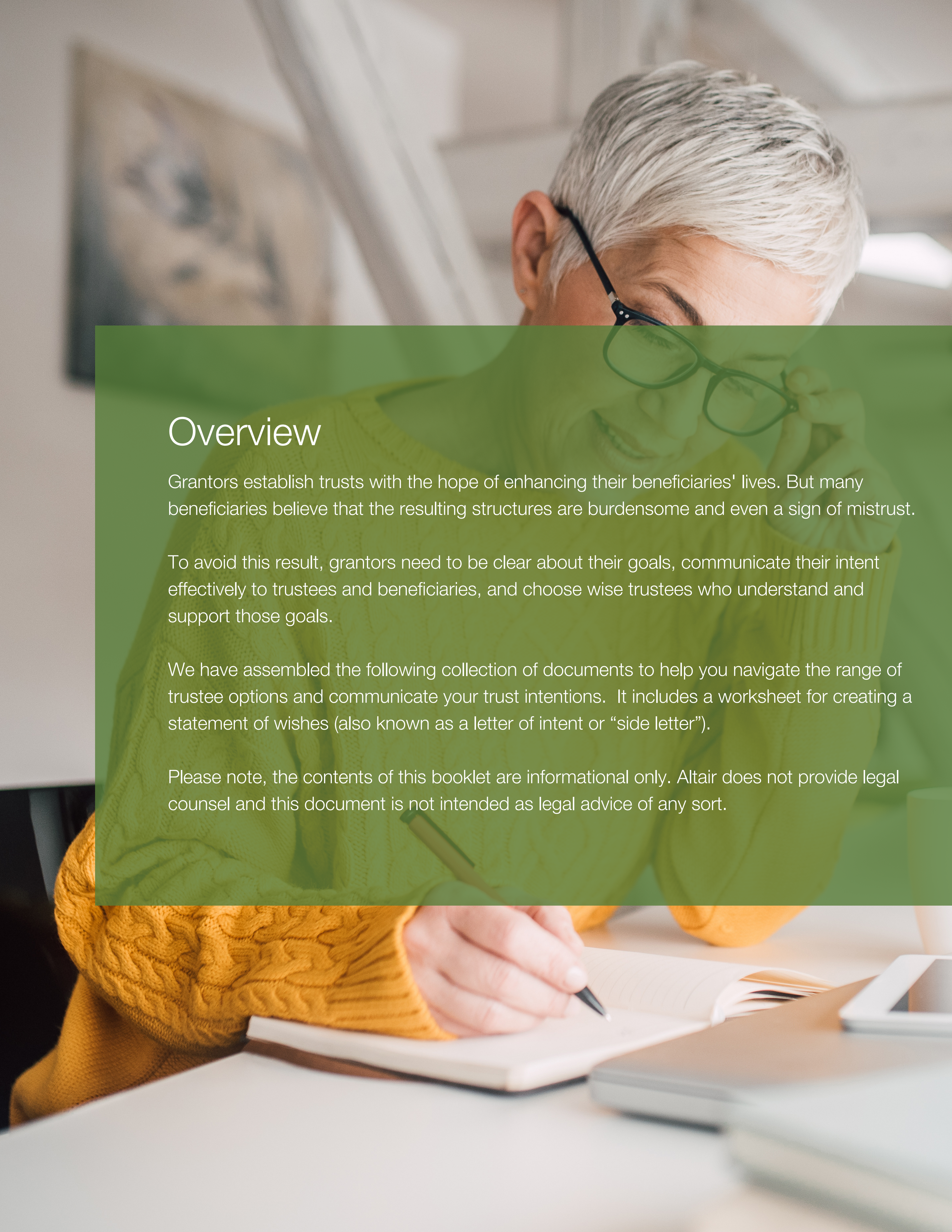
ALTAIR

Selected Resources

Trust Building: Expressing Intent and Choosing Wise Trustees



Overview

Grantors establish trusts with the hope of enhancing their beneficiaries' lives. But many beneficiaries believe that the resulting structures are burdensome and even a sign of mistrust.

To avoid this result, grantors need to be clear about their goals, communicate their intent effectively to trustees and beneficiaries, and choose wise trustees who understand and support those goals.

We have assembled the following collection of documents to help you navigate the range of trustee options and communicate your trust intentions. It includes a worksheet for creating a statement of wishes (also known as a letter of intent or "side letter").

Please note, the contents of this booklet are informational only. Altair does not provide legal counsel and this document is not intended as legal advice of any sort.

Table of Contents

Achieving Family Trust Intentions
Dr. Keith Whitaker

- What are your trust intentions?
    - Minimizing taxes
    - Protecting assets
    - Providing for professional management
    - Others?

- Reframing intentions
    - Family wealth vs. family financial wealth
    - Spirit of gift vs. transfer
    - More complete measure of family trust success: "Do beneficiaries view their trusts not as burdens that complicate their lives but as blessings that truly help them live well?"

- Putting these intentions into practice
    - Understanding what a trust truly is
    - The role of effective communication
    - Ways to foster effective communication
        - As a grantor
        - Through the choice of trustee
        - The responsibility of the beneficiary

- Summary
    - Infuse the trust with spirit
    - Encourage effective communication
    - Prepare the trustee and beneficiary to take responsibility for keeping the spirit of the gift alive

Keith Whitaker, Ph.D.
keith@wisecounselresearch.com

Summary of Trustee Options

Summary of Trustee Options

ALTAIR

CONSIDERATIONS IN CHOOSING A TRUSTEE

Experience & Expertise

- Technical expertise (legal, accounting, administrative)
- Familiarity with trustee duties

Personal Characteristics

Empathy, patience, flexibility, impartiality, honesty, prudent judgment, accessibility

Family Needs

- Relationship with family today
- Fit as family needs evolve

ALTAIR

See disclosures at end of document

Primary Trustee Options

Individual Trustees
A trusted individual, family or non-family member, can be a professional attorney or CPA

Corporate Trustees
Full-service institutions, typically banks or trust companies

Independent Trustees
Professions that focus on the trust administration and family relationships rather than investment of trust assets

ALTAIR

See disclosures at end of document

Individual Trustees

Pros:

- Knows the grantor personally and may be more familiar with their trust intentions and the family situation.
- Can be flexible to respond to special circumstances or needs in ways that might not be possible for corporate trustee.
- Compensation is typically lower or nonexistent.
- May have personal interest in beneficiaries well being.
- Sole focus, not serving a group of clients.
- May be more comfortable retaining concentrated investments.

Cons:

- Personal relationship can make it difficult for him/her to be impartial or take a hard line when required.
- May have expertise in one or two areas but likely not across all trustee duties.
- If he/she makes a mistake with a significant outcome, may not have the insurance or financial resources to reconcile.
- Requires appointment of successor trustee and plan for transition.
- Little to no regulation, no enforcement of fiduciary standards.

See disclosures at end of document

Corporate Trustees

Pros:

- Broad expertise across all trustee duties.
- Continuity of trusteeship is provided through corporation.
- Unbiased and will make decisions based on knowledge not emotion.
- Has deep pockets so if mistake is made, remuneration is possible.
- Highly regulated with high standard of professional responsibility.

Cons:

- Has less flexibility to adjust to unexpected family needs.
- Can be more expensive.
- May not have the personal perspective of the grantor's intent or personal connection with the beneficiaries.
- May be conflicted if also providing investment oversight of trust assets.
- Trust officer(s) turnover.
- Corporation can be sold/acquired.

See disclosures at end of document

Independent Trustees

Pros:

- Has the broad expertise of a corporate trustee with less potential for conflicts of interest.
- Focused on trust administration and family relationships.
- More flexible investment strategies available including custody of non-conforming assets (real estate, limited partnerships, etc.).
- Regulated financial institution with high standard of professional responsibility.

Cons:

- May be more expensive than an individual trustee but possibly less than corporate.
- Newer concept, not as widely known.
- Advisory team expands with division of trustee and investment relationships.

See disclosures at end of document

Additional Options

Co-Trustees

Two or more individuals who have been named to act together in managing a trust's assets.

A corporate and/or independent trustee can also be a co-trustee.

Trust Protectors

An independent adviser appointed to monitor how a trust is administered and distributed.

The powers granted to a trust protector can vary widely and are typically documented within a trust.

Commonly, this person has the ability to remove a trustee with or without cause as well as make updates to the trust to respond to changes in the law or changing circumstances of the trust beneficiaries.

Directed Trusts

A trust in which a "Directing Party" (e.g. a third-party investment manager to manage trust investments, or a third-party to make discretionary distribution decisions) is named within the trust instrument, pursuant to applicable state law.

The Directing Party guides the trustee concerning management of the trust assets and may assume full fiduciary responsibility and liability for its designated sphere of authority.

The trustee, in turn, assumes no fiduciary responsibility or liability for actions within the Directing Party's sphere of authority. The trustee when so directed, becomes an "excluded fiduciary."

See disclosures at end of document

Summary of Trustee Responsibilities

Fiduciary Duties
Maintain loyalty to the beneficiary(s).
Understand the beneficiary(s)'s situation and needs.
Be familiar with all requirements and terms of the trust document to ensure that its provisions are closely followed.
Collect and protect the personal assets and have them titled in the trust's name. This means that the trustee obtains possession of the assets and maintains control for the term of the trust. The trustee is obligated to protect and preserve the assets.
Keep funds separate. The trustee is not allowed to co-mingle the trust's assets with other family funds or the funds of any other trust
Remain impartial. In cases in which one beneficiary receives income from the trust and another receives the remainder of the trust at its expiration, the trustee must deal fairly with both competing interests by providing a reasonable income while preserving assets
Provide information and accounting to the beneficiaries. An annual report should offer a clear picture of the state of the trust, including its gains, losses, expenses and income. The trustee also should provide reasonable reports at the beneficiaries' requests and allow the beneficiaries to inspect the accounts and other related properties.

Administrative Duties
Receive and conduct an inventory of the trust assets.
Change titles of trust assets as required.
Establish bookkeeping procedures.
Pay bills from trust if applicable.
Maintain records of all income and principal transactions; prepare periodic accounting.
Submit records for independent audit as required.
Prepare and file federal and state income tax returns annually.
Furnish information for beneficiary tax returns.
Obtain IRS registration for the trust.
Arrange for security of all assets.
Monitor disbursements to maintain benefit entitlements.
Hire and monitor service providers.
Maintain communication with the beneficiary and service providers.

Trustee Qualifications, Personality and Character Traits

Personality and Character Traits of the Ideal Trustee

Honest	Can Say No Gracefully
Wise	Common sense – not just book smart
Not power minded	Good Listener
Epitomizes High Values and Integrity	Asks the “right” questions at the right time
Doesn’t play games	Logical
Down to earth	Can relate to and get along with people
Honors confidential information	Can see the big picture, as well as the details
Respectful	Compassionate and Empathetic
Won’t bend under pressure	Willing to learn
Brings out the best in people	Thoughtful
Sense of humor	Patient
Loyalty	Shuns self-dealing or the appearance of it

Background and Experiences that Might Prove Helpful for the Ideal Trustee

Investment Management	Legal - particularly tax or estate planning
Human Development or Human Resources	Finance or Banking
Accounting	Private Equity
Counseling or Clergy	Philanthropy
Family Wealth Consulting or Coaching	

Taken from
The New Paradigm in Trust Distribution and Governance Models

September 28, 2005

Sample Statement of Wishes

NOTE: The following is a direct excerpt from the book, Family Trusts: A Guide for Beneficiaries, Trustees, Trust Protectors and Trust Creators, by Hartley Goldstone, James E. Hughes, Jr, and Keith Whitaker.

Appendix 1

Sample Legacy Letter

The following multi-part legacy letter is offered as an example meant to spur readers' thinking. Besides removing personally identifying information, we have not modified it, so its parts reflect the values and judgments of its authors. We do not mean to endorse these values or judgments. We have used this letter with gratitude to and the permission of its author.

LETTER TO TRUSTEES

Dear ___________:

I. Purpose

I have spent a great deal of time thinking about how to arrange my estate after I die. I do this mostly because I want to give my family the best opportunity to thrive after me.

I do not wish for the money I leave behind to harm their pursuit of meaningful lives; rather, I would like it to be helpful.

My plans provide for trusts to benefit [WIFE] and [CHILD]. They call for you, [NAMES OF TRUSTEES] to serve as trustees. The relationships I am creating among you, on paper, will end up being incredibly significant in each of your lives. My sincere hope is that your relations will be positive, generative, and healthy.

I write this letter for the following purposes:

1. To help you understand what my hopes are for your relationships now and in the future.
2. To encourage you, now, to deepen your relationships with [CHILD] and [WIFE]. It is important that you know them well, and they you.
3. To inspire meaningful conversation between and among you, and me, about the principles that I wish to govern the discretionary decisions the trustees will be asked to make about money in the future.

What follows is meant to give you some things to talk about together and with me. It is not meant to go on your shelves or e-mail inboxes, collecting dust until my death. Let's get together and talk.

With that in mind, the rest of this letter and its enclosures are things I want you to know. Included are personal notes to [WIFE] and to [CHILD]. I have chosen to let you trustees "listen in" on these letters because I think it is important for you to know my feelings as you deepen your relationships with them now and in the future.

II. Exhibits

1. Ethical Will
2. Fiduciaries and Advisors Contact Info
3. Funeral Arrangement Letter
4. Statement of Financial Position

5. Estate Plan Diagram
6. Financial Planning Documents
7. Charitable Giving History
8. Investment Policy Statement

III. Ethical Will

I have included a copy of the current draft of my Ethical Will as Exhibit A. My Ethical Will describes many of my core values and life principles, including about life and money. Please read it carefully.

IV. Instructions at Death

Upon my death, *to the extent not already handled in my lifetime*, I would like you to consider these instructions:

1. My desire is to close my business. A diminishing number of executives and staff will need to remain as employees during this wind down and dissolution stage, as I expect for the business to collect on receivables and distribute the liquid assets to my estate. I am presently working on the sale of my business.
2. I have included a letter to [FUNERAL DIRECTOR] with instructions regarding my wishes for my funeral, attached as Exhibit C. My desire is to have a simple ceremony with nice music and a celebratory mood.

[Exhibit V, Messages to Wife, omitted.]

VI. Messages to [CHILD]

Dear [CHILD],

I am writing this letter to you to tell you what my hopes are for how you will benefit the most from the funds that I am leaving in trust for you. Being a young person with funds set aside for them is a big responsibility. I want it to help you find a meaningful life. I do not want it to hurt you.

While I am alive, I am responsible for deciding about your education and money. When I am gone, the trustees will perform this role.

There are five things I want to emphasize for you to help you on this path:

1. *Forge a meaningful relationship with your trustees.* I have some dear friends who have agreed to serve as your trustees. This is a major responsibility. They will have discretion to decide when and how to help you financially. I want your relationship with them to be close and meaningful. You have a responsibility to seek them out, to know them, to let them in on your life—your plans, hopes, dreams, and fears. Do this as early and often as possible. They have a responsibility to listen to you, care about you, and mentor you. They also have a responsibility to consider the values I have asked them to consider. Please give them your respect and understand that they have an important and challenging job to perform for you.
2. *Learn to be money wise.* I will have left you money in trust. Do not let it get in the way of your happiness. Too many people with money think they do not need to work, do not need to struggle, do not need to worry about understanding money, spending, budgets, and the like. Do not be that person. Learn about money. Learn about business and budgets and banks and investing. Learn how to read a bank statement, a financial statement, an investment report. Become a saver. Become a giver.
3. *Pursue education and learning.* Get an education. You are bright and curious. In the modern world, a young person like you should pursue a graduate-level degree. Beyond that, love to learn in all its forms, particularly through experiential world travel. The trustees should help you fund these pursuits.

4. *Work and contribute.* Find a meaningful vocation that allows you to use your incredible gifts to their fullest. It matters far less to me that this be financially rewarding, or how society perceives its values, and far more that you find meaning and fulfillment from it. Do not ever allow yourself to be lazy or dependent on others. Give of your own money and your time; we have a responsibility to help those less fortunate. Find some way to do this working together with others.
5. *Deal with conflicts.* There will be times when your trustees will have to make some really tough decisions. Sometimes those decisions will involve balancing what might be good for you with what might be good for your mother. Other times it might mean balancing what they think is good for you and your mother with what their bank co-trustee is doing with investing. Other times it might mean balancing what they want to do for you with what the law or my trust document says. Please be understanding and forgiving. They have a hugely challenging job.

I love you. I am proud of you. My time with you has been, and is, my greatest joy. I know you will flourish.

Your loving father.

VII. Messages to Trustees

Dear [NAMES OF TRUSTEES],

More than anything else, my message to you is this: get to know [WIFE] and [CHILD]; know them now, and forge a close relationship for the years to come. Be their friends and mentors. The rest of what follows is secondary to this grand hope. If you are close, I am confident that the rest will follow.

Beyond that, here are some additional thoughts I wish to share with you to help guide you with the many discretionary decisions you will need to make as my trustees:

First the obvious—follow the instructions in the trust agreements. My overriding intent about distributions is that the beneficiaries have financial peace and security, not superfluous excess. Be conservative with the investments of the trusts and maintain a long-term perspective. I have included for you the Investment Policy Statement that was developed with [INVESTMENT ADVISER] to monitor and assist in the investment guidelines that the corporate trustee should follow as managers of the estate. I shall talk further with you as to the function of each trust so that individual investment policy statements are developed for each trust.

The primary purpose of my trust during my lifetime with [WIFE] is to support our lives. After I am gone, it will be to support [WIFE]'s life. Any remainder will go to [CHILD]'s trust, where I would like it to support her care and education but preserve assets for educating her descendants.

My trust documents call for three individual trustees at all times, four while [WIFE] is alive. Individual trustees should retire at the earlier of incapacity or upon reaching the age of 75 years old. A trustee may voluntarily relieve him/herself of the responsibility as well.

You will have an appointed corporate trustee to do the "heavy lifting" for you: investing of assets, legal compliance/ issues, income tax compliance, mitigating risk, and safeguard assets from creditors. Your primary focus will be to maintain relationships with the beneficiaries and to make discretionary decisions about the distributions from the trusts. A general summary of the estate plan is included as Exhibit E. I encourage you to cultivate good relationships with [LAWYER] and [TAX ADVISER], but you should feel no obligation to continue working specifically with them.

I have calculated the numbers and have included for you my most current statement of financial position (Exhibit D), family budget and capital need analysis (Exhibit F), and charitable contribution history (Exhibit G). You will see that based on the assumptions in these exhibits, if I die at 85 years old and then

[WIFE] at 85 years old, there should be $____ million of investment assets, plus homes remaining at [WIFE]'s death. This is all calculated at a (hopefully) conservative long-term annualized investment return of inflation plus ____ percent.

Regarding distributions from trusts to beneficiaries:

All trustees must make decisions on distributions to beneficiaries, and I encourage you to maintain good communication with the corporate trustee. My overriding hope is that the trust funds we have provided for the beneficiaries will be used to enhance their lives and will not serve as an impediment to their happiness or sense of accomplishment and self-worth.

Be wise and discerning with distributions:

1. Do not enable long-term dependency on the funds that are distributed. I want them to be productive people who have a fully developed sense of self. If someone chooses a career that is a low-paying job, it is okay to underwrite them and support them with financial distributions.
2. Be aware of any possible substance abuse and avoid funding destructive behavior of this sort. Pay for rehabilitation services and promote reconciliation and recovery.
3. Be generous for educational expenses and to cover medical care costs.
4. Be supportive of international travel. There is so much to learn in the world outside of our daily lives.
5. Support entrepreneurial endeavors, but be wise in mitigating risks and require provision of a business plan to the Trustees with a request of funds.
6. Consider distributions for the purchase of a primary personal residence.

My desire is for [CHILD] and any children she may have to be educated in financial matters and be mentally engaged in the operations of her/their trust(s). The goal is for her to make informed financial decisions, so as not to purchase more shoes or frivolously spend money. I would like [CHILD] to work for things. Do not distribute large amounts of money without supportive reasoning. If she wants money for an entrepreneurial venture or investment, encourage her to have a material involvement in it.

I have a donor advised fund at [INSTITUTION] and would like for it to be divided into two separate donor advised funds upon my death. [NAMED PEOPLE] will be the successors of one DAF and will distribute those funds at their discretion to charitable organizations. The other DAF will have [NAMED PEOPLE] named successors and will have discretion of the distributions for the same purposes.

VIII. Reflections and Encouragement

If there weren't money involved, I would not be asking you to form relationships. Even though money is the reason I am asking you to build a relationship, my encouragement is that your relationships *not focus on money, but on what really matters in life*. Do this as part of your larger plans for building meaningful lives. Then I will look down and smile.

Now, let the conversations begin. You cannot know how much I look forward to sitting with each of you to talk.

All the best,
[SIGNATURE]

Crafting a Statement of Wishes Worksheet

Crafting a Statement of Wishes

A Statement of Wishes (also called a Letter of Intent or "Side Letter") clarifies a grantor's intentions for the trust and strengthens communications with trustees and beneficiaries. It explains the purpose of the trust and why it was created from the voice of the grantor(s) directly. Documenting this purpose lessens the likelihood of misunderstanding or misinterpretation on the part of the beneficiaries and can provide guidance for a trustee who is struggling with how to make a discretionary decision that aligns with the grantor's intentions.

This worksheet provides a template for surfacing some of the critical aspects of this communication tool and getting started in the creation process

Core Aspects:

Who is speaking? (An individual grantor, a couple, someone speaking for an older trust where the grantor has passed?)

____

____

Who is being spoken to? (An individual beneficiary, a group of beneficiaries, future beneficiaries who are not yet born?)

____

____

What is the main message the speaker wants to convey about the trust?

____

____

____

Developing a Statement of Wishes

As a starting point, this exercise will help you consider the key words for expressing your wishes or intentions for your trusts.

Example:
I have created this trust to give you, my family, what I hope will be the best opportunity to thrive after I am gone. It is a gift of love. I do not wish for the money I leave behind to harm your pursuit of meaningful lives; rather I would like it to further your own abilities to seek opportunities and be helpful.

Step One: Read the list of words below. Circle the words that capture, for you, the purpose of the gift you want your trust to be:[1]

Ambition	Dreams	Hope	Love	Risk
Beauty	Education	Humility	Opportunity	Security
Challenge	Faith	Humor	Patience	Service
Community	Family	Innovation	Personal Growth	Social responsibility
Compassion	Freedom	Joy	Perseverance	Spirituality
Courage	Gratitude	Integrity	Philanthropy	Tolerance
Curiosity	Honesty	Legacy	Pride	Work ethic

Step Two: Are there any other words not on this list that capture your intention?

Step Three: Review the words you circled and put a star next to the four or five that you feel are most important to you

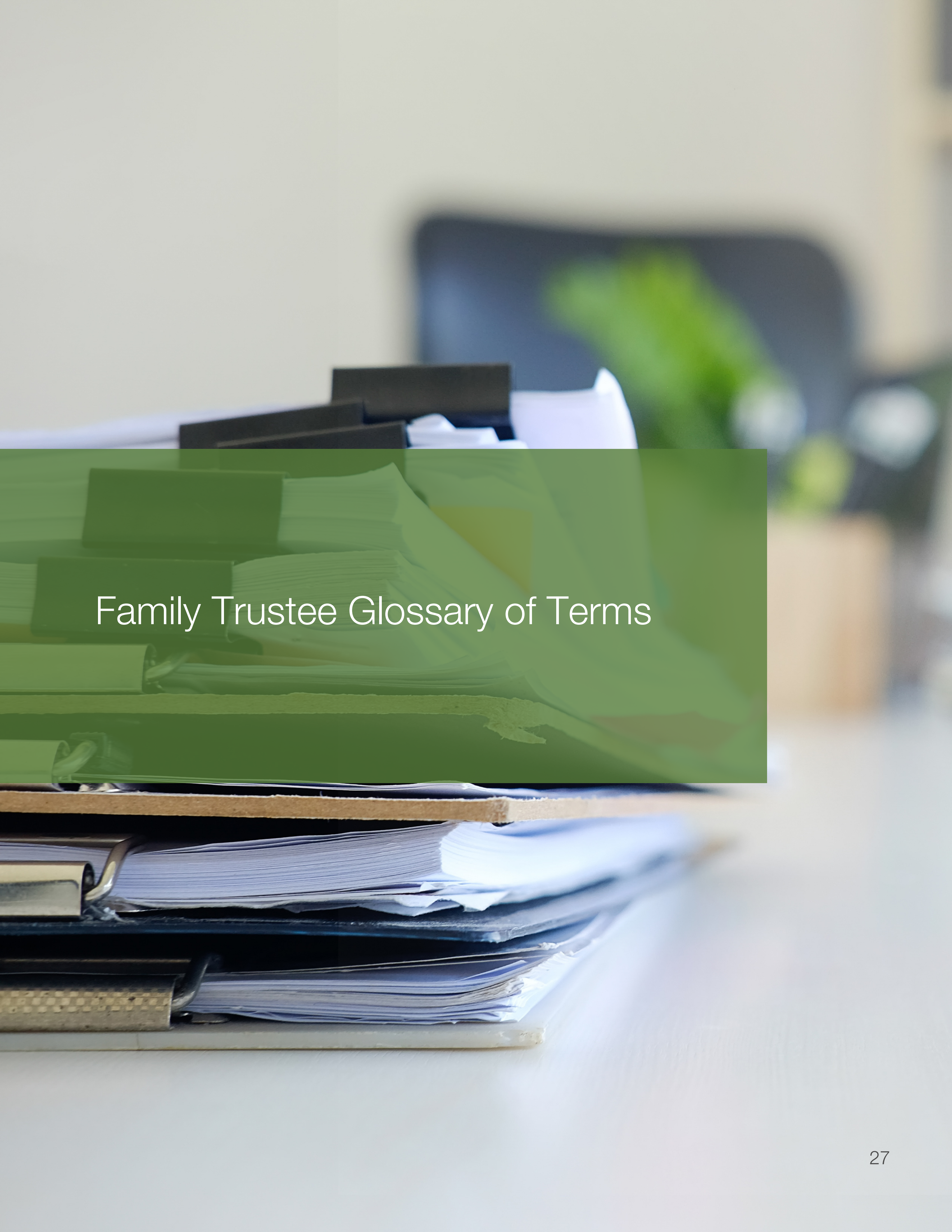
[1] For a more extended version of this exercise, see John A. Warnick, "Expressing Purpose in Your Trusts," in McCullough and Whitaker, eds., Wealth of Wisdom: Top Practices of Wealthy Families and Their Advisors (Wiley: 2022).

Imagine now that you must choose just one of those words as the most important. Put three stars next to it, and explain below why this purpose is so important and what you hope that its accomplishment would mean for the beneficiaries of the trust:

Which word would you choose as second-most important? Explain below why this purpose is so important and what you hope that its accomplishment would mean for the beneficiaries of the trust:

Now do the same for the third-most important word from those you starred:

Finally, use the space below to list any experiences you've had in life that illustrate how important these three purposes are:



Family Trustee Glossary of Terms

ALTAIR

Family Trustee Glossary of Terms

Do you speak Trustese? Familiarity with estate planning terminology is essential for grantors, trustees and beneficiaries. The following glossary includes some of the most common terms and was created to help family member trustees navigate legal conversations and documents with greater ease. Sources used to create this list include: the American Bar Association, the American College of Trust and Estate Counsel (ACTEC), Fiduciary Partners, Nexis Lexis, South Dakota Trust Company and WealthCounsel.

A-B Trust - A trust that includes a tax-planning provision that lets you provide for your surviving spouse and keep control over who will receive your assets after your spouse dies. It also lets both spouses use their federal estate tax exemptions. This can save a substantial amount in estate taxes and leave more money for your beneficiaries.

Administration - The process during which the executor or personal representative collects the decedent's assets, pays all debts and claims, and distributes the residue of the estate according to the will or the state law intestacy rules (when there is no will).

Administrator - The individual or corporate fiduciary appointed by the court to manage an estate if no executor or personal representative has been appointed or if the named executor or personal representative is unable or unwilling to serve.

Alternate Beneficiary - Person or organization named to receive your assets if the primary beneficiaries named in your Trust die before you do.

Ancillary Administration - An additional probate (or court handling of a will and asset distribution) in another state. Typically required when you own real estate in another state that is not titled in the name of your trust.

Annual exclusion - The amount an individual may give annually to each of an unlimited number of recipients free of federal gift or other transfer taxes and without any IRS reporting requirements. In addition, these gifts do not use any of an individual's federal gift tax exemption amount. The annual exclusion is indexed for inflation and is currently $17,000 per individual ($34,000 per married couple). Payments made directly to providers of education or medical care services also are tax-free and do not count against the annual exclusion or gift tax exemption amounts.

Applicable Exclusion Amount - Another name for the estate tax exemption amount (formerly called the unified credit), which shelters a certain value of assets from the federal estate and gift tax. This amount is currently $12.92 million ($25.84 million per married couple) and is inflation adjusted annually.

Ascertainable Standard - A standard, usually relating to an individual's health, education, support, or maintenance, that defines the permissible reasons for making a distribution from a trust. Use of an ascertainable standard prevents distributions from being included in a trustee/beneficiary's gross estate for federal estate tax purposes. Depending on state law, the use of an ascertainable standard may provide less protection for a beneficiary from creditors. If the risk of a lawsuit or divorce concerns you, you should discuss distribution standards with your attorney.

Assets - Basically, anything you own, including your home and other real estate, bank accounts, life insurance, investments, furniture, jewelry, art, clothing, and collectibles.

Assignment - A short document that transfers your interest in assets from your name to another. Often used when transferring assets to a trust.

A-Trust - The surviving spouse's portion of an A-B trust. Also called marital trust or survivor's trust.

Attorney-in-Fact – The person named as agent under a power of attorney to handle the financial affairs of another.

B-Trust - The deceased spouse's and family portion of an A-B trust. Also called a family trust, credit shelter or bypass trust.

Basis - Generally, what you paid for an asset. The value that is used to determine gain or loss for income tax purposes.

Beneficiaries - In a trust, the persons and/or organizations who receive the trust assets (or benefit from the trust assets) after the death of the trust grantor.

Bypass Trust - An arrangement in which a deceased spouse leaves a portion of his/her assets to a trust naming the surviving spouse as lifetime beneficiary, usually with the remainder going to children at the surviving spouse's death. This term is another name for the "B" part of an A-B living trust because the assets in this trust bypass federal estate taxes.

C-Trust - See "QTIP."

Certificate of Trust - A shortened version of a trust that verifies the trust's existence, explains the powers given to the trustee, and identifies the successor trustee(s). Does not reveal any information about the trust assets, beneficiaries, or their inheritances.

Charitable Lead Trust - Named charities receive payments from this trust for a period of time, after which the principal of the trust passes to named individuals.

Charitable Remainder Trust - A tax-exempt trust created during lifetime or at death that distributes an annuity or unitrust amount to one or more designated non-charitable beneficiaries for life or a term of years, with the remaining trust assets passing to charity upon termination of the trust. If appreciated assets are transferred to a charitable remainder trust and sold by the trust, the trust does not pay capital gains tax. Instead, the non-charitable beneficiaries are taxed on a portion of the capital gains as they receive their annual distributions and, in this manner, the capital gains tax is deferred.

Children's Trust - A trust included in your living trust. If, when you die, a beneficiary is not of legal age, the child's inheritance will go into this trust. The inheritance will be managed by the trustee you have named until the child reaches the age at which you want him/her to inherit.

Codicil - A formally executed document that amends the terms of a will so that a complete rewriting of the will is not necessary.

Co-Grantors - Two or more persons who establish one living trust together.

Common Trust - One living trust established by two or more individuals (usually a married couple).

Community Property - A form of ownership in certain states, known as community property states, under which property acquired during a marriage is presumed to be owned jointly. Only a small number of states are community property states, and the rules can differ significantly in these states. Current community property states include: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. In addition, Alaska and Puerto Rico have provisions allowing for some community property arrangements.

Conservator - One who is legally responsible for the care and well-being of an incapacitated person. If appointed by a court, the conservator is under the court's supervision. May also be called a guardian. (Duties and titles can vary by state. For example, in Missouri, there is a guardian of the person and a conservator of the estate.)

Conservatorship - A court-controlled program for persons who are unable to manage their own affairs due to mental or physical incapacity. May also be called a guardianship.

Contest - To dispute or challenge the terms of a will or trust.

Corporate Trustee - An institution, generally a bank or trust company, that specializes in managing trusts.

Co-Trustees - Two or more individuals who have been named to act together in managing a trust's assets. A corporate trustee can also be a co-trustee.

Credit Shelter Trust - Similar to a bypass trust, this trust holds assets intended to be "sheltered" from estate taxes by distributing the assets in trust rather than outright to a surviving spouse.

Creditor - Person or institution to whom money is owed.

Crummey Trust – An irrevocable trust that grants a beneficiary of the trust the power to withdraw all or a portion of assets contributed to the trust for a period of time after the contribution. The typical purpose of a Crummey trust is to enable the contributions to the trust to qualify for the annual exclusion from gift tax.

Custodian - Person named to manage assets given to a minor under the Uniform Transfer to Minors Act. In most states, the minor receives the assets at legal age.

Decanting - a legal process for transferring the assets of an existing irrevocable trust to a new trust with different provisions.

Deed - A document that lets you transfer title of your real estate to another person(s). Also see warranty deed and quitclaim deed.

Descendants – An individual's children, grandchildren, and more remote persons who are related by blood or because of legal adoption. An individual's spouse, stepchildren, parents, grandparents, brothers, or sisters are not included. The term “descendants” and “issue” have the same meaning.

Delegated Trust - A trust in which the trustee delegates some of its fiduciary responsibilities to a third party to handle certain functions for the trust (e.g. a third party investment manager to manage the trust investments). The trustee may make its own independent selection of the third party delegate or may look to the trust grantor and/or beneficiaries for recommendations. The trustee retains fiduciary responsibility and liability for actions taken by the delegate, and typically provides some oversight of the delegate’s activities.

Directed Trust - A trust in which a “Directing Party” (e.g., a third-party investment manager to manage trust investments, or a third-party to make discretionary distribution decisions) is named within the trust instrument, pursuant to applicable state law. The Directing Party directs the trustee/manages the trust assets with respect to its designated sphere of authority and assumes full fiduciary responsibility and liability for its designated sphere of authority. The trustee, in turn, assumes no fiduciary responsibility or liability for actions within the Directing Party’s sphere of authority.

Disclaim - To refuse to accept a gift or inheritance so it can go to the recipient who is next in line. State laws addressing disclaimer may differ, and some wills and trusts might include express provisions governing what happens to assets or interests that are disclaimed.

Discretion - The full or partial power to make a decision or judgment.

Distribution - Payment in cash or asset(s) to one who is entitled to receive it.

Durable Power of Attorney for Property - A legal document that gives another person full or limited legal authority to sign your name on your behalf in your absence. Valid through incapacity. Ends at death.

Durable Power of Attorney for Health Care - A legal document that lets you give someone else the authority to make health care decisions for you in the event you are unable to make them for yourself. Also called a health care proxy or medical power of attorney.

Equity - The current market value of an asset less any loan or liability.

Estate - a term that can have different meanings depending on the context. For example, some financial advisors use “estate” to refer to the sum total of an individual’s assets. In the context of estate taxes, terms such as “Gross Estate” and “Taxable Estate” refer specifically to those assets of a decedent that are subject to estate tax calculations and estate taxation, respectively. When referring to the probate process, “probate estate” refers to assets subject to probate proceedings in a county court. Each of the above contexts implies certain rules for determining included assets.

Estate Planning - A process by which an individual designs a strategy and executes a will, trust agreement, or other documents to provide for the administration of his or her assets upon his or her incapacity or death. Tax and liquidity planning are part of this process.

Estate Tax Exemption Amount - Amount of an individual's estate that is exempt from federal estate taxes. Another name for the unified credit amount, applicable exclusion amount, and credit shelter amount. This amount is currently $12.92 million ($25.84 million per married couple) and is inflation adjusted annually.

Estate Tax - Federal or state taxes on the value of assets left at death. Also called inheritance taxes or death taxes. An estate tax is to be contrasted with an inheritance tax imposed by certain states on a beneficiary's receipt of property. More than 20 states have state estate taxes that differ from the federal system, so an estate could be subject to a state estate tax even if it is not subject to a federal estate tax.

Executor - A person named in a will and appointed by the court to carry out the terms of the will and to administer the decedent's estate. May also be called a personal representative. If a female, may be referred to as the executrix.

Family Trust - A trust established to benefit an individual's spouse, children or other family members. A family trust is often the bypass trust or credit shelter trust created under a will.

Fiduciary - An individual or institution designated to manage money or property for beneficiaries and required to exercise the standard of care set forth in the governing document under which the fiduciary acts and state law. Fiduciaries include executors, trustees, trust investment advisors, trust distribution advisors, and trust protectors.

Funding - The process of transferring assets to a living trust.

Gain - The difference between what is received for the sale of an asset versus what was originally paid for it. Used to determine the amount of capital gains tax due.

Generation-Skipping Transfer (GST) Tax - A federal tax imposed on outright gifts and transfers in trust, whether during lifetime or at death, to or for beneficiaries two or more generations younger than the donor, such as grandchildren, that exceed the GST tax exemption. The GST tax imposes a tax on transfers that otherwise would avoid gift or estate tax at the skipped generational level. Some states impose a state generation-skipping transfer tax.

Gift - A transfer from one individual to another without fair compensation.

Gift Tax - The tax on completed lifetime transfers from one individual to or for the benefit of another (other than annual exclusion gifts and certain direct payments to providers of education and medical care) that exceed the gift tax exemption amount.

Grantor - The person who sets up or creates the trust. The person whose trust it is. Also called creator, settlor, trustor, donor or trust maker.

Grantor Trust - A trust over which the grantor retains certain control such that the trust is disregarded for federal (and frequently state) income tax purposes, and the grantor is taxed individually on the trust's income and pays the income taxes that otherwise would be payable by the trust or its beneficiaries. Such tax payments are not treated as gifts by the grantor to the trust or its beneficiaries. Provided the grantor does not retain certain powers or benefits, such as a life estate in the trust or the power to revoke the trust, the trust will not be included in the grantor's estate for federal estate tax purposes. Contrast with the non-tax reference to a person who forms or makes gifts to a trust as the "grantor."

Gross Estate - A federal estate tax concept that includes all property owned by an individual at death and certain property previously transferred by him or her that is subject to federal estate tax.

GST Exemption - The federal tax exclusion that allows a certain value of generation-skipping transfers to be made without the imposition of a generation-skipping tax. This amount is currently $12.92 million ($25.84 million per married couple) and is inflation adjusted annually.

Guardian - An individual or institution appointed by a court to act for a minor or incapacitated person (the "ward"). A guardian of the person is empowered to make personal decisions for the ward. A guardian of the property (also called a "committee") manages the property of the ward.

Guardianship - See "Conservatorship."

Health Care Power of Attorney - A document that appoints an individual (an "agent") to make health care decisions when the grantor of the power is incapacitated. Also referred to as a "health care proxy."

Health Care Proxy - See "Durable Power of Attorney for Health Care."

Heir - An individual entitled to a distribution of an asset or property interest under applicable state law in the absence of a will. "Heir" and "beneficiary" are not synonymous, although they may refer to the same individual in a particular case.

Holographic Will - A handwritten will.

Homestead Exemption - Portion of your residence (dwelling and surrounding land) that cannot be sold to satisfy a creditor's claim while you are living.

Income - The earnings from principal, such as interest, rent, and cash dividends. This is a fiduciary trust accounting concept and is not the same as taxable income for income tax purposes.

Independent Administration - A form of probate available in many states. Intended to simplify the probate process by requiring fewer court appearances and less court supervision.

Inheritance - The assets received from someone who has died.

Inter Vivos - Latin term that means "between the living." An inter vivos trust is created while you are living instead of after you die. A revocable living trust is an inter vivos trust.

Interest of a Beneficiary - The right to receive income or principal provided in the terms of a trust or will.

Intestate - When one dies without a valid will, such that the decedent's estate is distributed in accordance with a state's intestacy law.

Inventory - A list of the assets of a decedent or trust that is filed with the court.

Irrevocable Life Insurance Trust (ILIT) - An irrevocable trust created to hold life insurance policies on the life of the grantor, usually created to remove those policies from the grantor's estate for estate tax purposes.

Irrevocable Trust - A trust that generally cannot be terminated or revoked or otherwise modified or amended by the grantor. As modern trust law continues to evolve, however, it may be possible to effect changes to irrevocable trusts through court actions or a process called decanting, which allows the assets of an existing irrevocable trust to be transferred to a new trust with different provisions.

Joint Ownership - A form of ownership in which two or more persons own the same asset together. Types of joint ownership include joint tenants with right of survivorship, tenants in common, and tenants by the entirety.

Joint Tenancy - An ownership arrangement in which two or more persons own property, usually with rights of survivorship.

Joint Tenants with Right of Survivorship - A form of joint ownership in which the deceased owner’s share automatically and immediately transfers to the surviving joint tenant(s).

Land Trust - Often used for privacy. Title is transferred to a corporate trustee or corporation, but you keep control over how the property is managed. Because the title is in the name of the corporate trustee or corporation, no one knows the property belongs to you. In all financial transactions and dealings, your personal name never comes up. Also called a title holding trust.

Life Beneficiary - An individual who receives income or principal from a trust or similar arrangement for the duration of his or her lifetime.

Life Estate - The interest in property owned by a life beneficiary (also called life tenant) with the legal right under state law to use the property for his or her lifetime, after which title fully vests in the remainderman (the person named in the deed, trust agreement, or other legal document as being the ultimate owner when the life estate ends).

Liquid Assets - Cash and other assets (like stocks) that can easily be converted into cash.

"Living Probate" - The court-supervised process of managing the assets of one who is incapacitated.

Living Trust - A written legal document that creates an entity to which you transfer ownership of your assets. Contains your instructions for managing your assets during your lifetime and for their distribution upon your incapacity or death. Avoids probate at death and court control of assets at incapacity. Also called a revocable inter vivos trust. A trust created during one’s lifetime.

Living Will - A written document that states a individual's wishes on whether to be kept alive by artificial means when an illness or injury is terminal.

Marital Deduction - A deduction on the federal estate tax return that lets the first spouse to die leave an unlimited amount of assets to the surviving spouse free of estate taxes. However, if no other tax planning is used, and the surviving spouse’s estate is more than the amount of the federal estate tax exemption in effect at the time of his/her death, estate taxes will be due at the second death.

Marital Trust - A trust established to hold property for a surviving spouse in A-B trust planning and designed to qualify for the marital deduction. A commonly used marital trust is a qualified terminable interest property trust, or QTIP trust, which requires that all income must be paid to the surviving spouse.

Minor - One who is under the legal age for an adult, which varies by state (usually age 18 or 21).

Net Estate - The value of an estate after all debts have been paid. (Federal estate taxes are based on the net value of an estate.)

Net Value - The current market value of an asset less any loan or debt.

No-Contest Clause - A provision in a will or trust agreement that provides that someone who sues to receive more from the estate or trust or overturn the governing document will lose any inheritance rights he or she has. These clauses are not permissible in all instances or in all states.

Non-Judicial Settlement Agreement - a legally binding agreement created outside the court system that requires the approval of all persons whose consent would be required were the settlement to go through normal court proceedings. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that would normally be approved by the State courts under which the trust is governed.

Non-Resident Alien - An individual who is neither a resident nor a citizen of the United States. A non-resident alien nonetheless may be subject to federal estate tax or probate with regard to certain assets sitused in the United States. An estate tax treaty between that individual's home country and the United States may affect this result.

Operation of Law - The way some assets will pass at your death, based on state law or the titling (ownership) of the asset, rather than under the terms of your will.

Payable-on-Death Account - See "Totten Trust."

Per Capita - A way of distributing your estate so that your surviving descendants will share equally, regardless of their generation.

Per Stirpes - A Latin phrase meaning “per branch” and is a method for distributing property according to the family tree whereby descendants take the share their deceased ancestor would have taken if the ancestor were living. Each branch of the named person’s family is to receive an equal share of the estate. If all children are living, each child would receive a share, but if a child is not living, that child’s share would be divided equally among the deceased child’s children.

Personal Property - Movable property. Includes furniture, automobiles, equipment, cash and stocks. Opposite of real property that is permanent (like land).

Personal Representative - An executor or administrator of a decedent’s estate.

Portability - An estate planning law that permits a surviving spouse to apply the unused portion of the federal estate tax exemption from the deceased spouse's estate in addition to his or her own federal estate tax exemption. For example, if the first spouse dies and the value of his or her estate does not require the use all of his or her federal exemption from estate taxes, then the amount of the exemption that was not used for the deceased spouse's estate may be transferred to the surviving spouse's exemption so that he or she can use the deceased spouse's unused exemption plus his or her own exemption when the surviving spouse later dies.

Pour-over Trust - A trust established to receive assets after an individual's death, either from the decedent's probate estate, from another trust or from assets that name the pour-over trust as a beneficiary (such as life insurance).

Pour-over Will – A will usually be established in conjunction with a revocable living trust that transfers ("pours over") any assets passing through one's probate estate into their revocable living trust after death.

Power of Appointment - A power given to an individual (usually a beneficiary) under the terms of a trust to appoint property to certain persons upon termination of that individual's interest in the trust or other specified circumstances. The individual given the power is usually referred to as a "holder" of the power. The power of appointment may be general, allowing the property to be appointed to anyone, including the holder, or limited, allowing the property to be distributed to a specified group or to anyone other than the holder. Property subject to a general power of appointment is includible in the holder's gross estate for federal estate tax purposes.

Power of attorney - Authorization, by a written document, that one individual may act in another's place as agent or attorney-in-fact with respect to some or all legal and financial matters. The scope of authority granted is specified in the document and may be limited by statute in some states. A power of attorney terminates on the death of the person granting the power (unless "coupled with an interest") and may terminate on the subsequent disability of the person granting the power (unless the power is "durable" under the instrument or state law).

Power of Withdrawal - A presently exercisable power in favor of the power holder other than a power exercisable in a fiduciary capacity limited by an ascertainable standard, or which is exercisable by another person only upon consent of the trustee or a person holding an adverse interest in the trust.

Principal - The property (such as money, stock, and real estate) contributed to or otherwise acquired by a trust to generate income and to be used for the benefit of trust beneficiaries according to the trust's terms. Also referred to as trust corpus.

Private Trust Company - An entity formed by a family to serve as fiduciary for the estates and trusts of extended family members. Often referred to as a family trust company.

Probate - The court supervised process of proving the validity of a will and distributing property under the terms of the will or in accordance with a state's intestacy law in the absence of a will.

Probate Estate - The assets that go through probate after you die. Usually these include assets you own in your name and those paid to your estate. Usually does not include assets owned jointly, payable-on-death accounts, insurance and other assets with beneficiary designations. Assets in a trust also do not go through probate.

Probate Fees - Legal, executor, and appraisal fees and court costs when an estate goes through probate. Probate fees are paid from assets in the estate before the assets are fully distributed to the heirs.

Probate Tax - A tax imposed by many jurisdictions on property passing under an individual's will or by a state's intestacy law.

Property - Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

Prudent Investor Act - A law that provides for how fiduciaries must invest trust, estate and other assets they hold in a fiduciary capacity, such as a trustee or executor.

Prudent Man Rule - A legal principle requiring a trustee to manage the trust property with the same care that a prudent, honest, intelligent, and diligent person would use to handle the property under the same circumstances. See Prudent Investor Act.

Qualified Domestic Trust (QDOT) - Allows a non-citizen spouse to qualify for the marital deduction.

Qualified Personal Residence Trust - An irrevocable trust (referred to as a "QPRT") designed to hold title to an individual's residence for a term of years subject to the retained right of the individual to reside in the home for the term, with title passing to children or other beneficiaries at the end of the term.

Qualified Terminable Interest Property - Property (referred to as "QTIP") held in a marital trust or life estate arrangement that qualifies for the marital deduction because the surviving spouse is the sole beneficiary for life and entitled to all income.

Quitclaim Deed - Document that allows an individual to transfer title to real estate. With a quitclaim deed, the person transferring the title makes no guarantees, but transfers all his/her interest in the property.

Real Property - Land and property that is permanently attached to land (like a building or a house).

Recorded Deed - A deed that has been filed with the county land records. This creates a public record of all changes in ownership of property in the state.

Remainder Interest - An interest in property owned by the remainder man that does not become possessory until the expiration of an intervening income interest, life estate or term of years.

Residue - The property remaining in a decedent's estate after payment of the estate's debts, taxes, and expenses and after all specific gifts of property and sums of money have been distributed as directed by the will. Also called the residuary estate.

Revocable Living Trust - A trust established and often funded during the lifetime of the person setting up the trust (grantor/settlor), that can be revoked or changed during the grantor/settlor's lifetime. While revocable living trusts are often established in an effort to avoid probate, they have many potential uses.

Self-dealing - Personally benefiting from a financial transaction carried out on behalf of a trust or other entity, for example, the purchasing of an asset from a trust by the trustee unless specifically authorized by the trust instrument.

Separate Property - Generally, all assets you acquire prior to marriage and assets acquired by gift or inheritance during marriage.

Separate Trust - A trust established by one person. A married couple has separate trusts if each spouse has his/her own trust with its own assets. In contrast, see "Common Trust."

Settle an Estate - The process of handling the final affairs (valuation of assets, payment of debts and taxes, distribution of assets to Beneficiaries) after someone dies.

Settlor - Term frequently used for one who establishes or settles a trust. Also called a “trustor” or “grantor.”

Special Gifts - A separate listing of special assets that will go to specific individuals or organizations after your incapacity or death. Also called special bequests.

Special Needs Trust - Trust established for the benefit of a disabled individual that is designed to allow him or her to be eligible for government financial aid by limiting the use of trust assets for purposes other than the beneficiary’s basic care.

Spendthrift Clause - Protects assets in a trust from a beneficiary’s creditors.

Spendthrift Trust - A trust created for the benefit of a spendthrift who receives income from the trust but cannot obligate the trust or pledge trust assets to creditors to satisfy his/her debts.

Stepped-up Basis - Assets are given a new tax basis when transferred by inheritance (through a will or trust) and are re-valued as of the date of the owner’s death. If an asset has appreciated above its basis (what the owner paid for it), the new basis is called a stepped-up basis. A stepped-up basis can save a considerable amount in capital gains tax when an asset is later sold by the new owner. Also see "Basis."

Successor Trustee - Person or institution named in the trust document who will take over should the first trustee die, resign, or otherwise become unable to act.

Survivor’s Trust - See "A-Trust."

Tangible Personal Property - Property that is capable of being touched and moved, such as personal effects, furniture, jewelry, and automobiles. Tangible personal property is distinguished from intangible personal property that has no physical substance but represents something of value, such as cash, stock certificates, bonds, and insurance policies. Tangible personal property also is distinguished from real property, such as land and items permanently affixed to land, such as buildings.

Taxable Gift - Generally, a gift of more than the amount allowed by the federal gift tax exclusion in one year to someone other than your spouse. The value of the taxable gift is applied to your federal gift tax exemption. After you have used up your exemption, additional gifts will be taxed, usually at the highest estate tax rate in effect.

Tenancy by the Entirety - A joint ownership arrangement between a husband and wife, generally with respect to real property, under which the entire property passes to the survivor at the first death and while both are alive, may not be sold without the approval of both. In certain states, tenancy by the entirety provides asset protection, provided only one spouse comes under creditor attack.

Tenants-in-Common - A form of joint ownership in which two or more persons own an equal individual interest in the same property. At the death of a tenant-in-common, his/her share transfers to his/her heirs.

Terms of a Trust - The manifestation of the grantor's intent as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

Testamentary Trust - A trust established under the terms of a decedent's last will and testament, also known as a trust under will.

Testamentary - Relating to a will or other document effective at death.

Testator - One who dies with a valid will. If a female, may be referred to as the testatrix.

Title - Document proving ownership of an asset.

Total Return Unitrust (TRU) - A trust from which the beneficiary receives annually a fixed percentage of the fair market value of its assets. A TRU is designed to balance the interests of the current beneficiary and the remainder beneficiary by providing more consistent payments to the current beneficiary while encouraging an investment approach that strives for maximum after-tax returns and long-term capital growth that will ultimately be to the benefit of the remainder beneficiary

Totten Trust - A "pay-on-death" account. A bank account that will transfer to the beneficiary who was named when the account was established. The terms "transfer on death" ("TOD"), "in trust for" ("ITF"), "as trustee for" ("ATF"), and "pay on death" ("POD") often appear in the title.

Transfer Tax - Tax on assets when they are transferred to another. The estate tax, gift tax and generation skipping transfer tax are all transfer taxes.

Trust - A legal arrangement in which an individual or entity establishing or setting up the trust (settlor/grantor) transfers property to a trustee to manage for the benefit of one or more beneficiaries.

Trust Company - An institution that specializes in managing trusts. Also called a corporate trustee.

Trust Instrument - A document, including amendments thereto, executed by a grantor that contains terms under which the trust property must be managed and distributed. Also referred to as a trust agreement or declaration of trust.

Trust protector - an independent adviser appointed to monitor how a trust is administered and distributed. The powers granted to a trust protector can vary widely and are typically documented within a trust. Commonly, this person has the ability to remove a trustee if the trust assets are being managed or distributed in an imprudent manner as well as make updates to the trust to respond to changes in the law or changing circumstances of the trust beneficiaries.

Trustee - The individual or bank or trust company designated to hold and administer trust property (also generally referred to as a "fiduciary"). The term usually includes original (initial), additional, and successor trustees. A trustee has the duty to act in the best interests of the trust and its beneficiaries and in accordance with the terms of the trust instrument. A trustee must act personally (unless delegation is expressly permitted in the trust instrument), with the exception of certain administrative functions.

Trustor - See "Grantor."

Unfunded - Your living trust is unfunded if you have not transferred assets into it.

Unified Credit - A credit against the federal gift and estate tax otherwise payable by an individual or estate. Frequently referred to as the estate tax exemption amount, the exemption equivalent, or applicable exclusion amount. This amount is currently $12.92 million ($25.84 million per married couple) and is inflation adjusted annually.

Uniform Custodial Trust Act - A law enacted by some states providing a simple way to create a trust for a minor or adult beneficiary without the need for a complex trust document. Such a trust typically is used for a trust of modest size, particularly for a disabled beneficiary. An adult beneficiary may terminate the trust at any time, otherwise the trust may continue for the life of the beneficiary.

Uniform Transfers to Minors Act - A law enacted by most states providing a convenient means to transfer property to a minor. An adult person known as a “custodian” is designated by the donor to receive and manage property for the benefit of a minor. Although the legal age of majority in many states may be 18, some states enable the donor to authorize the custodian to hold the property until the beneficiary reaches age 21. Formerly called the Uniform Gifts to Minors Act.

Virtual Representation - A mechanism provided in a will or trust, or in some instances by state law, to permit a beneficiary to make decisions on behalf of another beneficiary who can claim or receive property only under or after them.

Warranty Deed - Document that allows you to transfer title to real estate. With a warranty deed, the person guarantees that the title being transferred is clear (free of any encumbrances). If the title is defective, the person making the transfer is liable. Compare to quitclaim deed.

Will - Also known as a last will and testament, a valid will governs, among other things, distribution of a decedent’s assets passing through the probate process (probate estate).

Disclosures

Altair Advisers LLC does not provide legal counsel to clients and this document is not intended to provide legal advice of any sort. Readers are encouraged to seek professional legal counsel for any matters that concern federal or state laws and regulations. Information presented herein incorporates Altair Advisers' views as of the date of this publication, are subject to change without notice and should not be considered personalized advice. Information presented is derived from sources deemed to be accurate. While we believe the information shown is accurate as of the date we compiled the reports, we cannot guarantee the accuracy of all such information presented.

Please see Altair Advisers' Form ADV Part 2A and Form CRS at https://altairadvisers.com/disclosures/ for additional information about Altair Advisers' business practices and conflicts identified.

ALTAIR
303 West Madison Street, Suite 600
Chicago, Illinois 60606
+1 (312) 429-3000 | altairadvisers.com

Connect with us: