusts that feature a bifurcation of investment management and administrative responsibilities are gaining acceptance and use over traditional trusts.

Counsel Trust Company – History and Qualifications

- Established in 2002 by former executive level Trust Professionals
- Created with a focus to support an existing RIA
- Expanded in 2012 to serve outside RIA's in a delegated trustee capacity
- Converted trust charter in 2018 from PA to TN, with superior, modernized trust laws, including 'directed trusts'
- Current Assets under Administration of $1.8 billion
- Working with over 50 independent advisors
- Active data links to 10+ custodians including Schwab, TD Ameritrade, Fidelity, and LPL

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Fiduciary Services – Why Are They Important?

Threats

- Baby Boomers control an estimated $20 trillion in assets and need sophisticated estate planning including trusts
- Blended and complicated family dynamics make trusts an obvious and efficient wealth transfer vehicle
- The ability to provide corporate trustee services is essential to retaining high net worth relationships
- Most bank trust departments will not work with independent investment advisors

Example

- A Wealthcare advisor managed a significantly sized trust account on behalf of the grantor who also served as her own trustee
- Due to family discord, the trustee decided to resign and name a successor corporate trustee – a local bank
- Upon appointment as the new trustee, the bank transferred management of the assets from Wealthcare resulting in the loss of a valuable client relationship

Fiduciary Services - Why Are They Important?

Opportunity

- Many Wealthcare clients may already be current beneficiaries of trusts set up by parents and grandparents
- These trusts are likely being managed and administered by individuals such as family members or banks
- Bank service and attentiveness levels have increasingly become inconsistent and slow, including impersonal communications
- With an independent trust company partnership, Wealthcare advisors have an opportunity to attain new trust management business from existing clients who are beneficiaries of existing trusts

Example

- An advisor in Texas managed the personal assets for a client who was also the beneficiary of a $15 million family trust managed by a bank
- The beneficiary was unhappy with the bank's trust services and wanted his preferred advisor to manage the assets
- The beneficiary named Counsel Trust as successor trustee who retained his preferred advisor as investment manager, resulting in significant new business for the advisor

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Fiduciary Services – Roles and Responsibilities

Wealthcare Advisor

- Manage trust assets and serve as the primary client relationship contact
- Trust assets are held by the advisor firm's preferred custodian
- Periodically transfer funds from the trust to the SEI cash account for making beneficiary distributions and payment of fees
- Generate performance reports and conduct periodic meetings with the client

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- Interpret the trust document and administer the trust, including making discretionary beneficiary distribution decisions
- Coordinate the preparation and filing of trust tax returns - 1041 and K1 with clients' accountant or CTC's vendor accountant
- Generate annual or more frequent principal and income trust statements
- Guide the process of creating new trusts or the transfer of existing trusts – coordinating with legal counsel as necessary

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When should my client consider a corporate trustee vs. an individual trustee?

Qualitative Reasons

- Trustee administrative continuity and longevity can be compromised as individual trustees become subject to health, disability or mortality issues
- Family dynamics, conflicts of interest and inter-family friction can be obstacles for grantors, children or family members serving as trustee when making beneficiary distribution decisions for other members of the family
- Family and friends may not have the required knowledge and experience to effectively manage the trust
- Corporate trustees provide sophisticated data feeds, record keeping, administrative continuity and enhanced regulatory fiduciary oversight

Quantitative Reasons

- A Tennessee based trustee can provide access to favorable trust law – self settled asset protection trusts, wealth trusts, trusts acting as a general partner, etc.
- Avoidance of state income taxes on retained trust income and capital gains
- Desire for 100% step up in basis for highly appreciated property via a TN Community Property Trust
- Grantors can retain control and beneficial interest in assets while simultaneously protecting it from liability and creditor claims
- Estate and gift tax savings or 'asset value freezes' employing a variety of specialized trusts such as SLAT's, IDGT's, GRAT's, GRUT's, etc.

Delegated Trusts

- Delegated Trust Law
  - Uniform trust code states
  - Absent language to the contrary in the trust instrument, the trustee can:
    - Delegate investment management to an outside advisor
    - Delegate business or special asset administration to another advisor or committee
    - Delegate accounting and tax preparation to another advisor
  - Ultimate responsibility and liability for all delegated functions remain with the trustee
  - Higher level governing regulations

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Directed Trusts

- Directed Trust Law
    - Grantor ‘directs’ or names other advisors (in addition to the trustee) in the trust instrument:
    - Trust Protector
    - Investment advisor
    - Business or special asset administration advisor or committee
    - Distribution advisor (including particular family members or associates)
  - Trustee and directed advisors are ‘excluded fiduciaries’
    - Regarding duties, actions and responsibilities of other directed functions
    - Only liable for bad faith or negligence
    - No duty to question if other empowered advisors are acting within scope of authority
    - No duty to intervene with other advisors to prevent or redress a breach
    - No duty to warn beneficiaries if other advisors exceed their power
  - An existing trust can become ‘directed’
    - Absent directed language in the trust instrument
    - A ‘nonjudicial settlement agreement of ‘qualified beneficiaries’, or a court order
    - Decanting the trust
    - Greater control for grantors, beneficiaries and advisors
  - Ultimate responsibility and liability for all directed functions reside with each advisor as directed by the Grantor

Commonly Asked Logistical Questions

Q: Who is the Custodian of the assets?

- Grantor’s (or advisor’s) preferred custodian
- Typical custodians: Schwab, TD Ameritrade, Fidelity, LPL, Pershing, etc
- Electronic data link

Q: How are distribution decisions made? As advisor, will I have any input?

- Pragmatic approach to decision making, including legal advisor input when necessary
- Trustee is responsible and accountable for document interpretation and distribution decision making

Q: How long do trust distribution decisions take? How are the results of those decisions communicated?

- Weekly trust committee meetings, however decisions can typically be made within two business days
- Often dependent upon discussions with other advisors

Q: Are trustees in directed trust states responsible for investment oversight?

- Directed trusts do not require investment oversight
- Administrative trustee duties are separate and distinct from investment management
- Trustee is familiar with investment policies and portfolio construction

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Commonly Asked Logistical Questions

Q: What is the trustee fee schedule?

0.40% annually on the first $1 million

0.35% annually on the next $2 million

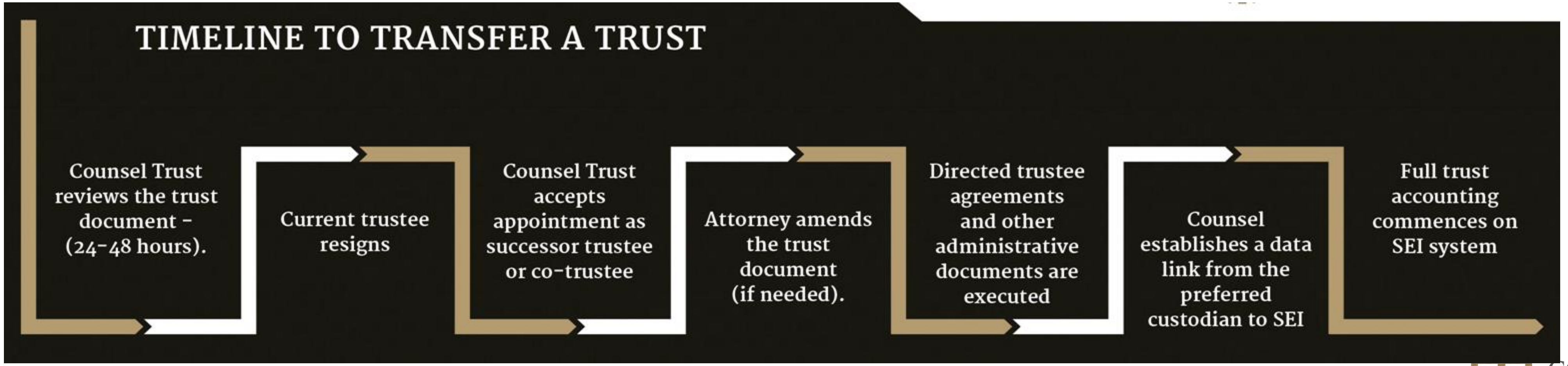
0.30% annually on the next $2 million

0.25% annually on the next $5 million

0.20% annually over $10 million

Minimum annual fee of $2,500

Q: What is the process for setting up a trust? What documents are required?



Prospecting for Trust Asset Management

Objective	Discovery Questions	Action Questions / Comments
Search for an opportunity to manage the assets of: ▪ An existing revocable trust ▪ An existing irrevocable trust ▪ A testamentary trust (under will) ▪ A charitable trust ▪ A special needs trust	- Are you a beneficiary of a trust? - Are you a trustee or an advisor of a trust? - Do you receive an annual K-1? - Who is the current trustee? - Are you pleased with the trustee's services?	Would you be interested in our firm managing the trust assets? Would you like to hear the differences in how we would manage the investments compared to the bank trustee or other advisor? Do you have access to the trust agreement or document?
What to look for – clients or prospects: - Who are beneficiaries of a trust - Receiving a trust K-1 - Receiving a trust statement - Receiving a 1041	- Does the trustee manage the assets? - Does the trustee permit outside managers? - Are you satisfied with the performance?	We partner with a trust administration firm that enables us to manage the trust while maintaining the preferred custodian. This trust firm is chartered in Tennessee, a state that has superior trust laws. There may be revisions that can be made to the trust improving flexibility, protecting assets, saving costs and income taxes.

Prospecting for Trust Asset Management

Circumstance	Estate Planning / Management Hazards and Challenges	Trust Solution	Questions to Ask
Jointly held assets	Potentially disinheriting children and grandchildren.	Directed Revocable Trust	What are your jointly held assets? What are the market values?
Single name assets	Probate Costs of 5% to 10% (attorney and executor fees).	Directed Revocable Trust	Do you have significant assets in your single name? Do you have a will?
Closely held business	Lack of a succession plan. Significant appreciation subject to estate tax.	Intentionally Defective Grantor Trust (IDGT).	Do you own a closely held business that may be merged or sold at sometime in the future? Do you have a succession plan?
Profession subject to potential lawsuits	Assets are vulnerable to creditor attachment.	Domestic Asset Protection Trust	Are you in a profession or business requiring liability or malpractice insurance?
Assets in excess of $23.16 million	U.S. estate tax burden (top bracket is 40%).	Irrevocable Life Insurance Trust (ILIT), Perpetual Trust or IDGT, Grantor Retained Annuity (GRAT) or Uni Trust (GRUT).	Are you seeking ways to remove taxable assets from your estate while retaining the income and control during your life?
Unique assets	Uncertainty regarding long term management, division and distribution.	Directed Revocable Trust capable of holding and managing unique assets.	Do you own illiquid (unique) assets such as real estate that should be maintained in the family?
Beneficiary or trustee of a trust	Asset management or trust administrative issues. Subject to state income tax. Document flaws.	Name a successor trustee and change the trust situs.	Do you receive a K-1? Are you satisfied with the asset management and overall trust administration?
Broad or limited power of attorney	Limited time or expertise acting as attorney in fact. Management liability.	Directed Revocable Trust.	Have you drafted a power of attorney or are you named as an attorney in fact?

Prospecting for Trust Asset Management

Circumstance	Estate Planning / Management Hazards and Challenges	Trust Solution	Questions to Ask
Interest in making charitable gifts	Failure to provide the greatest tax savings and gifting structure.	Charitable Remainder or Income Trust	Do you own low basis assets, producing insufficient income?
Significant assets with a desire to shift wealth and income among family members	Possibility of younger generation mismanagement. Estate / income tax inefficiencies.	Multi-Generational (perpetual generation skipping) Trust. Family Limited Partnership.	Desire to save estate taxes? Asset management concerns regarding younger generation beneficiaries?
Desire to maintain closely held or other private business interest for successive generations	Lack of a succession plan, significant appreciation subject to estate or inheritance tax, estate tax illiquidity issues.	Irrevocable Life Insurance Trust (ILIT), Intentionally Defective Grantor Trust (IDGT).	Do you own a private business that may continue to be held by younger family generations, or ultimately merged or sold in the future?
Special needs family members or a need to plan for nontraditional heirs	Asset mismanagement concerns and / or ineffective personal care administration.	Special Needs Trust with Trust Protector and / or Distribution Advisor.	Do you intend to provide for the financial or other personal care needs of an heir?
Inheritance expectation of a client with significant other assets	Assessment of estate taxes on succeeding generations.	Generation Skipping Trust.	Are you expecting a significant inheritance?
Family business management continuity	Maintaining and managing the family business for the ultimate benefit of young heirs.	Trust Protector or Special Holding Committee within a Directed Revocable or Testamentary Trust.	Do you want to maintain an intergenerational firm?

Contact Information

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APPENDIX

Directed Trust Examples

- DAPT – Domestic Asset Protection Trust Example

  - Charles is a practicing surgeon with significant earnings and life savings. He has no current litigation pending, however is concerned that even a frivolous malpractice lawsuit could have a negative impact on his net worth and ability to earn a living.

    - **Plan**

      - Charles creates a $3M DAPT - a 'self settled' irrevocable trust with a TN situs
      - Self settled means that Charles can receive distributions from the trust (in the trustee's discretion)
      - Other key objectives are asset protection and reducing the taxable estate

    - **Advantages**

      - Full asset protection is achieved 2 years after the DAPT is established
        - With the exception of child support and alimony
        - If DAPT is set up prior to marriage, it can serve as a pre-nuptial agreement substitute
      - The non grantor trustee can make discretionary distributions from the trust to the grantor
      - Grantor / beneficiary can use or occupy real or tangible personal property held in the trust
      - Grantor is responsible for payment of all income tax
      - DAPT can be excluded from Charles' estate if distributions are entirely in the trustee's discretion

Directed Trust Examples

- SLAT – Spousal Limited Access Trust Example
  - John, a PA resident has an estate of $4 mil including a $2 mil business that he founded. His wife, Mary is unfamiliar with the business and John hopes it can continue for future generations of his family
    - **Plan**
      - John creates a $2M SLAT (irrevocable trust) for Mary and a $2 mil revocable family trust - situs in TN - a directed trust state
      - A SLAT is essentially a credit shelter or bypass trust set up during life
      - If John predeceases Mary, she receives income and principal payments from the two trusts during her lifetime with the remainder passing to the children at her death
      - The SLAT can be a grantor trust, enabling John to personally pay the federal income tax, benefiting from the lower personal income tax bracket
    - **Advantages**
      - The trusts remove the risk of Mary's re-marriage, potentially disinheriting the children
      - The trusts are non-probate, saving John's and Mary's estate about $300k or more depending on date of death values
      - The SLAT avoids PA Inheritance tax, (a 4.5% rate), saving about 90k
      - The SLAT avoids PA state income tax on accumulated income and gains because the situs is TN - a no income tax state

Directed Trust Examples

- SLAT – Spousal Limited Access Trust Example

  - **Advantages continued**

    - Trust assets pass to succeeding generations free of all estate and inheritance taxes for both spouses (except for about 90k in PA Inheritance tax assessed to the family trust at John's death)
    - SLAT avoids disputes in the event John and Mary divorce
    - The SLAT is protected from creditors during both spouses' lives
    - Both trusts are protected from Mary's creditors and potential future spouse claims
    - SLAT can serve as a dynasty family trust, sheltering assets from next generation creditors and possible divorces
    - Both trusts enjoy all the benefits and flexibilities of directed trusts (see slide 7)

  - **Management**

    - The SLAT names a trust protector to oversee overall trust management and efficacy
    - Preferred investment advisor is appointed to manage non business assets
    - A business management committee is named to assure continuity and stability of business operations and growth

Directed Trust Examples

- IDGT – Intentionally Defective Grantor Trust Example
  - Jill owns a rapidly growing sub chapter S corporation recently valued at $3 million with a plan to sell the company at sometime in the future
    - **Plan**
      - Jill creates an IDGT and gifts all Sub S shares into the trust – a completed gift, removing the asset from her taxable estate
      - Alternatively, to mitigate gift taxes and use of the gift tax exemption, Jill can sell the shares to the trust in exchange for an installment note, coupled with a gift of additional assets as security for the note
      - The IDGT is an irrevocable trust in which the Jill retains certain powers, thus making it a grantor trust under income tax rules
        - Example: Jill can retain voting rights or the right to remove and replace trust assets of equal value
      - The IDGT is also an estate value 'freeze' technique – future growth is removed from Jill's estate
    - **Advantages**
      - Because the IDGT is considered a grantor trust for income tax purposes
        - The IDGT is permitted to hold sub S stock
        - Jill pays all income tax so that the trust compounds tax free for beneficiaries
        - No taxable gain is recognized on the sale of stock to the trust (Jill and trust are 'alter egos')
      - Trust assets are protected from creditors; divorces, etc.
      - May avoid state income tax if trust situs is a no income tax state (like TN)
      - Trust assets are protected from all future beneficiary creditors and divorces
      - Dynasty trust provisions can be made to mitigate taxes for future generations

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Directed Trust Examples

- GRAT / GRUT – Grantor Retained Annuity or Uni-Trust
  - Joe and Amy, a retired married couple in good health have an estate in excess of the combined unified credit exemption of $23.16 million. Continued asset growth and significant cash flow is expected. Maintaining income is important to the couple, however they want to maximize the eventual transfer of assets to their heirs.
    - **Plan**
      - Establish an irrevocable GRUT, a completed future interest gift with a 10 year term
      - The low future interest value mitigates using the unified credit and gift tax payable
      - Continue to receive the GRUT income at a specified rate on the value of GRUT assets annually
    - **Advantages**
      - Save estate and inheritance taxes by reducing the size of the estate
      - Excellent estate ‘freeze’ technique, escaping estate and inheritance taxes on GRUT appreciation
      - Trust assets are sheltered from creditors
      - Grantors are responsible for income tax on the GRUT, further enhancing assets passing to heirs
      - Remainder passes to heirs or as a continuing dynasty trust - estate tax free
      - QPRT – Qualified Personal Residence Trust is similarly structured
        - Remove appreciation value of Grantor’s home from the taxable estate
        - Freezes the value of the residence for estate tax purposes
        - Grantor retains the right to live in the home for a term of years
        - Gift of a future interest
        - Trust passes to heirs at term’s end