

# Estate Planning Masterclass SESSION 4:

**Beyond the Documents:  
Building Estate Plans That  
Survive Real Life**

Preparing Beneficiaries,  
Trustees, and Families for  
Long-Term Success

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FINANCIAL EXPERTS

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NETWORK



THE REALITY:

# MOST ESTATE PLANS FAIL

A well-intentioned plan is not enough. Execution, communication, and updates are critical to ensuring your legacy is preserved.

“ Poor planning or poor execution of a plan is the root cause of most estate failure.

— WealthCounsel

## THE STATISTIC IS STAGGERING



of estate plans **FAIL** to achieve their intended goals.



According to a 2023 study by Caring.com, 70% of estates fail to deliver the desired results for families.

Source: Caring.com, "Estate Planning Statistics," 2023

## OTHER STATS TO CONSIDER



64%

of adults do not have an estate plan.

Sources: Caring.com, 2023



62%

of estates above \$5 million experience disputes.

Source: WealthCounsel, 2023 Litigation Report



33%

of estate plans are more than 10 years out of date.

Source: AICPA, 2021 Personal Financial Planning Survey

## TOP REASONS ESTATE PLANS FAIL

1



### OUTDATED PLANS

Life changes, tax law changes, and outdated documents can render a plan ineffective or create unintended consequences.

2



### LACK OF FAMILY COMMUNICATION

Surprises lead to confusion, hurt feelings, and disputes that can destroy relationships and drain assets.

3



### IMPROPER TRUSTEE SELECTION

The wrong trustee, or no successor plan, can lead to poor decisions, family conflict, and mismanagement.

4



### POOR PLAN DESIGN OR DIY APPROACHES

Generic or DIY documents often fail to address complex family, financial, and tax situations.

5



### LACK OF PROFESSIONAL GUIDANCE

Failure to engage qualified estate planning, legal, tax, and financial professionals leads to costly mistakes.

6



### FAILURE TO FUND THE PLAN

Assets not properly titled or transferred can bypass the plan entirely, causing delays and unnecessary costs.

## THE IMPACT OF AN ESTATE PLAN THAT FAILS



Unnecessary taxes and fees



Family conflict and strained relationships



Court involvement, delays, and public scrutiny



Loss of privacy and control



Assets may not go to intended heirs or causes



## PROTECT YOUR LEGACY

A successful estate plan is more than documents—it is a process. Review regularly, communicate openly, choose the right fiduciaries, and work with a team of qualified professionals.

**Plan well. Communicate clearly. Review regularly. Protect what matters most.**

### SOURCES:

- Caring.com, "Estate Planning Statistics," 2023
- WealthCounsel, 2023 Estate Planning Litigation Report
- AICPA, 2021 Personal Financial Planning Survey
- WealthCounsel, "10 Reasons Estate Plans Fail," 2022



These statistics highlight why thoughtful planning and ongoing stewardship are essential to ensure your legacy is preserved for generations to come.

This material is for informational purposes only and should not be considered legal, tax, or financial advice. Consult qualified professionals regarding your specific situation.



A PLAN TODAY.  
PEACE OF MIND TOMORROW.  
LEGACY FOREVER.

# BEYOND THE DOCUMENTS

## The 5 Areas That Matter Most for Families with \$2–\$5 Million

Inspired by the UHNW Institute's Ten Domains of Family Wealth Framework

“Most families do not lose wealth because of poor investments. They lose wealth because of poor communication, unprepared heirs, weak governance, and inadequate planning.”

— Adapted from research by Roy Williams & Vic Preisser, *Preparing Heirs*

### 1 ESTATE PLANNING & TRUSTEE SELECTION

Key Question: *Will the plan actually work when it's needed?*



- Wills and trusts
- Beneficiary designations
- Trustee selection
- Trust administration readiness
- Asset distribution strategies



Advisor Discussion:  
*Who will manage the assets after Mom and Dad are gone?*

### 4 FAMILY COMMUNICATION & EXPECTATIONS

Key Question: *Does everyone understand the plan?*



- Family meetings
- Distribution expectations
- Trust education
- Inheritance discussions
- Conflict prevention
- Transparency strategies



Advisor Discussion:  
*What do the children believe will happen—and is it accurate?*



### 2 RISK MANAGEMENT & ASSET PROTECTION

Key Question: *Can the family's wealth survive life's challenges?*



- Liability protection
- Umbrella insurance
- Long-term care planning
- Divorce protection
- Creditor protection trusts
- Business risks



Advisor Discussion:  
*What could unexpectedly derail the family's financial future?*

### 3 PREPARING HEIRS

Key Question: *Are the children ready to inherit?*



- Financial literacy
- Stewardship
- Trustee preparation
- Work ethic
- Decision-making skills
- Understanding family values



Advisor Discussion:  
*Will the heirs be prepared for the opportunities and responsibilities that come with wealth?*

### 5 LEADERSHIP & DECISION-MAKING

Key Question: *Who takes over when the founders are gone?*



- Family leadership
- Successor trustees
- Business succession
- Governance structures
- Decision-making authority
- Conflict resolution



Advisor Discussion:  
*Who will guide the family when Mom and Dad are no longer making the decisions?*



#### KEY TAKEAWAY | Financial Capital Is Only Part of the Story

For most families with \$2–\$5 million in assets, the greatest risks are not investment-related.

*The biggest threats to long-term family success often involve:*

Families that address these issues proactively are far more likely to preserve both their wealth and their relationships across generations.



Unprepared heirs



Poor communication



Family conflict



Trustee failures



Lack of leadership succession

# Today's Agenda

Preparing Heirs

Risk Management (Covered in Previous Sessions)

Trustee Selection

Family Communications and EXPECTATIONS

Leadership and Decision-Making

Best Practices

Financial Advisor Communications

See the Addendum

# Preparing Heirs

**Financial Literacy, Stewardship & Family Values,  
Trustee Preparation, Work Ethic and Decision-making skills**



# PREPARING HEIRS FOR WEALTH:

## 5 THINGS EVERY FAMILY SHOULD KNOW OR DO

Build financial knowledge today. Strengthen decisions tomorrow. Protect the legacy for generations.

1



### START EARLY AND MAKE IT ONGOING.

Financial literacy is a lifelong journey, not a one-time conversation. Start age-appropriate education early and keep building over time.

2



### TALK OPENLY ABOUT MONEY AND VALUES.

Normalize money conversations. Discuss earning, spending, giving, saving, and investing—along with the values that guide them.

3



### TEACH BY DOING, NOT JUST TELLING.

Give heirs real-world experience through age-appropriate responsibilities, decisions, and even mistakes.

4



### BUILD CAPABILITY TO MANAGE WEALTH, NOT JUST RECEIVE IT.

Help heirs develop key skills: budgeting, investing, risk management, tax awareness, and understanding advisors and financial statements.

5



### ALIGN WEALTH WITH PURPOSE AND IMPACT.

Engage heirs in philanthropy and family mission to help them understand that wealth is a tool to create meaning, not just comfort.

“ The goal is not to create heirs who are rich, but heirs who are wise, responsible, and prepared to steward what they inherit. ”



### ADVISOR TAKEAWAY:

Financially literate heirs are more confident, make better decisions, and are more likely to preserve both wealth and family harmony.



### SOURCES:

James E. Hughes, Jr.  
*Family Wealth* (4th Ed., 2022)

Douglas T. Arner, PhD  
*The Reinventing Family Process*  
(3rd Ed., 2017)

William J. Bennett, CFP®  
*The Ready to Be Rich*  
*Workbook* (2016)

Kiplinger  
*Raising Financially Confident Kids*  
(2023)

Charles D. Collier, CFP®  
*Outcome Based Wealth*  
(2021)



# PREPARING A FAMILY MEMBER TO SERVE AS TRUSTEE

## RESOURCES & SUGGESTIONS FROM TRUSTED EXPERTS

Being a trustee is an honor—and a serious responsibility. Use these expert-recommended resources and steps to build knowledge, confidence, and the right support.

1



### GET EDUCATED ON TRUST BASICS & DUTIES.

Build a strong foundation in fiduciary duties, trustee powers, impartiality, and the administration process.

*Expert Source:*  
The American College of Trust and Estate Counsel (ACTEC)

2



### REVIEW KEY DOCUMENTS & ASK QUESTIONS.

Thoroughly review the trust document and all related estate planning documents. Don't hesitate to ask for clarification.

*Expert Source:*  
WealthCounsel Trustee Best Practices

3



### UNDERSTAND THE FAMILY & THEIR VALUES.

Learn the grantor's intent, family dynamics, beneficiaries' needs, and the family's mission and values.

*Expert Source:*  
STEP (Society of Trust and Estate Practitioners)

4



### BUILD FINANCIAL & INVESTMENT LITERACY.

Strengthen your understanding of investments, taxes, accounting, and risk management—key to sound decision-making.

*Expert Source:*  
CFA Institute (Trustee Education for Non-Professionals)

5



### CREATE A TEAM & PLAN FOR THE LONG TERM.

Work with experienced professionals and establish systems. Document decisions and consider successor trustee planning.

*Expert Source:*  
ABA (American Bar Association) Section of Real Property, Trust & Estate Law

## ADDITIONAL RESOURCES & SUPPORT



**ONLINE COURSES**  
ACTEC Trustee Academy ([actec.org/education](http://actec.org/education))  
EDUCAUSE for Trustees ([educause.edu](http://educause.edu))



**FIND A MENTOR**  
Connect with a trusted advisor or experienced trustee for guidance.



**CHECKLISTS & GUIDES**  
WealthCounsel Trustee Resource Center ([wealthcounsel.com/resources](http://wealthcounsel.com/resources))



**ONGOING PROFESSIONAL SUPPORT**  
Engage a trust company or professional co-trustee for complex or large trusts.



**FIDUCIARY INSURANCE**  
Consider fiduciary liability insurance for added protection.



### KEY TAKEAWAY:

A prepared trustee makes better decisions, fulfills their duties with confidence, and helps ensure the trust's success for generations to come.



### SOURCES:

The American College of Trust and Estate Counsel (ACTEC)  
[actec.org](http://actec.org)

WealthCounsel Trustee Best Practices  
[wealthcounsel.com](http://wealthcounsel.com)

STEP (Society of Trust and Estate Practitioners)  
[step.org](http://step.org)

CFA Institute Trustee Education for Non-Professionals  
[cfainstitute.org](http://cfainstitute.org)

ABA Section of Real Property, Trust & Estate Law  
[americanbar.org](http://americanbar.org)

EDUCAUSE for Trustees  
[educause.edu](http://educause.edu)



# HELPING FAMILY MEMBERS IMPROVE THEIR DECISION-MAKING SKILLS

## 5 EXPERT-RECOMMENDED STRATEGIES

Strong decisions lead to strong outcomes. Build the habits, mindset, and skills that drive confident, values-aligned choices—today and for generations to come.

- |   |  |   |  |
|---|--|---|--|
| 1 |  | <b>CLARIFY VALUES AND DEFINE SUCCESS.</b><br>Clear values are the foundation of better decisions. Encourage reflection on what truly matters and why.                 | <i>Expert Source:</i><br>Harvard Business Review<br>("Making Better Decisions," 2018)            |
| 2 |  | <b>GATHER GOOD INFORMATION—THEN CHALLENGE IT.</b><br>Teach them to seek relevant data, consider multiple perspectives, and identify potential biases and blind spots. | <i>Expert Source:</i><br>Daniel Kahneman,<br><i>Thinking, Fast and Slow</i> (2011)               |
| 3 |  | <b>THINK CRITICALLY AND CONSIDER TRADE-OFFS.</b><br>Help them evaluate options, understand consequences, and weigh short-term trade-offs against long-term impact.    | <i>Expert Source:</i><br>The Decision Lab<br>("The Decision-Making Process," thedecisionlab.com) |
| 4 |  | <b>MAKE DECISIONS, REVIEW, AND LEARN.</b><br>Encourage timely decisions, followed by reflection on outcomes. Learning from results builds judgment and confidence.    | <i>Expert Source:</i><br>James Clear,<br><i>Atomic Habits</i> (2018)                             |
| 5 |  | <b>BUILD EMOTIONAL INTELLIGENCE AND SELF-AWARENESS.</b><br>Help them manage emotions, listen well, and understand how their biases and reactions influence decisions. | <i>Expert Source:</i><br>Daniel Goleman,<br><i>Emotional Intelligence</i> (1995)                 |

### TOOLS & HABITS TO PRACTICE

- DECISION JOURNAL**  
Track decisions, reasoning, outcomes, and lessons learned.
- PRE-MORTEM**  
Before deciding, ask: "What could go wrong—and why?"
- PROS, CONS & CRITERIA**  
Define what matters most and score options against those criteria.
- SEEK WISE COUNSEL**  
Encourage diverse perspectives from mentors, advisors, and peers.
- KEEP LEARNING**  
Read, listen, and stay curious about people, markets, and the world.

**KEY TAKEAWAY:** Better decision-makers don't avoid mistakes—they learn from them. Intentional practice today builds wisdom, confidence, and better outcomes tomorrow.

SOURCES:	Harvard Business Review <a href="http://hbr.org">hbr.org</a>	Daniel Kahneman, <i>Thinking, Fast and Slow</i> (2011)	The Decision Lab <a href="http://thedecisionlab.com">thedecisionlab.com</a>	James Clear, <i>Atomic Habits</i> (2018)	Daniel Goleman, <i>Emotional Intelligence</i> (1995)
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# Trustee Selection

Individual, Corporate and more



# TRUSTEE RESPONSIBILITIES

## 5 THINGS EVERY ADVISOR SHOULD KNOW

“ A trustee serves the trust—not the beneficiaries, not the family, and not themselves. ”

1



### FOLLOW THE TRUST

The trust document is the instruction manual. Trustees must act within the terms and purposes of the trust.

2



### UNDERSTAND FIDUCIARY DUTIES

Trustees owe duties of loyalty, prudence, impartiality, and disclosure—and must always act in the best interests of the beneficiaries.

3



### DOCUMENT EVERYTHING

Keep clear records of all decisions, communications, and transactions. Good documentation is your best protection.

4



### DON'T IGNORE TAXES

Trusts may require income tax, estate tax, gift tax, and other filings. Work with tax professionals.

5



### HIRE EXPERTS WHEN NEEDED

Trustees aren't expected to know everything. Use qualified professionals—attorneys, CPAs, and investment advisors.



#### ADVISOR TAKEAWAY:

A trustee serves the trust—not the beneficiaries, not the family, and not themselves.



#### SOURCES:

Uniform Trust Code (UTC)

Restatement (Third) of Trusts

ACTEC (American College of Trust and Estate Counsel) Guidelines

Bogert's Trusts & Trustees (Hornbook Series)



# TRUSTEE SELECTION STRATEGY

THE MOST IMPORTANT DECISION IN THE PLAN

The trustee.

## WHY THE TRUSTEE DECISION MATTERS



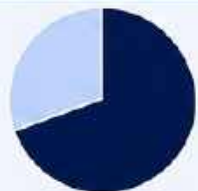
The trustee controls how, when, and to whom assets are distributed.



A great trustee protects your legacy and strengthens family harmony.



A poor trustee decision can create conflict, financial loss, and even litigation.



**70%**  
of families experience conflict or discord over an inheritance.

Source: Harris Poll, 2016 of Trust and Estate Counsel (ACTEC)

## WHY TRUSTEE FAILURES OCCUR



### LACK OF EXPERTISE

Complex financial, legal, and tax responsibilities require specialized knowledge and ongoing competence.



### FAMILY POLITICS

Perceived favoritism or competing loyalties can lead to resentment and breakdowns in trust.



### GEOGRAPHIC CHALLENGES

Distance can make it difficult to oversee assets, communicate effectively, and respond in a timely way.



### EMOTIONAL CONFLICTS

Personal relationships and unresolved emotions can cloud judgment and damage family relationships.

## BY THE NUMBERS



**60%**  
of trust & estate litigation involves allegations against trustees.

Source: American College of Trust and Estate Counsel (ACTEC)



**30-50%**  
of trusts are changed or terminated due to trustee issues.

Source: STEP (Society of Trust and Estate Practitioners) Worldwide Study



**\$112,000+**  
Average cost of trust litigation (attorney fees, court costs, expert fees).

Source: NAEPC Foundation, 2023 Estate Litigation Report



**2.8x**  
Families with a professional trustee report 2.8x higher satisfaction.

Source: Harrington Starr, Global Trustee Survey 2022

## SOURCES:

Harris Poll, 2016 – "America's Inheritance of Conflict"  
ACTEC, 2023 – Trust Litigation Report  
STEP Worldwide Study, 2021  
Harrington Starr, Global Trustee Survey, 2022  
NAEPC Foundation, 2023 Estate Litigation Report



## THE BOTTOM LINE:

The right trustee protects your assets, honors your wishes, and preserves family unity. Take the time to choose wisely.





# 3 THINGS FINANCIAL ADVISORS SHOULD RECOMMEND CLIENTS CONSIDER

## WHEN SELECTING A TRUSTEE

1

### COMPETENCE & CAPABILITY



Can the trustee properly handle investments, taxes, accounting, distributions, and all fiduciary responsibilities?

#### CONSIDER:

- ✓ Investment management expertise
- ✓ Understanding of trust administration and applicable laws
- ✓ Ability to handle complex situations
- ✓ Adequate resources and staff
- ✓ Sufficient time to serve well



**AUTHORITY:**  
Uniform Trust Code (UTC) §804  
*Prudent Administration*  
ACTEC Commentaries

2

### INDEPENDENCE & OBJECTIVITY



Will the trustee make decisions based on the trust terms and the beneficiaries' best interests—rather than family pressure or personal bias?

#### CONSIDER:

- ✓ Impartiality and ability to avoid conflicts
- ✓ Strong ethical standards and integrity
- ✓ Willingness to make tough decisions
- ✓ Independence from undue influence
- ✓ Ability to manage family dynamics fairly



**AUTHORITY:**  
Uniform Trust Code (UTC) §802  
*Duty of Loyalty*

3

### LONG-TERM RELIABILITY & CONTINUITY



Will the trustee still be able to serve effectively years or decades from now? Is there a succession plan if circumstances change?

#### CONSIDER:

- ✓ Financial strength and stability
- ✓ Depth of leadership and organizational continuity
- ✓ Succession planning and transition process
- ✓ Ability to adapt to changes in laws, taxes, and family needs
- ✓ Proven long-term track record



**AUTHORITY:**  
Uniform Trust Code (UTC) §801  
*Duty to Administer Trust*  
ACTEC guidance on trustee selection and succession



#### SOURCES:

- Uniform Trust Code (UTC) §§ 801, 802, 804

- American College of Trust and Estate Counsel (ACTEC) Commentaries

- ACTEC Foundation, Trustee Selection Considerations

- Restatement (Third) of Trusts §§ 77–79



#### KEY TAKEAWAY:

The right trustee protects wealth, preserves harmony, and ensures your client's legacy.



# INDIVIDUAL TRUSTEE ANALYSIS

*A Personal Role. A Serious Responsibility.*

Choosing an individual trustee can provide familiarity, continuity, and a personal touch— but it also requires judgment, competence, and the ability to act impartially.

## ADVANTAGES



### KNOWS THE FAMILY

Understands family dynamics, values, history, and beneficiary needs.



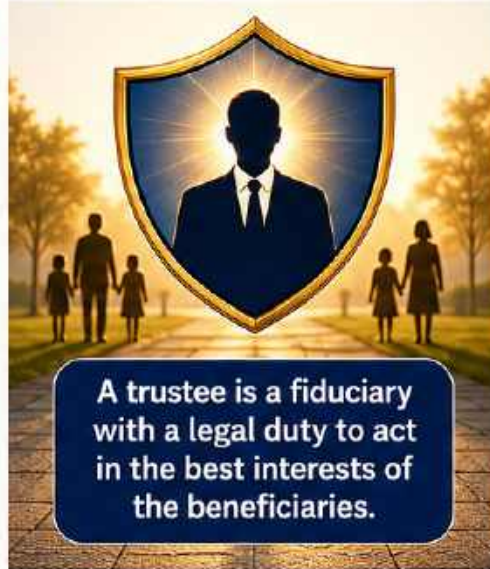
### LOWER COST

Often less expensive than a corporate trustee or trust company.



### PERSONAL TOUCH

Provides familiarity, accessibility, and continuity across generations.



A trustee is a fiduciary with a legal duty to act in the best interests of the beneficiaries.

## RISKS



### BIAS

Personal relationships can create perceived favoritism or conflicts.



### INEXPERIENCE

Trust administration, investments, taxes, and fiduciary duties can be complex.



### BURNOUT

Serving as trustee can become time-consuming and emotionally draining.



### LIABILITY

Trustees may be held personally liable for breaches of fiduciary duty.



## EXPERT INSIGHT



*“Select someone who understands finances, legal or accounting matters, or has strong business judgment. If that’s not available, choose a ‘peacemaker’ who communicates well and keeps family members informed.”*

— Lorraine Cavataio, Esq.,  
Fellow, ACTEC



## WHAT MAKES A GOOD INDIVIDUAL TRUSTEE?

- ✓ Financial competence
- ✓ Sound judgment
- ✓ Strong communication skills
- ✓ Ability to remain impartial
- ✓ Organizational discipline
- ✓ Willingness to serve long-term
- ✓ Respect from the family



## ADVISOR TAKEAWAY

The best trustee is not always the oldest child, the closest child, or the most successful child.

The best trustee is the person most capable of carrying out the grantor’s wishes while balancing fiduciary responsibilities, family relationships, and long-term stewardship.

*If those qualities are lacking, consider a professional trustee, corporate fiduciary, or co-trustee structure.*



## SOURCES



Lorraine Cavataio, Esq.,  
Fellow, ACTEC



American College of  
Trust and Estate Counsel  
(ACTEC)



Uniform Trust  
Code (UTC)



Restatement (Third)  
of Trusts



# CORPORATE TRUSTEE ANALYSIS

◆ Professional Management. Permanent Continuity. Objective Decision-Making. ◆

A corporate trustee provides professional trust management, bringing deep expertise, permanent continuity, and strict objectivity to your estate. However, these benefits come with notable drawbacks, including higher financial costs, potential administrative red tape, and a lack of personal familiarity with your family's unique dynamics.

**ADVANTAGES**

- EXPERTISE**  
Corporate trustees employ trust officers, tax specialists, and legal experts. They are highly equipped to navigate complex tax laws, handle intricate asset distributions, and manage volatile investments.
- CONTINUITY**  
Unlike an individual trustee, a corporate entity does not get sick, age, or pass away. Your trust remains under continuous, uninterrupted management.
- OBJECTIVITY**  
Professional trustees act as neutral, impartial decision-makers. They are insulated from emotional conflicts and family disputes, ensuring strict adherence to the trust document and fiduciary duties.
- PROFESSIONAL ADMINISTRATION**  
Recordkeeping, tax reporting, accounting, distributions, compliance, and investment oversight are handled by dedicated professionals.

**PROFESSIONAL FIDUCIARY OVERSIGHT**  
A COMMITMENT TO STEWARDSHIP AND INTEGRITY

**RISKS**

- COST**  
Corporate trustees charge ongoing management or administrative fees, which are typically calculated as a percentage of the trust's assets (often between 1% and 2% annually).
- BUREAUCRACY**  
Institutional decision-making can be rigid. Beneficiaries might experience slower response times, stricter adherence to "red tape," and a less personalized approach when requesting discretionary distributions.
- LACK OF FAMILY KNOWLEDGE**  
A corporate institution operates objectively but lacks personal context. They do not have firsthand knowledge of your family's history, nuanced values, or evolving personal dynamics, which can make empathetic decision-making difficult.
- LESS FLEXIBILITY**  
Some beneficiaries may perceive corporate trustees as rigid when making discretionary distribution decisions.

**WHEN A CORPORATE TRUSTEE MAY BE MOST APPROPRIATE**

- Large or complex trusts
- Beneficiaries with addiction issues
- Significant investment assets
- Beneficiaries with special needs
- Blended families
- Multi-generational trusts
- Beneficiaries with creditor concerns
- Situations involving family conflict

**WHAT MAKES A GOOD CORPORATE TRUSTEE?**

- Strong trust administration experience
- Investment expertise
- Dedicated trust department
- Experience with family governance
- Competitive fee structure
- Ability to serve as sole or co-trustee
- Responsive communication

**ADVISOR TAKEAWAY**

- The best trustee is not always the family member who knows everyone best.
- Sometimes the best trustee is the professional who can remain objective, navigate complexity, and administer the trust consistently for decades.
- For many affluent families, the ideal solution may be a hybrid approach using both a corporate trustee and a trusted family member as co-trustees.

**SOURCES**

- American College of Trust and Estate Counsel (ACTEC)
- Uniform Trust Code (UTC)
- Restatement (Third) of Trusts
- ABA Real Property, Trust & Estate Law Section
- Heckerling Institute on Estate Planning



# HYBRID STRUCTURE: BALANCING THE OPTIONS

## The Best of Both Worlds

To mitigate the risks of using only an individual trustee or only a corporate trustee, many settlors choose a hybrid structure. This setup combines the personal insight of family with the expertise, resources, and continuity of a professional trustee.



### HYBRID STRUCTURE OPTIONS

**CO-TRUSTEESHIP**  
(Individual + Corporate)

A family member and a corporate trustee share fiduciary responsibilities.

- Combines personal insight with professional expertise
- Shared decision-making and oversight
- Provides checks and balances

**ADMINISTRATIVE TRUSTEE + DISTRIBUTION TRUSTEE**

Separates administrative duties from discretionary distribution decisions.

- Administrative trustee handles investments, accounting, tax reporting, and compliance
- Distribution trustee (often a family member) makes discretionary distributions
- Limits risk while preserving personal judgment

**INVESTMENT TRUSTEE + DISTRIBUTION TRUSTEE**

Separates investment management from beneficiary distribution decisions.

- Investment trustee focuses on strategy, research, and performance
- Distribution trustee focuses on beneficiary needs and circumstances
- Ideal for families with complex assets

**TRUST PROTECTOR**

An independent party with defined powers to oversee and adapt the trust.

- Modifies trust terms (if authorized)
- Removes or replaces trustees
- Resolves deadlocks
- Provides ongoing oversight and flexibility



### BENEFITS OF A HYBRID STRUCTURE -



Balances personal knowledge with professional expertise



Reduces risk of bias, conflict, and burnout



Ensures continuity across generations



Enhances compliance and fiduciary protection



Provides flexibility to meet changing family needs



### ADVISOR TAKEAWAY

No single trustee solution is right for every family.

A well-designed hybrid structure can provide the ideal balance of personal insight, professional expertise, and long-term stewardship.



The best structure depends on your family's goals, trust complexity, assets, and the dynamics of your beneficiaries. *Work with your advisor to design the right solution for your legacy.*



# 10 QUESTIONS TO ASSESS AN INDIVIDUAL'S CAPABILITY TO SERVE AS TRUSTEE

Smart trustee selection protects your legacy, your family, and the trust.

*These questions help you evaluate judgment, competence, objectivity, and long-term stewardship.*

“The trustee is the heart of the trust. The wrong choice can jeopardize everything the trust is designed to achieve.

— ACTEC

A STRONG TRUSTEE IS MORE THAN WILLING—THEY ARE CAPABLE, OBJECTIVE, AND COMMITTED FOR THE LONG TERM.

<p><b>1</b> </p> <p><b>Do you understand that your duty is to follow the trust document, not family preferences?</b></p> <p>A trustee's fiduciary duty is to the trust and beneficiaries—not to the grantor, spouse, or family pressure.</p>	<p><b>2</b> </p> <p><b>Have you ever managed significant investments, business interests, or financial accounts?</b></p> <p>The trustee should have the financial literacy and experience needed to oversee and protect trust assets.</p>	<p><b>3</b> </p> <p><b>Can you make difficult decisions even when family members disagree with you?</b></p> <p>A trustee must be independent, objective, and willing to do what is right—not what is easy.</p>	<p><b>4</b> </p> <p><b>How much time can you realistically devote to trustee responsibilities each year?</b></p> <p>Trustee duties include oversight, decision-making, recordkeeping, tax filings, and working with advisors.</p>	<p><b>5</b> </p> <p><b>Are you comfortable working with attorneys, CPAs, financial advisors, and investment managers?</b></p> <p>A good trustee knows how to collaborate with experts and make informed decisions.</p>
<p><b>6</b> </p> <p><b>If the beneficiary spouse requests a large distribution, how would you evaluate the request?</b></p> <p>Your answer reveals your judgment and understanding of fiduciary duties and trust standards.</p>	<p><b>7</b> </p> <p><b>How would you handle a situation where one beneficiary believes another is receiving preferential treatment?</b></p> <p>Family conflict is a leading cause of trust disputes. Fairness, transparency, and communication are essential.</p>	<p><b>8</b> </p> <p><b>If the grantor suggests a course of action that conflicts with your fiduciary duties, what would you do?</b></p> <p>The trustee must place fiduciary duties above all informal pressure, including from the grantor.</p>	<p><b>9</b> </p> <p><b>Are you likely to remain capable and available to serve for the next 10–20 years?</b></p> <p>Consider age, health, location, career demands, and other factors that may affect long-term continuity.</p>	<p><b>10</b> </p> <p><b>Why do you want to serve as trustee?</b></p> <p>Your motivation matters. Look for a commitment to stewardship, not control, status, or obligation.</p>

**EVALUATE ACROSS 10 KEY DIMENSIONS**





- ✓ Financial Literacy
- ✓ Understanding Fiduciary Duty
- ✓ Objectivity
- ✓ Judgment
- ✓ Communication Skills
- ✓ Ability to Handle Conflict
- ✓ Availability
- ✓ Willingness to Seek Advice
- ✓ Long-Term Continuity
- ✓ Overall Trustee Readiness


**SCORING GUIDELINE**

45 – 50	Strong Candidate
35 – 44	Acceptable with Advisor Support
25 – 34	Consider Co-Trustee Structure
Below 25	Consider Corporate Trustee

 The best trustee is not just willing to serve—they are equipped to serve well, for the long term, in the best interest of the beneficiaries.

**EXPERT AUTHORITIES & SOURCES**

-  Uniform Trust Code (UTC) §§ 801, 802, 804 – Duties of Loyalty, Prudence, Impartiality, and Administration
-  Restatement (Third) of Trusts §§ 77–79 – Trustee Duties and Standard of Conduct
-  ACTEC Guidance & Commentaries Trustee Selection, Duties, and Best Practices
-  AICPA Personal Financial Planning Section Best Practices Trust Administration and Governance

**ADVISOR TAKEAWAY**  Use these questions in interviews, document your evaluation, and revisit regularly. A well-chosen trustee today helps ensure the trust achieves its purpose for generations to come.

This material is for educational purposes only and should not be considered legal, tax, or investment advice. Consult qualified professionals regarding your specific situation.



# Family Communication and Expectations

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## Does Everyone Understand the Plan?

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Family Meetings

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Distribution Expectations

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Trust Education

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Inheritance discussions

---

Conflict Prevention

---

Transparency strategies

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# BENEFICIARY READINESS & EDUCATION

PREPARING TODAY'S GENERATION TO BE RESPONSIBLE STEWARDS TOMORROW

Well-prepared beneficiaries help preserve unity, reduce conflict,  
and protect the long-term legacy of the family.

## WHEN TO INTRODUCE HEIRS TO TRUST STRUCTURES



- ✓ Introduce concepts early, not just the documents.
- ✓ Tailor conversations to age, maturity, and interest.
- ✓ Start with values and purpose before legal details.
- ✓ Revisit regularly as life and circumstances evolve.

## PREPARING CHILDREN FOR TRUSTEE ROLES



- ✓ Educate on fiduciary duties and legal responsibilities.
- ✓ Involve them in financial discussions over time.
- ✓ Encourage outside experience and professional development.
- ✓ Use co-trustees or advisors for support and guidance.

## SETTING EXPECTATIONS AROUND DISTRIBUTIONS



- ✓ Explain the purpose behind distribution standards.
- ✓ Clarify what will and will not be provided.
- ✓ Address potential concerns before they arise.
- ✓ Document expectations and communicate them clearly.

## FAMILY FINANCIAL TRANSPARENCY MODELS



- ✓ Decide what information should be shared and why.
- ✓ Use regular family meetings to build trust and alignment.
- ✓ Balance transparency with privacy and fairness.
- ✓ Foster unity through openness, not just dollars.



**KEY TAKEAWAY:** Educated and engaged beneficiaries are more likely to act responsibly, support each other, and honor the family's values and vision for generations to come.



### ADVISOR TIP:

Proactive education today can prevent confusion, entitlement, and conflict tomorrow.



### AUTHORITATIVE SOURCES

#### ACTEC

American College of Trust  
and Estate Counsel

#### FAMILY WEALTH REPORT

Insights on Family Office  
and Wealth Stewardship

JAMES E. HUGHES, JR.  
*Family Wealth*

CHARLES COLLIER  
*Wealth in Families*



# WHEN SHOULD CHILDREN LEARN ABOUT TRUSTS?

AGE-APPROPRIATE GUIDANCE ♦ BUILD KNOWLEDGE ♦ CREATE CONFIDENCE ♦ PRESERVE LEGACY

**AGES 18–25**

- Basic concepts**  
Introduce the fundamentals of trusts and how they work.
- Family values**  
Share the family mission, values, and legacy.
- Stewardship**  
Teach responsible money management and gratitude.

*Introduce the “why” behind family wealth and values.*

**AGES 25–40**

- Trust structure**  
Understand how the trust is designed and how it operates.
- Trustee responsibilities**  
Learn the role of trustees and their fiduciary duties.
- Long-term expectations**  
Discuss goals, timelines, and future generations.

*Build understanding of roles, responsibilities, and purpose.*

**MATURE BENEFICIARIES**

- Full participation**  
Engage in decisions and contribute to the family’s vision and strategy.
- Family meetings**  
Participate in regular meetings and open communication.
- Governance discussions**  
Discuss policies, distributions, and family governance.

*Engage as partners in preserving legacy for future generations.*

**THE GOAL:** Empower each generation with the knowledge, values, and to be a responsible steward of the family legacy.

**NOTE:** Readiness depends on maturity, family dynamics, and circumstances. These age ranges are general guidelines rather than strict rules.

**RESEARCH INSIGHT**  
Studies consistently suggest that wealth transitions are more likely to succeed when heirs are prepared through communication, education, shared values, and family governance—not simply through legal documents.

**SOURCES**

- James E. Hughes, Jr. *Family Wealth: Keeping It in the Family*
- Charles W. Collier *Wealth in Families*
- Dennis T. Jaffe *Borrowed From Your Grandchildren*
- Family Firm Institute (FFI) *Family Governance & Next Generation Research*
- Purposeful Planning Institute (PPI) *Rendezvous Process & Family Communication Framework*
- The Williams Group *Research on Wealth Transition and Family Preparedness*



# MANAGING INHERITANCE EXPECTATIONS

Clear communication today helps prevent conflict tomorrow.

**COMMON MISTAKES**

**Parents never discuss:**

- Distribution timing
- Trust restrictions
- Family intentions

---

**RESULT:**

- Surprise
- Resentment
- Litigation



**ADVISOR FRAMEWORK**

**“What do your children believe will happen?”**

- Start the Conversation
- Align Expectations With Reality
- Reduce Conflict and Protect Relationships
- Support a Smoother Wealth Transition

**THE BIG IDEA:** Managing expectations is one of the most powerful ways to preserve family harmony and protect your legacy.

**SOURCES:**

James E. Hughes, Jr. *Family Wealth: Keeping It in the Family*

Charles W. Collier *Wealth in Families*

Dennis T. Jaffe *Borrowed From Your Grandchildren*

Family Firm Institute (FFI) *Family Governance & Next Generation Research*

Purposeful Planning Institute (PPI) *Rendezvous Process & Family Communication Framework*

The Williams Group *Research on Wealth Transition and Family Preparedness*



# FAMILY FINANCIAL TRANSPARENCY MODELS

THREE APPROACHES • DIFFERENT LEVELS OF INFORMATION • SAME GOAL: A STRONGER FAMILY LEGACY



**WHY IT MATTERS:** The right level of transparency builds trust, prepares the next generation, and helps prevent conflict—while respecting privacy, capacity, and family dynamics.

## 1. COMPLETE TRANSPARENCY



Full access to financial information, including assets, liabilities, income, expenses, and estate plans.



### PROS

- Builds maximum trust and openness
- Prepares heirs for full responsibility
- Reduces surprises and misunderstandings
- Encourages collaboration and shared decision-making



### CONS

- Can overwhelm or burden younger heirs
- Risk of entitlement or misuse of information
- May create tension if children are not financially mature

## 2. GRADUATED TRANSPARENCY



Information is shared over time as heirs demonstrate maturity, responsibility, and readiness.



### PROS

- Matches information with readiness
- Encourages growth and responsibility
- Builds trust over time
- Reduces risk of information misuse



### CONS

- Requires ongoing judgment and communication
- Inconsistent information sharing can cause confusion
- May be viewed as withholding if not communicated well

## 3. NEED-TO-KNOW APPROACH



Limited information is shared only as needed for specific roles, responsibilities, or decisions.



### PROS

- Protects privacy and security
- Limits risk of misuse or conflict
- Appropriate for children with little interest or involvement
- Useful for complex or high-risk situations



### CONS

- Can create feelings of exclusion
- May reduce preparation for future roles
- Risk of mistrust or assumptions if not explained clearly



### KEY CONSIDERATIONS FOR CHOOSING THE RIGHT MODEL



Heir maturity and capability



Family culture and values



Complexity of assets



Risk of conflict or misuse



Purpose and goals of transparency



### THE BIG IDEA:

There is no one-size-fits-all approach. Choose the transparency model that best aligns with your family's values, goals, and the readiness of the next generation.



### SOURCES:



James E. Hughes, Jr.  
*Family Wealth: Keeping It in the Family*



Charles W. Collier  
*Wealth in Families*



Dennis T. Jaffe  
*Borrowed From Your Grandchildren*



Family Firm Institute (FFI)  
*Family Governance & Next Generation Research*



Purposeful Planning Institute (PPI)  
*Rendezvous Process & Family Communication Framework*



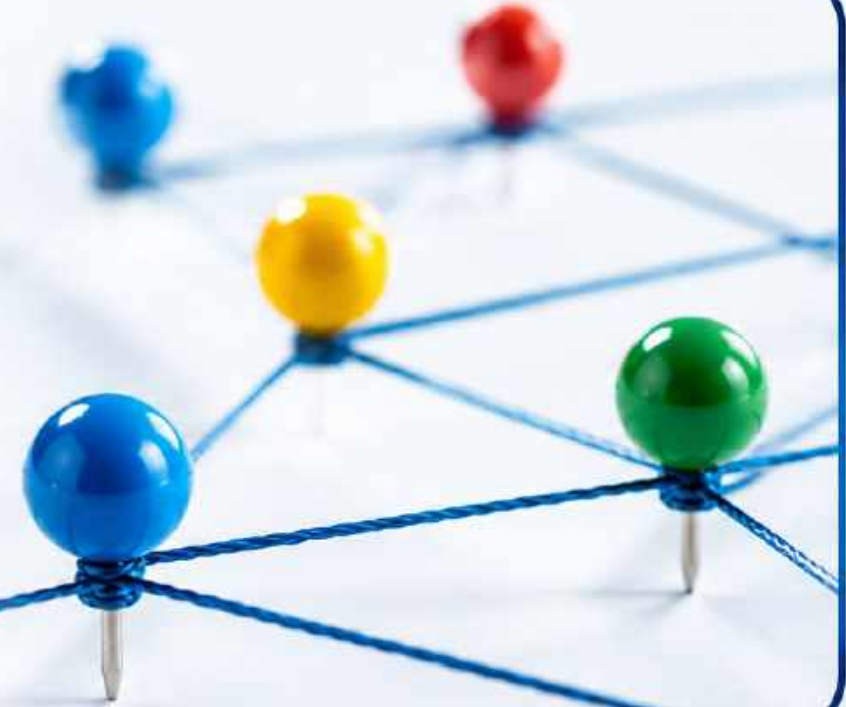
The Williams Group  
*Research on Wealth Transition and Family Preparedness*

# Expectations



## Distribution

*The Who and How*





# TRUST DISTRIBUTION RULES

## 5 QUESTIONS EVERY ADVISOR SHOULD ASK

Ask these five questions to understand how a trust will distribute assets—and whether it aligns with your client's goals.

1

### WHO gets the assets?



Determines which beneficiaries are entitled to receive trust assets, now or in the future.

#### EXAMPLES

- Per Stirpes (by representation)
- Per Capita (equally among living)
- By Branch or Generation
- Contingent Beneficiaries
- Blended Family Provisions

2

### HOW MUCH do they receive?



Determines the dollar amount or percentage each beneficiary (or group) will receive.

#### EXAMPLES

- Fractional Formula (percentage of estate)
- Pecuniary Formula (fixed dollar amount)
- Marital Deduction / QTIP Formulas
- Clayton Election Formulas
- Formula Funding Clauses

3

### WHEN do they receive it?



Determines the timing and schedule of distributions to beneficiaries.

#### EXAMPLES

- Immediately at Death
- Specific Ages (e.g., 25, 30, 35)
- Staggered Distributions
- Upon Achieving Milestones (education, marriage, etc.)
- Lifetime / Per Stirpes at Death

4

### UNDER WHAT CONDITIONS can distributions be made?



Determines the standards or circumstances that must be met before distributions occur.

#### EXAMPLES

- HEMS Standard (Health, Education, Maintenance, Support)
- Discretionary Distributions
- Special Needs Provisions
- Incentive Provisions (education, employment, charitable, etc.)
- Spendthrift Protection

5

### WHO decides?



Determines who has the authority to make distribution decisions and how that authority is used.

#### EXAMPLES

- Trustee (Individual or Corporate)
- Co-Trustees
- Trust Protector
- Independent Distribution Committee
- Beneficiary (in some cases)



#### ADVISOR TAKEAWAY:

The best trust plans answer all five questions clearly. When any answer is vague or outdated, the risk of conflict, confusion, and unintended consequences increases.



#### SOURCES



Jonathan G. Blattmachr, JD  
Trusts & Estates



Scott and Ascher on Trusts  
(Restorative 4th)



Bogert's Trusts  
& Trustees  
(Hornbook Series)



Leimberg Estate  
Planning Newsletter



American College of Trust  
and Estate Counsel (ACTEC)  
Materials



# TRUSTEE DISCRETION & HEMS STANDARDS

## HOW TRUSTS PROTECT BENEFICIARIES AND PROVIDE FLEXIBILITY



Most modern trusts give the trustee discretion to make distributions for the beneficiary's health, education, maintenance, and support (HEMS). This flexibility allows the trustee to respond to the beneficiary's needs while protecting trust assets.

### TRUSTEE DISCRETION EXPLAINED



Trustee discretion is the legal authority given to a trustee to decide whether, when, and how much to distribute to a beneficiary. The trustee is not required to make distributions, but must act in good faith and in accordance with the trust's terms and state law fiduciary duties.

#### WHY IT MATTERS

- ✓ Allows the trustee to consider the beneficiary's actual needs and circumstances.
- ✓ Helps protect assets from creditors, divorce, and imprudent spending.
- ✓ Provides long-term flexibility as life circumstances change.

### EXAMPLES OF TRUSTEE DISCRETION IN ACTION



A trustee may approve college tuition one year and not the next if the beneficiary is already well funded.



A trustee may pay for rehab or counseling even if not specifically listed in the trust, if it promotes the beneficiary's well-being.



A trustee may advance funds for a down payment on a home, but delay additional distributions if the beneficiary is imprudent with money.



A trustee may withhold distributions during divorce proceedings to help protect trust assets.

### HEMS STANDARDS EXPLAINED

HEMS is the most commonly used standard for discretionary distributions. It stands for Health, Education, Maintenance, and Support.



#### HEALTH

Medical care, insurance premiums, prescriptions, therapy, long-term care, and other health-related expenses.



#### EDUCATION

Tuition, books, fees, room and board, vocational training, continuing education, and other educational expenses.



#### MAINTENANCE

Basic needs for food, clothing, housing, transportation, utilities, and other day-to-day living expenses.



#### SUPPORT

Expenses that support the beneficiary in maintaining their customary standard of living.

The trustee may also consider other factors, such as the beneficiary's other resources, employment, marital status, dependents, and overall circumstances.

### KEY BENEFITS OF DISCRETIONARY HEMS TRUSTS

- ✓ **ASSET PROTECTION:** Helps shield assets from creditors and lawsuits.
- ✓ **FAMILY HARMONY:** Reduces conflict by allowing the trustee to treat beneficiaries fairly based on need.
- ✓ **FLEXIBILITY:** Allows the trust to adapt to changing circumstances over time.
- ✓ **TAX PLANNING:** Supports long-term estate, gift, and generation-skipping tax strategies.

“The discretion to invade principal for the beneficiary's health, education, maintenance, or support has become the standard for discretionary trusts and is broadly construed by the courts.”

Source: Bogert's Trusts and Trustees §6.2 (Hornbook Series®) (Joseph L. Sax, 3d ed. 2022)



**IMPORTANT NOTE:** Trustees must always act in good faith, for the benefit of the beneficiaries, and in accordance with the terms of the trust and applicable state law.

Additional Source: Restatement (Third) of Trusts §50 cmt. d (2007)



# DISTRIBUTION FORMULAS

## 5 THINGS EVERY ADVISOR SHOULD KNOW

“ Clear distribution formulas reduce conflict, provide flexibility, and help ensure your clients’ intentions are followed. ”

– Jonathan G. Blattmachr, JD

1



### THEY PUT YOUR CLIENT’S INTENTIONS INTO ACTION

Distribution formulas determine how and when beneficiaries receive trust assets. Clarity today helps avoid conflict tomorrow.

2



### THERE ARE DIFFERENT TYPES—CHOOSE CAREFULLY

Common formulas include per stirpes, per capita, fractional, pecuniary, marital deduction, age-based, and support standard formulas. Each produces different outcomes.

3



### FLEXIBILITY BUILT INTO THE FORMULA CAN BE POWERFUL

Well-drafted formulas can adapt to changing family situations, blended families, or unequal gifts made during life.

4



### PRECISION MATTERS

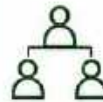
Ambiguous or outdated formulas can lead to unintended results, litigation, and fiduciary headaches for trustees.

5



### DISTRIBUTION FORMULAS FALL INTO TWO CATEGORIES

#### WHO Gets the Assets (Determines the Beneficiaries)



- **Per Stirpes (By Representation)**  
Example: Estate = \$5,000,000  
My three children share equally. If a child has two children and is deceased, each grandchild receives \$833,333.
- **Per Capita (Equal Shares)**  
Example: Estate = \$5,000,000  
My four grandchildren share equally.  
Each grandchild receives \$1,250,000.

#### HOW MUCH They Receive (Determines the Dollar Amount)



- **Pecuniary Formula (Fixed Dollar Amount)**  
Example: “Fund the bypass trust with \$2,000,000.”  
The trust receives \$2,000,000, and the remainder (\$3,000,000) goes to other beneficiaries.
- **Fractional Formula (Percentage of Estate)**  
Example: “Give 40% of my estate to the bypass trust.”  
If estate = \$5,000,000, the trust receives \$2,000,000 (40% of \$5,000,000), and the remainder (\$3,000,000) goes to other beneficiaries.



#### ADVISOR TAKEAWAY:

A well-designed distribution formula is a roadmap for the future—clear, flexible, and aligned with your client’s goals.



#### SOURCES:

Jonathan G. Blattmachr,  
Trusts & Estates

Scott and Ascher on Trusts  
(Restorative 4th)

Bogert’s Trusts & Trustees  
(Hornbook Series)

Leimberg Estate Planning  
Newsletter

# HOW THE CLAYTON ELECTION WORKS

A post-death planning technique that gives the executor flexibility to decide how much property will qualify for the marital deduction.



**KEY POINT:** The Clayton Election allows the executor to decide after the first spouse's death how much property will qualify for the marital deduction, providing valuable flexibility to respond to tax laws and family needs.

## AUTHORITY & EXPERT SOURCES



*Estate of Clayton v. Commissioner*, 976 F.2d 1486 (5th Cir. 1992)

Recognizes and upholds the validity of the Clayton election as a proper marital deduction planning technique.



Internal Revenue Code §2056

Allows a deduction for property interest passing to the surviving spouse (marital deduction).



Treasury Regulation §20.2056(b)-7

Specifically provides rules for the so-called "Clayton election" on timely filed Form 706.



IRS Form 706 & Instructions

Schedule M is used to make the election that determines the portion of the estate qualifying for the marital deduction.



Estate Planning Commentary

Discussed in leading treatises and professional guidance, including:

- BNA Estate Planning Portfolio
- Leimberg Estate Planning Newsletter
- ACTEC Estate Planning Journal

This graphic is for educational purposes only and is not legal or tax advice. Estate and tax laws are complex and subject to change.

Consult your attorney or tax advisor regarding your specific circumstances.

# Leadership and Decision-Making

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Succession, Trust Protectors,  
Governance Structures





# TRUSTEE SUCCESSION: BEST PRACTICES TO ENSURE A SMOOTH TRANSITION

A well-planned trustee succession protects the trust, honors the grantor's intent, and provides continuity for beneficiaries. Use these expert-recommended steps to plan ahead and stay prepared.

- |   |  |   |   |
|---|--|---|---|
| 1 |  | <p><b>PLAN AHEAD—DON'T WAIT FOR A CRISIS.</b><br/>Discuss succession early and document the process in the trust. Review regularly as circumstances or family dynamics change.</p>      | <p><i>Expert Source:</i><br/>The American College of Trust and Estate Counsel (ACTEC)</p>       |
| 2 |  | <p><b>NAME SUCCESSOR TRUSTEES AND ALTERNATES.</b><br/>Name at least one successor trustee and one or more alternates. Consider a mix of trusted family members and professionals.</p>   | <p><i>Expert Source:</i><br/>WealthCounsel Trustee Best Practices</p>                           |
| 3 |  | <p><b>PREPARE AND EDUCATE SUCCESSOR TRUSTEES.</b><br/>Provide ongoing education about fiduciary duties, investments, taxes, and the trust's goals. Involve successors early.</p>        | <p><i>Expert Source:</i><br/>STEP (Society of Trust and Estate Practitioners)</p>               |
| 4 |  | <p><b>ORGANIZE AND MAINTAIN KEY INFORMATION.</b><br/>Keep trust documents, account info, policies, and instructions organized and up to date. Use a Trustee Information Binder.</p>     | <p><i>Expert Source:</i><br/>National Association of Estate Planners &amp; Councils (NAEPC)</p> |
| 5 |  | <p><b>ENSURE A COLLABORATIVE TRANSITION.</b><br/>Facilitate introductions between current and future trustees. Encourage open communication and shared decision-making.</p>             | <p><i>Expert Source:</i><br/>The American College of Trust and Estate Counsel (ACTEC)</p>       |
| 6 |  | <p><b>REVIEW AND UPDATE SUCCESSION PLANS REGULARLY.</b><br/>Revisit trustee appointments, successor readiness, and trust terms at least every 3–5 years—or after major life events.</p> | <p><i>Expert Source:</i><br/>WealthCounsel Trustee Best Practices</p>                           |

## CONSIDERATIONS WHEN SELECTING SUCCESSOR TRUSTEES

- 

**FIDUCIARY CAPABILITY**  
Choose someone with integrity, sound judgment, and the ability to manage complex responsibilities.
- 

**WILLINGNESS & AVAILABILITY**  
Ensure they have the willingness, time, and resources to serve.
- 

**ALIGNMENT WITH VALUES**  
Select someone who understands and shares the grantor's values and the intent of the trust.
- 

**GEOGRAPHY & ACCESS**  
Consider location and ability to access assets, beneficiaries, and advisors.

## KEY REMINDERS

- ✓ A smooth transition protects the trust and relationships.
- ✓ Document your plan and communicate clearly.
- ✓ Prepare successors with knowledge and confidence.
- ✓ Review regularly and adapt as circumstances change.

 **KEY TAKEAWAY:** Thoughtful planning, preparation, and communication are the keys to a seamless trustee transition.

	<b>SOURCES:</b>	ACTEC actec.org	WealthCounsel wealthcounsel.com	STEP (Society of Trust and Estate Practitioners) step.org	NAEPC naepc.org	The American College of Trust and Estate Counsel (ACTEC) actec.org	Trustee Handbook (Fourth Edition) Published by ACTEC Foundation actec.org
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# TRUST PROTECTOR

## 5 THINGS EVERY ADVISOR SHOULD KNOW

“ A trust protector’s job is not to predict the future—it’s to help the trust respond to it. ”

-  **1 FUTURE-PROOFS THE TRUST**  
Allows the trust to adapt when laws change, tax rules evolve, or circumstances of the beneficiaries or family change.
-  **2 MAY MODIFY TRUST PROVISIONS**  
Depending on the trust document, can amend administrative provisions and respond to tax law changes without court involvement.
-  **3 MAY REMOVE AND REPLACE TRUSTEES**  
Provides oversight and accountability by appointing, removing, or directing trustees to serve the best interests of the trust.
-  **4 CAN PROTECT BENEFICIARIES**  
May add protections for beneficiaries, including spendthrift provisions, creditor protection, special needs, or changing family dynamics.
-  **5 NOT A TRUSTEE**  
The trust protector oversees the trust and has limited powers defined in the document, but does not manage day-to-day trust administration.



**ADVISOR TAKEAWAY:** A trust protector’s job is not to predict the future—it’s to help the trust respond to it.



**SOURCES:** Jonathan G. Blattmachr, *Trusts & Estates* | ACTEC (American College of Trust and Estate Counsel) Resources | Uniform Trust Code Commentary



# GOVERNANCE STRUCTURES FOR FAMILIES WITH \$5 MILLION OR LESS

## SMART, SIMPLE WAYS TO MANAGE WEALTH TRANSFER AND HARMONY AMONG MULTIPLE CHILDREN

Strong governance doesn't require complex structures. These practical approaches can help families promote fairness, clarity, and unity while transferring wealth across generations.

1



**HAVE OPEN, ONGOING FAMILY CONVERSATIONS.**  
Start early and keep communication ongoing about values, goals, inheritances, and expectations. Transparency reduces surprises and strengthens relationships.

*Expert Source:*  
The American College of Trust and Estate Counsel (ACTEC)

2



**CREATE AN ESTATE PLAN WITH CLEAR DOCUMENTS.**  
A well-drafted will or revocable trust, powers of attorney, and healthcare directives provide clarity and minimize confusion during an already difficult time.

*Expert Source:*  
National Association of Estate Planners & Councils (NAEPC)

3



**PROMOTE PERCEPTIONS OF FAIRNESS.**  
Fair doesn't always mean equal. Consider each child's needs, contributions, and circumstances. Communicate your reasoning to reduce potential resentment.

*Expert Source:*  
Dr. Janeen Sproull, Family Wealth Advisor, UBS (2022)

4



**USE LETTERS OF INTENT OR FAMILY GUIDELINES.**  
Share your wishes for asset distribution, values, and legacy. While not legally binding, these documents provide context and reduce uncertainty.

*Expert Source:*  
WealthCounsel Estate Planning Best Practices

5



**CONSIDER A TRUST FOR PRIVACY AND FLEXIBILITY.**  
A revocable living trust can simplify transfers, avoid probate, and allow for terms that encourage responsible stewardship without unnecessary restrictions.

*Expert Source:*  
The American College of Trust and Estate Counsel (ACTEC)

6



**ESTABLISH A SIMPLE FAMILY GOVERNANCE FRAMEWORK.**  
Create a family charter or agreement that outlines communication norms, decision-making processes, and how future wealth—including inheritances—should be managed.

*Expert Source:*  
Family Enterprise USA (FEUSA) Best Practices



### KEY TAKEAWAY:

Good governance is about people, not just paperwork. With clear communication, fair planning, and simple structures, families can protect both wealth and relationships.



### SOURCES:

The American College of Trust and Estate Counsel (ACTEC)  
[actec.org](http://actec.org)

National Association of Estate Planners & Councils (NAEPC)  
[naepc.org](http://naepc.org)

Dr. Janeen Sproull, Family Wealth Advisor, UBS  
[ubs.com/family-office/insights](http://ubs.com/family-office/insights)

WealthCounsel  
[wealthcounsel.com](http://wealthcounsel.com)

Family Enterprise USA (FEUSA)  
[familyenterpriseusa.com](http://familyenterpriseusa.com)

### SIMPLE STRUCTURES TO CONSIDER (FOR \$5 MILLION OR LESS)



**REVOCABLE LIVING TRUST**  
Provides privacy, avoids probate, and allows for clear distribution instructions.



**1 OR 2 TRUSTEES (FAMILY OR PROFESSIONAL)**  
Keep it simple. Co-trustees can balance family involvement and professional oversight.



**SPENDTHRIFT AND INCENTIVE PROVISIONS**  
Encourage responsible use of inheritances while protecting assets from creditors, divorce, or mismanagement.



**FAMILY MEETINGS (ANNUAL OR BI-ANNUAL)**  
Review goals, share updates, and keep the next generation informed and engaged.



**LEGACY BEYOND MONEY**  
Share stories, values, and life lessons. A meaningful legacy lasts longer than any inheritance.

### KEY REMINDERS

- ✓ Start the conversation before there's a need.
- ✓ Clarity today prevents conflict tomorrow.
- ✓ Document your plan and keep it updated.
- ✓ Treat all children with respect and transparency.
- ✓ Professional guidance is an investment in harmony.

*This information is for educational purposes only and not legal or tax advice. Consult your attorney, CPA, and financial advisor.*



# NAVIGATING INHERITANCE CONFLICTS: BEST PRACTICES FOR FAMILIES

Conflicts over money and meaningful possessions are common—but they don't have to damage relationships. Use these expert-recommended practices to promote fairness, honor intentions, and preserve family harmony.

1



## COMMUNICATE EARLY AND OPENLY.

Encourage honest conversations about values, wishes, and concerns before and after the wealth transfer. Transparency reduces surprises and builds trust.

*Expert Source:*  
*The American College of Trust and Estate Counsel (ACTEC)*

2



## FOCUS ON FAIRNESS, NOT EQUAL SHARES.

Fairness considers each family member's needs, contributions, and circumstances. Explain the reasoning behind decisions.

*Expert Source:*  
*WealthCounsel Best Practices*

3



## ADDRESS SENTIMENTAL ITEMS THOUGHTFULLY.

Personal property often carries deep emotional value. Create a plan—such as stories, letters, or a process for selection—to honor meaning and minimize hurt.

*Expert Source:*  
*The Legacy Cookbook by Karen Ann Quigley*

4



## USE A NEUTRAL THIRD PARTY WHEN NEEDED.

A trusted advisor, mediator, or facilitator can help manage difficult conversations and keep discussions constructive.

*Expert Source:*  
*Institute for Conflict Management (ICM)*

5



## CREATE CLEAR PLANS AND DOCUMENTATION.

A well-drafted estate plan, letter of intent, and inventory of personal property can prevent confusion and reduce the potential for disputes.

*Expert Source:*  
*National Association of Estate Planners & Councils (NAEPC)*

6



## KEEP THE BIG PICTURE IN MIND.

Remind the family that the greatest inheritance is often love, values, and legacy—not just assets or things.

*Expert Source:*  
*Dr. Ron Deal, Moving Your Family Forward*

## SPECIAL CONSIDERATIONS



### FINANCIAL ASSETS

Be transparent about what exists and how it will be distributed. Explain the "why" behind major decisions.



### PERSONAL PROPERTY

Recognize emotional attachment. Consider rotating choice systems, auctions with play money, or creating shared keepsakes.



### BLENDED FAMILIES & COMPLEX DYNAMICS

Acknowledge potential sensitivities and seek guidance to address unique family structures with care and fairness.

## KEY REMINDERS

- ✓ Listen with empathy and validate feelings.
- ✓ Avoid comparisons between siblings or branches.
- ✓ Keep conversations ongoing, not one-time events.
- ✓ Seek professional guidance before conflicts escalate.



### KEY TAKEAWAY:

Thoughtful planning, open communication, and a focus on relationships are the best tools for navigating inheritance conflicts and preserving family harmony.



### SOURCES:

ACTEC  
[actec.org](http://actec.org)

WealthCounsel  
[wealthcounsel.com](http://wealthcounsel.com)

The Legacy Cookbook  
by Karen Ann Quigley

Institute for Conflict Management  
[web.icmnet.org](http://web.icmnet.org)

NAEPC  
[naepc.org](http://naepc.org)

Dr. Ron Deal  
[rontdeal.com](http://rontdeal.com)



Tips for Counseling Clients on the Estate  
Planning Process

## **Communication Frameworks for Planners**



## PILLAR 1

# BUILD THE RIGHT PLANNING TEAM

The foundation of a successful trust and estate plan is qualified, coordinated, and experienced professionals.

“ Good estate planning isn't about documents—it's about expertise, coordination, and stewardship. — ACTEC

### SPECIALIZED EXPERTISE. COORDINATED ADVICE. BETTER OUTCOMES.

Each professional brings a unique and essential perspective to your client's plan.



#### ESTATE PLANNING ATTORNEY

Designs the legal structure of the plan, ensures assets are titled correctly, and documents your client's wishes in accordance with state law.



Protects intent. Provides legal certainty.



#### CPA / TAX SPECIALIST

Evaluates tax implications, models strategies, and helps structure the plan to minimize taxes and preserve after-tax wealth.



Optimizes outcomes. Reduces taxes. Preserves more.



#### FINANCIAL ADVISOR

Aligns the estate plan with your client's overall financial plan, cash flow needs, risk tolerance, and long-term goals.



Aligns the plan with life goals and financial reality.



#### TRUST OFFICER (WHEN APPROPRIATE)

Provides institutional experience, fiduciary oversight, and continuity in administration—especially for complex or multigenerational plans.



Provides continuity. Adds fiduciary oversight.

### WHY THE RIGHT TEAM MATTERS

Poor planning and lack of coordination can have lasting and costly consequences.



64% of families say conflict is their greatest worry about wealth transfer.

Source: *Caring for the Future of Family Wealth 2023, PWC*



70%+ of estates are not updated after major life events.

Source: *Caring for the Future of Family Wealth 2023, PWC*



\$7 BILLION+ lost annually due to poor planning, family conflict, and taxes.

Source: *Wealth Management.com, 2023*



~2/3 of trust and estate litigation stems from miscommunication and unclear intent.

Source: *ACTEC Foundation, Trust Litigation Report*



#### ADVISOR TAKEAWAY

You are your client's quarterback. Bring the right specialists to the table early, coordinate the plan, and review it regularly.

**BETTER PLANNING. STRONGER FAMILIES. LASTING LEGACIES.**



#### RISKS OF GOING IT ALONE OR USING UNDERSPECIALIZED ADVICE

- ✗ Documents that don't work together
- ✗ Missed tax savings and planning opportunities
- ✗ Increased family conflict and confusion
- ✗ Court involvement and unnecessary costs
- ✗ Unintended beneficiaries and poor outcomes



#### AUTHORITIES THAT GUIDE BEST PRACTICES

- Uniform Trust Code (UTC) §§ 802, 803, 804 — Duties of Loyalty, Prudence, and Impartiality require specialized knowledge and faithful administration.
- ACTEC Model Rules of Professional Conduct Emphasize competence, collaboration, and acting in the best interests of the client.
- AICPA Personal Financial Planning Section Best Practices Recommends a team-based, collaborative planning approach.



THE RIGHT TEAM TODAY. THE RIGHT LEGACY TOMORROW.

Expertise. Coordination. Stewardship. That's the difference a great plan makes.





## PILLAR 2

# SELECT THE RIGHT TRUSTEE

THE RIGHT TRUSTEE IS OFTEN MORE IMPORTANT THAN THE TRUST DESIGN.

A well-drafted trust with the wrong trustee can fail.  
A simpler trust with the right trustee can succeed for generations.

“ The trustee is the heart of the trust. Choose wisely.

— ACTEC

### WHO CAN SERVE AS TRUSTEE?

Each option has strengths and considerations.



#### INDIVIDUAL TRUSTEES

A trusted individual with the skills, time, and willingness to serve.



#### FAMILY TRUSTEES

May bring deep understanding and commitment, but can create conflict or bias.



#### CORPORATE TRUSTEES

Professional expertise, resources, systems, and continuity.



#### CO-TRUSTEE STRUCTURES

Combine strengths (e.g., family insight + institutional expertise).



The best choice depends on your family, assets, complexity, and long-term goals.

### THE 3 ESSENTIAL QUALITIES OF THE RIGHT TRUSTEE

Use these as your evaluation framework.



#### 1. COMPETENCE

- Understands trust administration, investments, taxes, and accounting
- Has relevant experience and resources
- Can make informed, prudent decisions



#### 2. OBJECTIVITY

- Acts solely in the best interests of beneficiaries
- Avoids favoritism and conflicts of interest
- Can make difficult decisions impartially



#### 3. LONG-TERM CONTINUITY

- Willing and able to serve for the long term
- Has a succession plan if circumstances or generations change
- Provides stability across time and transitions

### COMMON TRUSTEE FAILURES & FAMILY CONFLICT RISKS



#### LACK OF SKILL OR EXPERIENCE

Poor decisions, missed opportunities, and unnecessary costs.



#### CONFLICTS OF INTEREST

Self-dealing or divided loyalties can breach fiduciary duties and damage trust.



#### FAVORITISM OR PERCEIVED BIAS

Unequal treatment leads to resentment, disputes, and litigation.



#### LACK OF TIME OR RESOURCES

Overcommitted trustees may fall behind or make avoidable mistakes.



#### POOR COMMUNICATION

Silence and surprises are the leading causes of family conflict.



Nearly 70% of trust and estate disputes involve allegations of breach of fiduciary duty or poor communication. Source: ACTEC Trust Litigation Report

### FIDUCIARY RESPONSIBILITIES: THE TRUSTEE'S STANDARD OF CARE

Trustees have legal duties that cannot be delegated.



#### DUTY TO ADMINISTER (UTC § 801)

Administer the trust in good faith and in accordance with the terms and purposes of the trust.



#### DUTY OF LOYALTY (UTC § 802)

Act solely in the interests of the beneficiaries and avoid conflicts of interest and self-dealing.



#### DUTY OF PRUDENT ADMINISTRATION (UTC § 804)

Administer the trust as a prudent person would, considering the purposes, terms, and circumstances.



These duties are the foundation of every trustee decision. Breach of these duties can result in removal, liability, and litigation.

### AUTHORITATIVE GUIDANCE



- Uniform Trust Code §§ 801, 802, 804
- Restatement (Third) of Trusts §§ 77-79



- ACTEC Commentaries on the Model Rules of Professional Conduct



- ACTEC Foundation – Trustee Selection Considerations



### ADVISOR TAKEAWAY

Help clients look beyond convenience or family expectations. Guide them to select a trustee with the right skills, independence, and long-term capacity to protect assets, preserve harmony, and fulfill the intent of their plan.

**THE RIGHT TRUSTEE PROTECTS MORE THAN ASSETS—  
THEY PROTECT LEGACY, RELATIONSHIPS, AND INTENT.**

### KEY QUESTIONS TO ASK WITH CLIENTS

- ✓ Does this person or institution have the right expertise?
- ✓ Can they be objective and avoid conflicts?
- ✓ Will they be willing and able to serve for decades?
- ✓ Is there a succession plan if circumstances change?
- ✓ How will beneficiaries feel about this choice?



This material is for educational purposes only and should not be considered legal, tax, or investment advice. Consult qualified professionals regarding your specific situation.



### PILLAR 3

# ENGAGE THE FAMILY BEFORE A CRISIS

OPEN COMMUNICATION TODAY PREVENTS CONFLICT TOMORROW.

The strongest estate plans don't just transfer wealth—they preserve family unity, values, and legacy.

“The single greatest cause of family conflict in estate matters is poor communication.

— ACTEC Foundation

## THE 3 MOST IMPORTANT THINGS FAMILIES SHOULD KNOW

1



### TALK EARLY AND TALK OFTEN

Open, honest conversations create clarity, alignment, and trust.

- Silence breeds assumptions, unmet expectations, and future conflict.
- Share your values, intentions, and the purpose behind your plan.
- Include all family members who may be impacted—not just beneficiaries.

#### KEY ACTIONS

- ✓ Schedule a dedicated family meeting.
- ✓ Encourage questions and listen.
- ✓ Revisit conversations as life and circumstances change.

2



### PREPARE YOUR FAMILY AND CLARIFY ROLES

Prepared heirs and clear expectations lead to better decisions and stronger outcomes.

- Help heirs understand their future roles, responsibilities, and the importance of stewardship.
- Clarify the trustee's duties, decision-making process, and how communication will be handled.
- Education today builds confidence and reduces the risk of future conflict.

#### KEY ACTIONS

- ✓ Educate beneficiaries about the plan and their roles.
- ✓ Discuss how decisions will be made.
- ✓ Empower the next generation for success.

3



### KEEP THE LEGACY AT THE CENTER

A shared legacy and purpose unite families across generations.

- Focus on more than money—pass down values, principles, and purpose.
- Align your estate plan with what matters most to your family.
- A meaningful legacy strengthens relationships and endures over time.

#### KEY ACTIONS

- ✓ Define your family's values and legacy goals.
- ✓ Incorporate philanthropic and purpose-driven planning.
- ✓ Celebrate and communicate the family story.

## WHY IT MATTERS



70%

of families lose wealth or relationships due to poor communication.

Source: Family Business Institute, 2022



60%+

of estate litigation is caused by family conflict, not unfairness.

Source: ACTEC Trust Litigation Report



3x

Families who engage in early, open communication are 3x more likely to achieve a smooth wealth transfer.

Source: Russell Reynolds Associates, 2020



Strong conversations today lead to stronger relationships tomorrow.

Source: Harvard Business Review Analytic Services, "The Family Factor," 2021



### ADVISOR TAKEAWAY

Encourage families to start the conversation early, include the right people, and revisit the dialogue regularly. You help families preserve more than wealth—you help preserve unity, purpose, and their lasting legacy.

**STRONG PLANS ARE BUILT ON STRONG CONVERSATIONS.**

### AUTHORITATIVE GUIDANCE



Uniform Trust Code §§ 801, 802, 804  
*Duties of Loyalty, Prudence, and Administration*



Restatement (Third) of Trusts §§ 77-79  
*Trustee Duties and Standard of Conduct*



ACTEC Guidance  
*Family Communication and Trustee Selection Best Practices*



The best estate plan in the world cannot heal a family that never had the chance to talk.

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### PILLAR 3

# ENGAGE THE FAMILY BEFORE A CRISIS

OPEN COMMUNICATION TODAY PREVENTS CONFLICT TOMORROW.

Many estate disputes arise not from the plan itself, but from surprises, confusion, and unmet expectations.

“The single greatest cause of family conflict in estate matters is poor communication.

— ACTEC Foundation

## WHY FAMILY ENGAGEMENT MATTERS



### REDUCES FUTURE CONFLICT

Open conversations clarify intentions, set expectations, and reduce misunderstandings and resentment.



### PRESERVES HARMONY

Families that communicate well together tend to stay united across generations.



### SUPPORTS TRUSTEE SUCCESS

Trustees make better decisions when beneficiaries understand the plan and their roles.



### PROTECTS THE LEGACY

Shared values and goals help ensure the plan protects both wealth and family purpose.



### LOWERS LITIGATION RISK & COST

Transparency and preparation are among the strongest predictors of lower estate litigation.



Families that talk about wealth, values, and legacy are more likely to keep both.  
Source: Harvard Business Review Analytic Services, "The Family Factor," 2021

## COMMON COMMUNICATION MISTAKES TO AVOID



**KEEPING IT A SECRET**  
Surprises almost always lead to suspicion and conflict.



**IGNORING FAMILY DYNAMICS**  
Unaddressed conflict, sibling rivalry, or blended family issues can escalate later.



**OVER-SHARING SENSITIVE DETAILS**  
Too much information too soon can cause anxiety or entitlement.



**NOT LISTENING**  
One-way conversations miss concerns and create missed opportunities.



**ONE-TIME CONVERSATIONS**  
Communication should be ongoing, not a single meeting event.



Intent without communication is just a document. Communication brings intent to life.

## AUTHORITY & GUIDANCE



Uniform Trust Code §§ 801, 802, 804  
Duties of Loyalty, Prudence, and Administration



Restatement (Third) of Trusts §§ 77-79  
Trustee Duties and Standard of Conduct



ACTEC Guidance  
Family Communication and Trustee Selection Best Practices



## ADVISOR TAKEAWAY

Encourage families to talk early, talk openly, and talk often. You don't just help them preserve wealth—you help them preserve what matters most.

**STRONG PLANS ARE BUILT ON STRONG CONVERSATIONS.**

## HOW TO ENGAGE THE FAMILY EFFECTIVELY

Proactive, thoughtful conversations create clarity and confidence.



### HOST A FAMILY MEETING

Bring key family members together (virtually or in person) to discuss goals, values, and the purpose of the plan.



### SHARE YOUR INTENT

Explain the "why" behind your plan—your values, hopes, and what you want the legacy to accomplish.



### EDUCATE & PREPARE BENEFICIARIES

Help heirs understand their future roles, responsibilities, and the importance of stewardship.



### CLARIFY TRUSTEE ROLES & EXPECTATIONS

Discuss the trustee's duties, decision-making process, and how communication will be handled.



### MAKE IT AN ONGOING CONVERSATION

Revisit the plan as life changes, new generations join, and circumstances evolve.

## KEY TOPICS TO INCLUDE IN FAMILY CONVERSATIONS



### FAMILY VALUES & PURPOSE

What matters most to our family?



### WEALTH & LEGACY GOALS

What do we hope our wealth will accomplish?



### ROLES & RESPONSIBILITIES

Who will do what, and how will decisions be made?



### TRUSTEE SELECTION

Why this trustee and what do we expect from them?



70%

of families lose wealth or relationships due to poor communication.

Source: Family Business Institute, 2022



60%+

of estate litigation is caused by family conflict, not unfairness.

Source: ACTEC Trust Litigation Report



3x

Families who engage in early communication are 3x more likely to achieve smooth wealth transfer.

Source: Russell Reynolds Associates, 2020

## PLANNING & PRACTICE

The best practice or best tool, together or apart, is not the best practice or best tool.



## REMEMBER

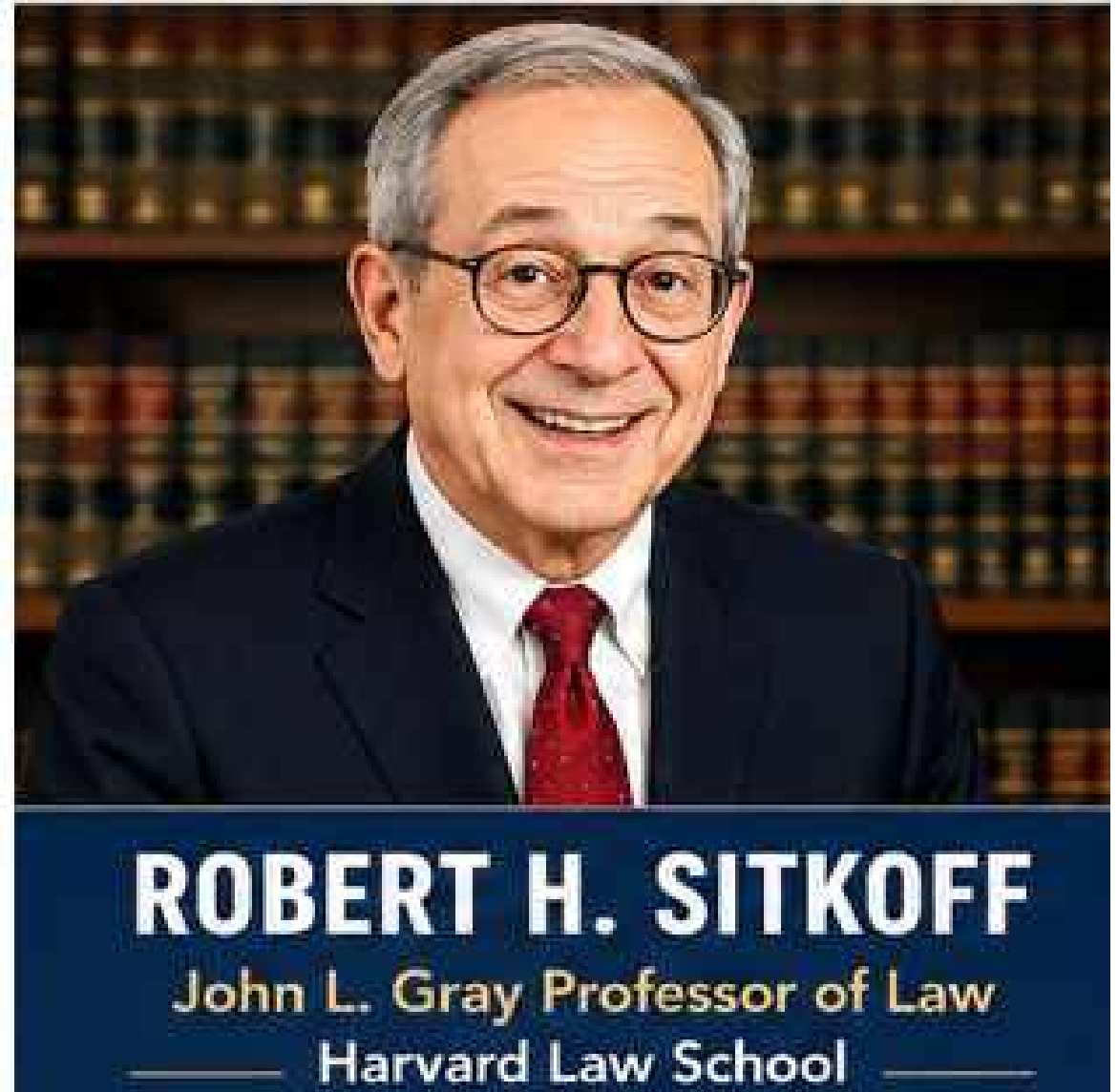
The best estate plan in the world cannot heal a family that never had the chance to talk.

SOURCES: ACTEC Foundation (Trust Litigation Report) • Harvard Business Review Analytic Services (The Family Factor) • Family Business Institute • Russell Reynolds Associates  
This material is for educational purposes only and should not be considered legal, tax, or investment advice. Consult qualified professionals regarding your specific situation.



Source: Robert H. Sitkoff

# Best Practices



# WHY COURTS, ATTORNEYS, AND FINANCIAL PROFESSIONALS LISTEN TO PROFESSOR SITKOFF



HARVARD  
LAW SCHOOL



## ROBERT H. SITKOFF

John L. Gray Professor of Law  
Harvard Law School

Professor Robert H. Sitkoff is widely recognized as one of the nation's leading authorities on trust and fiduciary law. His scholarship, teaching, and legal writing have influenced the development and interpretation of trust law throughout the United States.



Professor Sitkoff's scholarship has influenced courts, practitioners, lawmakers, and students through his leadership on the Restatement (Third) of Trusts and his authorship of some of the most respected trust law authorities in the United States.

### DISTINGUISHED CREDENTIALS



#### Reporter for the Restatement (Third) of Trusts

One of the most authoritative legal sources courts rely upon when trust law is unclear or evolving.



#### Co-Author of *The Law of Trusts and Trustees (Bogert)*

One of the most respected and frequently cited trust law treatises in the United States.



#### Co-Author of *Wills, Trusts, and Estates*

One of the leading law school casebooks used to educate future attorneys and trust professionals.



#### Frequently Cited by Courts and Legal Scholars

His work is regularly referenced by state supreme courts, appellate courts, and academic commentators addressing complex trust and fiduciary issues.



#### Advisor to the Uniform Law Commission

Contributed expertise on trust law matters affecting uniform legislation adopted across multiple states.



#### Leading Voice in Modern Trust Law

Recognized nationally for his work on trust modification, fiduciary duties, trust administration, and adapting trusts to changing circumstances.

### WHY HIS PERSPECTIVE MATTERS

Professor Sitkoff's scholarship has helped shape the modern understanding of how trusts should be administered, interpreted, and modified when circumstances change.

His work emphasizes balancing fidelity to a settlor's intent with the flexibility necessary to address evolving family, financial, tax, and legal realities.



### AUTHORITATIVE SOURCES

- ✓ Harvard Law School Faculty Profile
- ✓ American Law Institute, *Restatement (Third) of Trusts* (Reporter: Robert H. Sitkoff)
- ✓ Sitkoff & Ascher, *The Law of Trusts and Trustees (Bogert)*
- ✓ Sitkoff & Dukeminier, *Wills, Trusts, and Estates*
- ✓ American College of Trust and Estate Counsel (ACTEC)

# 5 Things that can go WRONG

### 1 FAILURE TO PROPERLY FUND THE TRUST

**MISTAKE:** The trust is signed, but assets are never retitled into the trust's name.

WE HAVE A TRUST—WE'RE ALL SET!

STILL IN MY NAME  
PROBATE REQUIRED

**WHY IT MATTERS:**  
Unfunded assets may be subject to probate despite the existence of a trust.

### 2 OVERLY BROAD DISTRIBUTION STANDARDS

**MISTAKE:** The trust allows distributions for a beneficiary's "comfort," "happiness," or "best interests" without clear guidance.

WHAT DOES "BEST INTERESTS" REALLY MEAN?

WHY IS HE GETTING MORE THAN ME?

TRUSTEE

**WHY IT MATTERS:**  
Vague standards invite family disputes, trustee liability, and costly court involvement.

### 3 FAILURE TO ADDRESS TRUSTEE SUCCESSION AND REMOVAL

**MISTAKE:** The trust names only one trustee or provides no practical mechanism for removal.

PROBLEMS:  
✓ AGING  
✓ HEALTH ISSUES  
✓ CONFLICTS  
✓ UNCOOPERATIVE

THERE'S NO EASY WAY TO REMOVE OR REPLACE HIM!

SOLE TRUSTEE

**WHY IT MATTERS:**  
Without a succession or removal mechanism, beneficiaries may need expensive court proceedings.

### 4 IGNORING CHANGES IN TAX LAW

**MISTAKE:** Trusts are drafted using formulas tied to estate tax exemptions that later become outdated.

THE LAW CHANGED—BUT THE TRUST DIDN'T!

FEDERAL ESTATE TAX EXEMPTION

\$1M (2001)	\$13.61M (2024)
-------------	-----------------

TRUST FORMULA BASED ON \$1 MILLION EXEMPTION

**WHY IT MATTERS:**  
Outdated formulas can create unintended tax results and disinherit family members.

### 5 FAILURE TO BUILD IN FLEXIBILITY FOR FUTURE CIRCUMSTANCES

**MISTAKE:** The trust assumes today's laws, family structure, and economic conditions will remain unchanged.

A TRUST MAY LAST FOR GENERATIONS—BUILD IN FLEXIBILITY!

CHANGES IN TAX LAW	SPECIAL NEEDS BENEFICIARIES	DIVORCE
CREDITOR CLAIMS	ASSET PROTECTION	MOVING TO ANOTHER STATE

**WHY IT MATTERS:**  
Flexibility tools (trust protectors, decanting, powers of appointment, directed trustee provisions) allow the trust to adapt over time.

# BEST PRACTICES FOR DISTRIBUTION STANDARDS AND LANGUAGE

Clear standards. Thoughtful language. Fewer disputes. Better outcomes.



## WHY IT MATTERS

Vague distribution language is one of the leading causes of trust litigation and inconsistent administration among trustees.



Well-drafted standards provide guidance, protect trustees, and carry out the settlor's intent.

## BEST PRACTICES



### 1. USE ASCERTAINABLE STANDARDS

Define standards that can be measured by an objective person. Avoid purely subjective terms.



### 2. INCLUDE EXAMPLES AND FACTORS

Provide non-exclusive factors to guide the trustee in making distribution decisions.



### 3. BALANCE FLEXIBILITY WITH GUARDRAILS

Give the trustee flexibility, but set boundaries (e.g., for health, education, maintenance, and support).



### 4. REQUIRE GOOD FAITH AND DOCUMENTATION

Direct the trustee to act in good faith and document the reasons for distributions.



### 5. CONSIDER TRUST DURATION AND BENEFICIARIES

Tailor standards to the beneficiaries' ages, needs, and life stages over time.



### 6. REVIEW AND UPDATE PERIODICALLY

Ensure the language remains appropriate for current laws, family circumstances, and settlor intent.



## WHAT TO AVOID

- ✗ **"Comfort, happiness, and best interests"**  
Too subjective and open-ended.
- ✗ **Unlimited discretion with no guidance**  
Invites inconsistent decisions and litigation.
- ✗ **No distinction between principal and income**  
May cause unintended depletion of trust assets.
- ✗ **No requirement to consider other resources**  
Could encourage over-distribution.
- ✗ **No standards for extraordinary requests**  
Large or unusual distributions need higher scrutiny.

## EXAMPLE OF WELL-DRAFTED DISTRIBUTION LANGUAGE

The Trustee may distribute income and/or principal to or for the benefit of any beneficiary, in the Trustee's sole discretion, for that beneficiary's health, education, maintenance, and support, including support in a manner consistent with the beneficiary's accustomed standard of living, considering all relevant circumstances.

In making distributions, the Trustee may consider, without limitation:

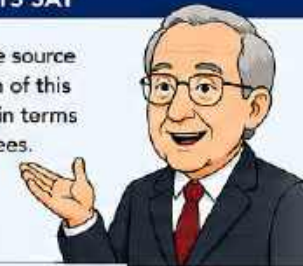
- ✓ The beneficiary's age, health, occupation, skills, and education;
- ✓ The beneficiary's financial resources, including other assets and income;
- ✓ Current and anticipated needs;
- ✓ Any special needs of the beneficiary;
- ✓ The size and nature of the trust estate; and
- ✓ Any other factor the Trustee considers relevant.

The Trustee shall act in good faith and may rely on information reasonably believed to be accurate. The Trustee is not required to make distributions to any beneficiary.

## WHAT THE EXPERTS SAY

“ Vague standards of distribution are a fertile source of litigation... The settlor can avoid much of this trouble by expressing fiduciary discretion in terms that provide meaningful guidance to trustees.

– PROFESSOR JOHN H. LANGBEIN  
Sterling Professor of Law Emeritus, Yale Law School  
Author, *The Law of Trusts and Trustees* (rev. 2023)



Clear standards today.  
Trust harmony tomorrow.  
Protect your intent. Protect your family.



**Authoritative Source:** *The Law of Trusts and Trustees* (REV. 2023) by John H. Langbein  
Widely regarded as the most respected and influential treatise on trust law in the United States.



# BEST PRACTICES AND LANGUAGE TO ADDRESS TRUSTEE SUCCESSION AND REMOVAL



Plan ahead. Provide options. Protect your trust and your beneficiaries.

## WHY IT MATTERS

Trusts often last for decades. Circumstances change and trustees may:

- Die or become incapacitated
- Move away or become unavailable
- Develop conflicts of interest
- Become ineffective or uncooperative

Without clear succession and removal provisions, beneficiaries may be forced into expensive court proceedings and delay.

## WHAT TO AVOID

- Naming only one trustee with no successor.
- Requiring unanimous beneficiary consent for removal.
- No clear standard for removal.
- No process for incapacity or resignation.
- Silence on filling vacancies.

## WHAT THE EXPERTS SAY



“A well-drafted trust anticipates change in trustees and provides a flexible set of tools to address it. Clear succession and removal provisions are essential to avoiding court involvement and preserving settlor intent.”

— PROFESSOR ROBERT H. SITKOFF  
Harvard Law School  
Author, *The Law of Trusts* (rev. 2022) and  
*Restatement (Third) of Trusts: Reporter*

## BEST PRACTICES

1



### NAME SUCCESSOR TRUSTEES

- Name at least one successor trustee.
- Consider naming co-trustees or a corporate trustee as a back-up.

### SAMPLE LANGUAGE

“Upon the resignation, removal, incapacity, or death of a Trustee, the Successor Trustee named in Article \_\_\_ shall serve. If no Successor Trustee is then able or willing to serve, the remaining Trustee(s) may appoint a qualified successor.”

2



### GIVE A CLEAR APPOINTMENT POWER

Ensure remaining trustees or a trust protector can appoint a successor if needed.

### SAMPLE LANGUAGE

“Any Trustee then serving may appoint an individual or corporate successor trustee who is not a beneficiary of the trust.”

3



### PROVIDE A PRACTICAL REMOVAL MECHANISM

- Allow removal for cause and, if appropriate, without cause.
- Avoid requiring unanimous beneficiary consent.

### SAMPLE LANGUAGE

“A Trustee may be removed for cause by the vote of a majority of the then-current income beneficiaries who are not subject to a substantial adverse interest. A Trustee may be removed without cause by the same vote.”

4



### DEFINE “CAUSE”

Include objective standards to guide decisions and reduce the risk of disputes.

### SAMPLE LANGUAGE

“Cause shall include: (i) breach of fiduciary duty; (ii) gross negligence or willful misconduct; (iii) incapacity; (iv) conflict of interest; or (v) failure to administer the trust in good faith.”

5



### ADDRESS INCAPACITY AND RESIGNATION

- Allow trustees to resign.
- Specify how incapacity is determined (e.g., written opinion of a physician).

### SAMPLE LANGUAGE

“A Trustee may resign upon 30 days’ written notice to the other Trustee(s). A Trustee shall be deemed incapacitated upon the written opinion of a physician that such Trustee is unable to manage his or her affairs.”

6



### PROVIDE FOR FILLING VACANCIES QUICKLY

Empower remaining trustees or a trust protector to act promptly to avoid administrative gaps.

### SAMPLE LANGUAGE

“Any vacancy in the office of Trustee may be filled by the remaining Trustee(s) or by the Trust Protector, and the person so appointed shall have all the powers of a Trustee hereunder.”

## TRUSTEE SUCCESSION & REMOVAL CHECKLIST

- Are at least one successor trustee (or more) named?
- Can trustees appoint a successor if no successor is available?
- Is there a clear removal mechanism for cause?
- Can a trustee be removed without cause by an objective standard?
- Is “cause” defined in the trust?
- Can a trustee resign, and is the process specified?
- Is incapacity addressed with a practical standard?
- Is there a process to fill vacancies quickly?
- Do provisions avoid requiring unanimous beneficiary consent?



### Authoritative Source:

*Restatement (Third) of Trusts* § 37, cmt. e (2007)

The Restatement (Third) of Trusts, widely regarded as the preeminent authority on U.S. trust law, emphasizes that trust instruments should include flexible mechanisms for trustee succession and removal to ensure effective administration and to adapt to changed circumstances over time.



# BEST PRACTICES AND LANGUAGE TO ADDRESS INEVITABLE CHANGES IN THE LAW WITHIN A TRUST



Build flexibility today. Protect your intent tomorrow.

## WHY IT MATTERS

Tax laws, creditor laws, beneficiary laws, and other regulations will change. A rigid trust can create unintended taxes, limit planning opportunities, or defeat your intent.



A flexible trust can adapt without court involvement.

## COMMON RISKS OF A RIGID TRUST

- ✗ Unintended tax consequences when tax laws change.
- ✗ Loss of asset protection as laws evolve.
- ✗ Inability to qualify for planning opportunities not available today.
- ✗ Outdated definitions or rules conflict with new laws.
- ✗ Court involvement and cost to obtain modifications.

## BEST PRACTICES AND MODEL LANGUAGE

1



### 1. INCLUDE A SAVINGS CLAUSE

- Ensures the trust is interpreted in a manner that preserves its validity and intent if any provision becomes invalid under future law.

#### SAMPLE LANGUAGE

"If any provision of this Trust is held invalid, illegal, or unenforceable under future law, the remaining provisions shall not be affected and shall be interpreted to carry out the Settlor's intent to the fullest extent permitted by law."

2



### 2. GIVE BROAD TRUSTEE POWERS

- Grant trustees the power to adapt the trust in response to changes in law or circumstances.

#### SAMPLE LANGUAGE

"The Trustee shall have all powers necessary or advisable to administer the trust, including the power to take any action that the Trustee determines, in good faith, to be appropriate in light of changes in applicable law."

3



### 3. ALLOW FOR MODIFICATIONS WITHOUT COURT

- Allow modifications that further the trust's purposes and are permitted under law.

#### SAMPLE LANGUAGE

"The Trustee may modify the administrative or dispositive provisions of this Trust, without the consent of any court, if the Trustee determines in good faith that such modification is consistent with the Settlor's intent and permitted by applicable law."

4



### 4. AUTHORIZE DE-CANTING

- Permit the Trustee to transfer assets to a new trust (a "decanting trust") to take advantage of more favorable laws.

#### SAMPLE LANGUAGE

"The Trustee is authorized to transfer all or part of the trust property to one or more decanting trusts that the Trustee determines in good faith will further the purposes of this Trust and are permitted by law."

5



### 5. USE FLEXIBLE DEFINITIONS

- Define key terms (e.g., income, principal, descendants) by reference to applicable law as it may exist from time to time.

#### SAMPLE LANGUAGE

"All terms not otherwise defined in this Trust shall be interpreted in accordance with the laws of the state of the Settlor's domicile as such laws may be amended or re-enacted."

6



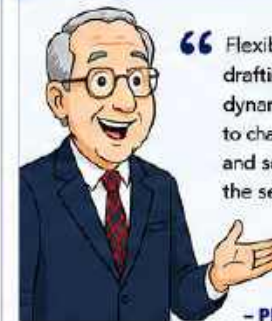
### 6. INCLUDE A DISTRIBUTION STANDARD THAT EVOLVES WITH THE LAW

- Tie distribution authority to what is allowed under applicable law.

#### SAMPLE LANGUAGE

"Distributions may be made to a beneficiary to the extent permitted by applicable law, including any changes in that law."

## WHAT THE EXPERTS SAY



"Flexibility is the hallmark of good trust drafting. A modern trust should be a dynamic instrument—able to respond to changes in tax law, family circumstances, and societal needs without defeating the settlor's intent."

— PROFESSOR JOHN H. LANGBEIN

Sterling Professor of Law Emeritus, Yale Law School  
Author, *The Law of Trusts and Trustees* (rev. 2023)

## TRUST FLEXIBILITY CHECKLIST

- ✓ Savings clause included?
- ✓ Broad trustee powers to act despite changes in law?
- ✓ Power to modify trust provisions without court approval?
- ✓ Power to decant to a new trust?
- ✓ Flexible definitions tied to applicable law as amended?
- ✓ Distribution standards that adjust to law?
- ✓ Authority to allocate among income, principal, and other sources?
- ✓ Regular review process in place?



**AUTHORITATIVE SOURCE:** *The Restatement (Third) of Trusts* § 66 cmt. e (2007)

The Restatement (Third) of Trusts recognizes that trust terms should be sufficiently flexible to adapt to changes in law and circumstances to carry out the settlor's purposes.

Session 4: Estate Planning Masterclass FEN



# BEST PRACTICES AND LANGUAGE FOR CHANGES IN CIRCUMSTANCES

Plan for today. Provide for tomorrow.  
A flexible trust adapts to life's inevitable changes.



## WHY IT MATTERS

Families change. Health changes. Relationships change. Circumstances change. Thoughtful trust language ensures your plan continues to work as life evolves.



## COMMON RISKS OF INFLEXIBLE LANGUAGE

- ✗ Disinheriting or unintentionally excluding loved ones.
- ✗ Inability to provide for special needs or incapacity.
- ✗ Trust provisions that no longer reflect your values or goals.
- ✗ Court involvement and expense to obtain modifications.
- ✗ Loss of tax benefits or asset protection opportunities.

## BEST PRACTICES AND MODEL LANGUAGE

- 1 USE BROAD, INCLUSIVE PURPOSES**

  - Allow for a wide range of needs and circumstances.
  - Avoid narrow or overly restrictive terms.

**SAMPLE LANGUAGE**  
"The Trustee may make distributions for the benefit of any beneficiary for health, education, maintenance, support, and general welfare, including in the discretion of the Trustee, for any other purpose the Trustee determines to be in the best interests of the beneficiary."
- 2 ANTICIPATE SPECIAL NEEDS**

  - Provide authority to create or modify trusts for disabled or incapacitated beneficiaries.

**SAMPLE LANGUAGE**  
"The Trustee may establish and fund one or more supplemental needs trusts for the benefit of any beneficiary who becomes disabled, without regard to age, and modify such trusts as the Trustee deems appropriate."
- 3 ADDRESS DIVORCE AND REMARRIAGE**

  - Protect assets from divorce.
  - Clarify treatment of new spouses.

**SAMPLE LANGUAGE**  
"In the event a beneficiary divorces, that beneficiary shall not be required to treat any distribution received from this Trust as marital or community property."
- 4 GIVE THE TRUSTEE FLEXIBILITY TO ADAPT**

  - Grant broad discretion to respond to unforeseen events.
  - Allow decisions in good faith.

**SAMPLE LANGUAGE**  
"The Trustee shall have all powers necessary or advisable to administer the Trust in response to changes in circumstances, including any powers granted by law, and may exercise such powers in good faith and
- 5 PERMIT MODIFICATIONS TO PROTECT INTENT AND BENEFICIARIES**

  - Allow changes that do not defeat the settlor's core intent.
  - Permit decanting if allowed by law.

**SAMPLE LANGUAGE**  
"The Trustee may modify the administrative or dispositive provisions of this Trust, without the consent of any court, if the Trustee determines in good faith that such modification is consistent with the Settlor's intent and permitted by applicable law."
- 6 PLAN FOR CHANGES IN RESIDENCE OR JURISDICTION**

  - Avoid language tied to one state's law.
  - Allow governing law to follow the trustee or situs of administration.

**SAMPLE LANGUAGE**  
"This Trust shall be governed by the law of the state of the Trustee's principal place of administration at the time of administration, to the extent permitted by law."
- 7 INCLUDE A REVIEW REMINDER**

  - Encourage periodic review to keep the trust current.
  - Not a substitute for legal advice.

**SAMPLE LANGUAGE**  
"The Trustee and beneficiaries are encouraged to review this Trust periodically and consider whether any provisions should be updated in light of changes in law or circumstances."

## WHAT THE EXPERTS SAY



"A well-drafted trust anticipates change and provides the fiduciary with the flexibility to respond to it. The goal is not to predict the future, but to be prepared for it."

— PROFESSOR ROBERT H. SITKOFF  
Harvard Law School  
Author, *The Law of Trusts (rev. 2022)*  
and *Restatement (Third) of Trusts: Reporter*

## TRUST FLEXIBILITY CHECKLIST

- ✓ Are distribution purposes broad and inclusive?
- ✓ Can the trustee respond to unforeseen events?
- ✓ Are special needs and incapacity addressed?
- ✓ Is there protection in the event of divorce or remarriage?
- ✓ Can the trustee modify or adapt provisions without court?
- ✓ Does the trust allow for decanting if beneficial?
- ✓ Is governing law flexible to adapt to relocation?
- ✓ Is there an encouragement for periodic review?



## KEY TAKEAWAY



The most effective trusts are not the most rigid—they are the most adaptable.

Flexible language today helps protect your intent, your assets, and the people you love—for generations to come.



**AUTHORITATIVE SOURCE:** *Restatement (Third) of Trusts § 66 cmt. e (2007)*  
The Restatement (Third) of Trusts emphasizes that trusts should be drafted with sufficient flexibility to adapt to changed circumstances while remaining faithful to the settlor's intent.

# Estate Plan Stress Testing



# THE BIGGEST EVENTS THAT STRESS ESTATE PLANS FOR FAMILIES WORTH \$5 MILLION OR LESS

LIFE CHANGES CAN CREATE CONFUSION, CONFLICT, AND COSTLY DELAYS.

These common events put the most pressure on estate plans—and what families should do to protect their loved ones and their legacy.

## 1 DEATH OF A SPOUSE OR PRIMARY DECISION-MAKER



The sudden loss of a partner or key decision-maker can create emotional turmoil and leave a plan unworkable.

### WHY IT STRESSES

- Decisions must be made during grief
- Successor roles may be unclear
- Family dynamics can be strained

### WHAT TO DO

- ✓ Ensure successor trustees, agents, and guardians are clearly named and informed.

## 2 DIVORCE OR SEPARATION



Divorce can invalidate beneficiary designations, change family dynamics, and create unintended inheritances.

### WHY IT STRESSES

- Outdated documents may benefit an ex-spouse
- Children and new partners may be impacted
- Assets may be tied up in legal disputes

### WHAT TO DO

- ✓ Review and update all documents, beneficiaries, and titles immediately.

## 3 BLENDED FAMILIES OR NEW RELATIONSHIPS



New marriages, stepchildren, or long-term partners can create confusion and risk resentment or disinheritance.

### WHY IT STRESSES

- Unclear intent can lead to family conflict
- Unequal treatment may be misunderstood
- Legal challenges are more likely

### WHAT TO DO

- ✓ Communicate your wishes and consider tools like trusts, prenups, and letters of intent.

## 4 INCAPACITY OR CHRONIC ILLNESS



Illness or cognitive decline can leave no one legally authorized to act or make critical decisions.

### WHY IT STRESSES

- No authority to manage finances or care
- Bills and decisions may be delayed
- Court involvement may be required

### WHAT TO DO

- ✓ Establish powers of attorney, healthcare directives, and review regularly.

## 5 MAJOR FINANCIAL CHANGE



A sudden increase or decrease in wealth, sale of a business, or inheritance can throw a plan off track.

### WHY IT STRESSES

- Plan may not reflect current reality
- Tax or creditor risks may increase
- Gifting or inheritance strategies may be missed

### WHAT TO DO

- ✓ Revisit your plan after any major financial event or change in assets.

## 6 CHILD OR GRANDCHILD WITH SPECIAL NEEDS



A diagnosis or change in circumstances requires special planning to protect loved ones long-term.

### WHY IT STRESSES

- Public benefits may be jeopardized
- Long-term care costs can be high
- Planning must be highly coordinated

### WHAT TO DO

- ✓ Use a Special Needs Trust and work with professionals who understand benefits.



### KEY TAKEAWAY:

Life changes happen—often unexpectedly. Proactive planning, regular reviews, and open communication are the best ways to keep your estate plan strong and your family protected.



### REVIEW YOUR PLAN:

At least every 3–5 years or after any major life event.

### EXPERT SOURCES

The American College of Trust and Estate Counsel (ACTEC)  
actec.org

National Association of Estate Planners & Councils (NAEPC)  
naepc.org

WealthCounsel  
wealthcounsel.com

Family Enterprise USA (FEUSA)  
familyenterpriseusa.com

Dr. Janeen Sproull,  
Family Wealth Advisor, UBS  
ubs.com/family-office/insights

Morningstar  
“Top Estate Planning Mistakes” Report  
morningstar.com



# WHEN THE MATH DOESN'T COMPUTE

## The Trustee's Most Difficult Calculations

Complex trusts often create valuation, tax, and distribution challenges long after the documents are signed.



### TRUSTEE ADMINISTRATION CHALLENGES

"Can we determine a fair value, calculate the correct distribution, and satisfy beneficiaries without harming the estate?"



### CRITICAL TIME PERIOD: FIRST 12 MONTHS AFTER DEATH



Estate Valuation



Tax Reporting



Beneficiary Distributions



Liquidity Planning



Fiduciary Decision-Making



### CIRCULAR FORMULAS

When the Tax Depends on the Deduction—and the Deduction Depends on the Tax



#### THE PROBLEM

Some trusts use formula clauses tied to:

- Marital deductions
- Charitable deductions
- Estate tax allocations



**Result:** An apparent mathematical loop  
Tax affects deduction. Deduction affects tax.



#### TRUSTEE RESPONSE

- ✓ Estate tax software
- ✓ CPA calculations
- ✓ Estate attorney review
- ✓ Form 706 preparation

**COMMON TOOLS**  
Bloomberg Tax  
NumberCruncher  
Leimberg Resources



#### TIMELINE

Form 706 due within 9 months of death (extensions may apply)



### INFLATION-INDEXED DISTRIBUTIONS

When Yesterday's Dollars Are Not Today's Dollars



#### THE PROBLEM

The trust requires inflation-adjusted payments.

Example: \$10,000 monthly payment established years ago.

What should the payment be today?



#### TRUSTEE RESPONSE

- ✓ Identify required inflation index
- ✓ Calculate cumulative inflation
- ✓ Update required distributions
- ✓ Document methodology



#### COMMON INDEX

Consumer Price Index (CPI-U)  
Bureau of Labor Statistics

#### FORMULA

$$A = P(1 + i)^n$$

A = Adjusted Amount  
P = Principal (Base Amount)  
i = Inflation Rate  
n = Number of Periods



### VALUATION CHALLENGES

Assets Without Public Market Prices



#### THE PROBLEM

Some assets cannot simply be looked up online.

Examples:



Commercial Real Estate



Closetly Held Businesses



Farms



Development Property

#### TRUSTEE QUESTIONS

- ❓ What is it worth?
- ❓ Who determines the value?
- ❓ Which valuation date applies?



#### TRUSTEE RESPONSE

- ✓ Independent appraisal
- ✓ Business valuation specialist
- ✓ Date-of-death valuation
- ✓ Alternate valuation review



#### COMMON VALUATION METHODS

- Discounted Cash Flow
- Capitalization of Earnings
- Market Comparables



### ILLIQUID ASSET DISTRIBUTIONS

When the Estate Has Value But No Cash



#### THE PROBLEM

The trust requires equal distributions.

The estate owns:



One commercial building

OR



One family business

OR



One farm

#### TRUSTEE CHALLENGE

How do beneficiaries receive their inheritance if most wealth is tied up in a single asset?



#### TRUSTEE SOLUTIONS

- ✓ In-Kind Distributions
- ✓ Fractional Ownership Interests
- ✓ Commercial Financing
- ✓ Asset Sale
- ✓ Installment Distribution Planning



#### GOAL

Avoid a forced liquidation that harms beneficiaries.



### KEY TAKEAWAY

Most estate plans fail during administration—not drafting.

Trustees frequently encounter valuation issues, liquidity shortages, inflation adjustments, and formula-based calculations that require specialized expertise.



The more complex the assets, the more important it becomes to stress-test how the plan will actually work after death.

### SOURCES



ACTEC  
(American College of Trust and Estate Counsel)



IRS Form 706  
Instructions



Treasury Regulation  
§20.2032  
(Alternate Valuation Date)



Uniform Trust Code



Bloomberg Tax  
Estate Planning Resources



Heckerling Institute  
on Estate Planning



Bureau of Labor Statistics  
(CPI-U)



American Society of Appraisers  
(ASA)



# THE TRUSTEE'S VALUATION & LIQUIDITY CHALLENGE

Valuation is Not Just a Number. Liquidity is Not Always Available.

The greatest challenges trustees face often occur after the first year—when asset values must be determined and distributions are due, yet the estate lacks the cash to make it happen.

## 1. BUSINESS VALUATIONS

Determining What the Business Is Truly Worth



### THE ISSUE

Closely held businesses do not have public market prices. Values can fluctuate due to market conditions, economic cycles, or the loss of a key person.



### TRUSTEE ACTIONS

- Commission a formal, date-of-death retrospective appraisal.
- Consider the alternate valuation date (6 months post-death) if it results in a lower estate tax.
- Engage valuation specialists experienced in closely held businesses.
- Document methodology and assumptions thoroughly.

### COMMON VALUATION METHODS



#### CAPITALIZATION OF EARNINGS

Values the business based on its ability to generate future earnings.



#### DISCOUNTED CASH FLOW

Projects future cash flows and discounts them to present value.



#### MARKET COMPARABLES

Compares the business to similar companies that have been sold.



### KEY CONSIDERATION

The chosen valuation method and date can significantly impact taxes, beneficiary distributions, and future disputes.

## 2. ILLIQUID ASSET DISTRIBUTIONS

When the Estate Has Value, But Not Cash



### THE ISSUE

The trust may require specific dollar amounts or percentages to be distributed, but the estate consists of illiquid assets such as real estate, private businesses, or concentrated holdings.



### TRUSTEE CHALLENGE

How do you satisfy beneficiaries fairly without forcing a premature sale that may harm the estate?

### POTENTIAL SOLUTIONS



#### IN-KIND DISTRIBUTIONS

Distribute the asset itself instead of cash, preserving value for all beneficiaries.



#### FRACTIONAL OWNERSHIP INTERESTS

Deed partial ownership interests in real estate or business assets to beneficiaries.



#### COMMERCIAL FINANCING

Obtain a loan against the asset to provide liquidity for cash distributions.



#### PLANNED SALE OF ASSETS

Sell the asset when market conditions are favorable and liquidity is needed.



#### INSTALLMENT DISTRIBUTIONS

Pay beneficiaries over time based on a plan allowed by the trust terms.



### OVERARCHING GOAL

Preserve long-term value while meeting fiduciary duties and beneficiaries' needs.



### ADVISOR TAKEAWAY

Valuation and liquidity planning should be stress-tested before death occurs. Encourage clients to discuss potential challenges with their trustee, appraisers, and advisors now—so the plan works when it matters most.



Good planning today prevents disputes, forced sales, and costly consequences tomorrow.

### SOURCES



ACTEC  
(American College of  
Trust and Estate Counsel)



IRS Form 706  
Instructions



Treasury Regulation  
§20.2032  
(Alternate Valuation Date)



Uniform  
Trust Code



Bloomberg Tax  
Estate Planning  
Resources



Heckerling Institute  
on Estate Planning



Bureau of Labor  
Statistics  
(CPI-U)



American Society  
of Appraisers  
(ASA)



# CASE STUDY: THE \$6 MILLION FAMILY BUSINESS

## A Real-World Liquidity Challenge for Trustees

Even a well-drafted trust can create a difficult situation when the estate lacks liquidity. This case study illustrates how a trustee can navigate a complex distribution challenge.

### THE SITUATION



- Family Manufacturing Company
- Value: \$6,000,000
- Cash Available: \$100,000
- Three Children
- Each entitled to: \$2,000,000



Virtually all of the estate's wealth is trapped inside one business.

### THE TRUSTEE'S DILEMMA



How do you distribute \$2 million to each child...  
*...when almost all of the family's wealth is trapped inside one business?*



FAIRNESS TO BENEFICIARIES



PRESERVE THE BUSINESS



FOLLOW THE TRUST TERMS

### THE CHALLENGE



The trust requires equal distributions.



No cash is available.



A forced sale could destroy value.



Beneficiaries may have different goals and risk tolerances.



Acting within the 12-month administration window.

### POSSIBLE SOLUTIONS FOR THE TRUSTEE



#### OWNERSHIP INTERESTS

Distribute equal ownership interests in the business to each child. Future liquidity can be created over time.



#### BUYOUT FINANCING

Obtain a commercial loan or outside capital to buy out beneficiaries who do not wish to remain owners.



#### INSTALLMENT DISTRIBUTIONS

Distribute proceeds over time as the business generates cash flow, based on a plan allowed by the trust terms.



#### BUSINESS RECAPITALIZATION

Restructure the business, possibly bringing in new equity or debt to create liquidity without a sale.



#### PARTIAL SALE / LIQUIDATION

Sell a portion of the business or specific assets if other options are not feasible or desired by beneficiaries.

### A TRUSTEE'S DECISION PATH



“

Equal treatment does not always require equal assets.

ACTEC  
Fiduciary  
Administration  
Principle



### KEY TAKEAWAY

The trustee's job is not simply to divide assets. The trustee's job is to balance:



FAIRNESS



LIQUIDITY



FAMILY HARMONY



PRESERVATION OF WEALTH



FIDUCIARY RESPONSIBILITY

A successful distribution often requires creativity—not liquidation.

# Case Studies

Trustees to Beneficiaries and more



# CASE STUDY: WHEN SIBLING DISPUTES GO TO COURT

• *The Scenario: Trustee Fails to Uphold His Duty* •



Two brothers and one sister are equal beneficiaries of their parents' trust. The oldest brother is named successor trustee.

After their father dies, he delays distributing assets, refuses to share financial records, and moves into the family home without paying rent. The other siblings grow frustrated and suspect self-dealing.



Delays distributions



Refuses to provide financial records



Lives in the family home rent-free



Siblings suspect self-dealing

## THE LEGAL STRATEGY



The beneficiaries hire a lawyer to petition the probate court for:



An order compelling the trustee to provide a full accounting



Suspension and removal of the trustee for breach of fiduciary duty



Surcharge for losses due to unpaid rent and missed investment opportunities



## THE OUTCOME



The court finds the trustee failed to uphold his duties and orders his removal.



A neutral third-party professional trustee is appointed.



The trust assets are eventually distributed fairly to all beneficiaries.



**KEY TAKEAWAY:** Trustees must act with loyalty, transparency, and impartiality. When they don't, the court can—and will—step in to protect beneficiaries and uphold the trust.



**AUTHORITATIVE SOURCES**

ACTEC  
American College of Trust  
and Estate Counsel

RESTATEMENT (THIRD)  
OF TRUSTS  
§§ 77, 78, 100

SCOTT AND ASCHER  
ON TRUSTS  
5th Edition

PERRY ON TRUSTS  
28th Edition

AMERICAN BAR ASSOCIATION  
Section of Real Property, Trust  
and Estate Law

# The “Equal Isn’t Always Fair” Estate Plan

## 1 CLIENT FACTS

### THE ANDERSON FAMILY



**Parents**  
John (78) & Susan (75)



**Net Worth**  
\$4.2 Million

### CHILDREN



**Michael (50)**  
Worked in the family business for 25 years



**Jennifer (48)**  
Teacher



**David (45)**  
Physician, lives in another state

“We want everything divided equally among our three children.”

### ASSETS

### VALUE

Residence	\$900,000
Investment Accounts	\$1,800,000
Family Business	\$1,200,000
Cash	\$300,000

**TOTAL ESTATE**

**\$4.2 MILLION**



A revocable trust was created.  
**Instruction:** Leave the estate in equal shares to our children.

## 2 FRAMING THE ISSUE

### THE HIDDEN PROBLEM

Although the trust said “equal shares to my children,” there was no discussion regarding:

- 1 Who would own the family business
- 2 Whether the business should be sold
- 3 Whether Michael should continue operating it
- 4 How the other siblings would be compensated



### THE REAL PROBLEM WASN'T TAXES. IT WAS AMBIGUITY.



The family never discussed what “equal” really meant.

### PLANNING LESSON

There are two different concepts:

#### EQUAL



Every child receives the same amount.

#### FAIR



Children receive outcomes that reflect family circumstances, contributions, needs, and parental intent.

Those concepts are not always the same.

### WHAT ADVISORS COULD HAVE DONE

- 1 **Ask Better Questions**  
What happens to the family business? Should all children inherit ownership? What if one child wants out?
- 2 **Facilitate a Family Meeting**  
Discuss expectations, succession plans, trustee selection, and business ownership before the parents' deaths.
- 3 **Create a Business Transition Plan**  
Consider a buy-sell agreement, life insurance funding, redemption plan, or business to Michael; other assets to siblings.
- 4 **Use a Letter of Intent**  
Parents could explain their wishes, reasoning, and vision for family harmony.

## 3 THE OUTCOME



John died.



Susan died three years later.



The trust became irrevocable.

### IMMEDIATELY, DISAGREEMENTS EMERGED.



**Michael's Position**  
“Dad wanted me to continue the business.”



**Jennifer's Position**  
“If Michael gets the business, I should receive additional assets.”



**David's Position**  
“Let's sell everything and divide it equally.”

### THE RESULT



The business lost value.



Siblings stopped communicating.



Lawyers became involved.



Trustee decisions were challenged.



Distribution of the estate was delayed.

### COSTLY & EMOTIONAL



Legal and accounting fees exceeded **\$125,000.**



### ADVISOR TAKEAWAY

Estate plans fail most often because of ambiguity, not taxes.

The question advisors should ask is:

**“Have we prepared the family for the plan, or have we only prepared the documents?”**

### TEACHING CONCEPT



### FAMILY GOVERNANCE & COMMUNICATION

Families often lose wealth because expectations were never clarified before wealth was transferred.

# Addendum

# THE UHNW INSTITUTE'S TEN DOMAINS OF FAMILY WEALTH™

*A Comprehensive Framework for Multi-Generational Success*

The Ten Domains of Family Wealth™ identifies ten distinct areas that determine whether a family thrives across generations. Financial capital is one domain out of ten. The other nine are all dimensions of human capital.



## THE TEN DOMAINS OF FAMILY WEALTH™ FRAMEWORK



## FAMILY NEEDS ASSESSMENT™

A diagnostic tool to help advisors and families map needs across all ten domains before moving into solutions.



## SAMPLE NEEDS ASSESSMENT SNAPSHOT

Rate each domain: 1 = Low Need 3 = Moderate Need 5 = High Need

DOMAIN	NEED (1-5)	DOMAIN	NEED (1-5)
1 - Financial & Investment Management	● ● ● ● ●	5 - Leadership & Transition Planning	● ● ● ● ●
2 - Estate Planning	● ● ● ● ●	6 - Rising Generation Development	● ● ● ● ●
3 - Social Impact & Philanthropy	○ ○ ○ ○ ○	7 - Family Dynamics	● ● ● ● ●
4 - Risk Management	● ● ● ● ●	8 - Health & Wellbeing	● ● ● ● ●
5 - Governance & Decision-Making	● ● ● ● ●	10 - Family-Advisory Relationships	● ● ● ● ●

Best Practice

## WHY THIS MATTERS



Research by Roy Williams & Vic Preisser (*Preparing Heirs*) and others shows that families rarely lose wealth because of poor investments or taxes. They lose it because of breakdowns in communication, lack of preparation, and unresolved family issues.

**A framework that addresses all ten domains creates the foundation for lasting wealth, strong relationships, and a meaningful legacy.**



## TAKEAWAY

The UHNW Institute's Ten Domains of Family Wealth™ and Family Needs Assessment™ help families and advisors shift the focus from only managing money to building the human, relational, and organizational capital that sustains wealth across generations.



Sources: UHNW Institute | Roy Williams & Vic Preisser, *Preparing Heirs* | James E. Hughes Jr., *Family Wealth: Keeping It in the Family* | Dennis Jaffe, *Borrowed From Your Grandchildren*



# PORTABILITY: PRESERVE THE UNUSED EXEMPTION.

Protect Your Clients' Future.

“ Portability is one of the greatest gifts Congress ever gave married couples.

– Jonathan G. Blattmachr, JD

*Trusts & Estates Magazine, May/June 2011* ”



## 1. FILE FORM 706 AT THE FIRST DEATH

File a timely Form 706 (even if no tax is due) and make the portability election to preserve the deceased spouse's unused exemption (DSUE).



## 2. PRESERVES MILLIONS IN FUTURE FLEXIBILITY

Allows the surviving spouse to use their own exemption PLUS the DSUE, which may save millions in estate taxes.



## 3. SMART PLANNING—NOT JUST ABOUT TODAY'S LAW

Estates grow, and tax laws can change. Portability preserves options for whatever the future may bring.



## 4. LOW COST, HIGH VALUE

The cost of filing Form 706 is small compared to the potential tax savings.



## 5. IMPORTANT LIMITATION

Portability preserves the estate and gift tax exemption, but it does NOT preserve the GST exemption or state estate tax issues.



**SOURCES:** IRC §2010(c) • Treasury Reg. §20.2010-2 • IRS Form 706 Instructions  
IRS Publication 559 • Jonathan G. Blattmachr, *Trusts & Estates Magazine*, May/June 2011



# BEST PRACTICES FOR ENSURING PORTABILITY EXEMPTION

★ Maximize the Unused Exemption. Protect Your Legacy. ★



## 1 DRAFT WITH PORTABILITY IN MIND



- Use clear, flexible language that contemplates portability (e.g., "surviving spouse") and avoids unnecessary limitations on the survivor.

## 2 ELECT PORTABILITY TIMELY



- File Form 706 within 9 months of the first spouse's death (including extensions).
- Portability is lost if the estate tax return is not filed.

## 3 MAKE A PROPER PORTABILITY ELECTION (IRS FORM 706)



- File a complete and accurate Form 706.
- Check the portability election box (and attach statements if required).

## 4 ALLOCATE DSUE TO PORTABILITY



- Ensure the deceased spouse's unused exemption (DSUE) is allocated to the surviving spouse on the return.
- Review calculations carefully.

## 5 ENSURE SURVIVOR'S FILING COMPLIANCE



- The surviving spouse must file a timely estate tax return (Form 706) for portability to be valid.
- No estate tax is due—but filing is required.

## 6 KEEP EXCELLENT RECORDS



- Retain certified death certificate(s), filed Form 706, DSUE allocation, and related workpapers permanently.
- These may be needed to substantiate the DSUE.

## 7 ALIGN TRUST TERMS WITH TAX GOALS



- Ensure trust provisions allow the survivor to use both their own exemption and the DSUE efficiently.
- Avoid restrictive "trap" clauses.

## 8 REVIEW STATE ESTATE TAX RULES



- Some states decouple from the federal exemption or do not recognize portability.
- Review state-specific requirements.

## 9 COORDINATE WITH ADVISORS



- Engage experienced estate planning counsel and tax professionals.
- Coordinate planning across legal, tax, and financial teams.

## 10 REVISIT AND UPDATE REGULARLY



- Review your plan after major life events, law changes, or increases in exemption amounts.
- Update documents and strategy accordingly.

### AUTHORITATIVE SOURCES



IRS Publication 976 (2024)  
Chapter 4: Portability of the Exclusion Amount  
[irs.gov/pub/irs-pdf/p976.pdf](https://irs.gov/pub/irs-pdf/p976.pdf)



IRS Form 706 and Instructions (2024)  
[irs.gov/forms-pubs/about-form-706](https://irs.gov/forms-pubs/about-form-706)



Treasury Regulations § 20.2010-2  
Election to Treat Deceased Spouse's Unused Exclusion Amount as Deceased Spouse's Applicable Exclusion Amount  
[ecfr.gov/current/title-26/section-20.2010-2](https://www.ecfr.gov/current/title-26/section-20.2010-2)



ABA Section of Real Property, Trust and Estate Law  
Portfolio No. 1: Federal Estate and Gift Taxation (Portability)  
[ambar.org](https://www.ambar.org)



AICPA Estate Planning Guide  
Chapter 24: Portability of the Deceased Spousal Unused Exclusion Amount  
[aicpa.org/estateplanningguide](https://aicpa.org/estateplanningguide)



### PRO TIP

Portability is not automatic. It requires planning, filing, and documentation.



### THE TAKEAWAY

Follow these best practices to preserve the DSUE and maximize wealth transfer to the next generation—tax efficiently.

This information is for general educational purposes only and does not constitute legal, tax, or accounting advice. Consult with qualified professionals regarding your specific situation.

Current as of May 2024



# PORTABILITY:

## Preserve the Unused Exemption. Protect Your Clients' Future.

Portability allows a surviving spouse to use any unused portion of the deceased spouse's federal estate tax exemption.

“ Portability is one of the greatest gifts Congress ever gave married couples. — Jonathan G. Blattmachr, JD  
Trusts & Estates Magazine, May/June 2011 ”

### THE NEW REALITY: OBBA MADE A MAJOR CHANGE

The One Big Beautiful Bill Act (OBBA) permanently increased the federal estate, gift, and GST tax exemptions beginning in 2026.



Starting in 2026 (and indexed for inflation)

**\$15 MILLION**

Per Person Exemption

**\$30+ MILLION**

Potential Combined Exemption for Married Couples with Portability



The feared TCJA “sunset” is gone. The exemption is now \$15 million per person and will continue to grow with inflation.

### WHY PORTABILITY STILL MATTERS EVEN FOR ESTATES UNDER \$5 MILLION



**1. ASSET GROWTH**  
A \$5 million estate today may become \$10 million, \$15 million, \$20 million+ over a long retirement.



**2. FUTURE TAX LAW CHANGES**  
Congress can always change estate tax rules, rates, or exemptions.



**3. PRESERVING OPTIONS**  
Portability preserves the deceased spouse's unused exemption (DSUE), giving the surviving spouse maximum flexibility.



**4. LOW COST, HIGH BENEFIT**  
Filing Form 706 to elect portability is often a low-cost step that can save millions.

### REALITY FOR MANY FAMILIES TODAY



Married couple Age 60 → Net worth: \$5 MILLION → At first death: No federal estate tax due (based on current \$15M exemption).



The executor must decide: File Form 706 and make the portability election—or lose the opportunity forever.

### HOW TO MAKE SURE PORTABILITY IS TRANSFERRED: THE 6 KEY STEPS

- FILE A TIMELY FORM 706**  
File a federal estate tax return (Form 706) for the first spouse's estate, even if no tax is due.  
Deadline: 9 months from date of death (can be extended up to 15 months).
- MAKE THE PORTABILITY ELECTION**  
Check the portability election box on Form 706 (Schedule A, Part 5) to transfer any unused exemption.  
If the box is not checked, no exemption is ported.
- ACCURATELY REPORT THE ESTATE**  
Provide complete and accurate information about the gross estate, deductions, and exemption used.  
The IRS will calculate the DSUE amount.
- OBTAIN IRS ACCEPTANCE**  
The IRS will process the return and accept the portability election.  
There is no separate “approval” letter, but keep the filed return and any IRS notices.
- KEEP DOCUMENTS SAFE**  
The surviving spouse or their advisors should retain the filed Form 706 and supporting documents permanently.  
These may be needed later to substantiate the DSUE amount.
- REPORT DSUE ON SURVIVOR'S FORM 706**  
When the surviving spouse passes away, report the DSUE on their Form 706 (Schedule A, Part 4, Line 18).  
This allows use of the combined exemption.

### TWO PATHS. VERY DIFFERENT OUTCOMES.

#### PATH 1: NO PORTABILITY ELECTION

Form 706 not filed or portability not elected

TODAY



Net worth \$5 MILLION

No estate tax due at first death.

20 YEARS LATER



Estate grows to \$12 MILLION+ (example)

Exemption may be the same, higher, or lower—no one knows.

RESULT



LOST DSUE FOREVER

Higher estate tax may be due.

Once lost, the deceased spouse's unused exemption (DSUE) cannot be.

VS.

#### PATH 2: PORTABILITY ELECTION MADE

Form 706 filed and portability election made

TODAY



Net worth \$5 MILLION

No estate tax due at first death.

20 YEARS LATER



Estate grows to \$12 MILLION+ (example)

Exemption may be the same, higher, or lower.

RESULT



DSUE PRESERVED & COMBINED

Surviving spouse has both exemptions available.

The surviving spouse can use BOTH exemptions, potentially saving millions in estate taxes.

### COMMON MISTAKES TO AVOID

- Failing to file Form 706 because no tax is due.
- Not checking the portability election box.
- Missing the 9-month deadline (no late portability election allowed).
- Filing an incomplete or inaccurate return.
- Losing documentation of the filed return and DSUE amount.

**KEY POINT:** Portability is an “all or nothing” election. If it's not properly made on a timely Form 706, the opportunity is lost forever.

### IMPORTANT LIMITATIONS



Portability preserves the FEDERAL ESTATE AND GIFT TAX exemption, but it does NOT preserve the GST exemption.



Portability does NOT solve STATE ESTATE TAX issues. State portability rules vary widely.



Portability is a planning tool, not a substitute for a comprehensive estate plan.

### ADVISOR TAKEAWAY



You don't file Form 706 because the client owes estate tax today. You file it because you don't know what the estate tax landscape will be tomorrow—or how much wealth your clients will have in the future.

**File once. Preserve millions. Give your clients options.**



### SOURCES

- IRC §2010(c)
- Treasury Regulations §20.2010-2
- IRS Form 706 & Instructions
- IRS Publication 595: Survivors, Executors, and Administrators



**FEN**  
FINANCIAL EXPERTS  
NETWORK

Knowledge. Trust. Results.

- Jonathan G. Blattmachr, “Portability Is One of the Greatest Gifts Congress Ever Gave Married Couples,” *Trusts & Estates Magazine*, May/June 2011
- Lomborg Estate Planning Newsletter
- ACTEC (American College of Trust and Estate Counsel) Resources

This information is general in nature and not intended as legal, tax, or financial advice. Consult qualified professionals for advice specific to your situation.

# THE CLAYTON ELECTION

## A "WAIT-AND-SEE" APPROACH TO FUNDING MARITAL & BYPASS TRUSTS

A proven estate planning strategy that creates post-death flexibility.



### HOW THE CLAYTON ELECTION WORKS



### WHY ADVISORS USE THE CLAYTON ELECTION



### CLAYTON ELECTION VS. DISCLAIMER TRUST

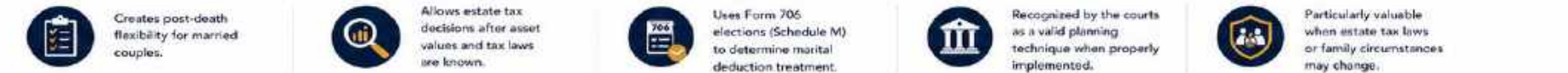
FEATURE	DISCLAIMER PLAN	CLAYTON ELECTION
INITIAL FUNDING	Marital Trust	Bypass/Family Trust
DECISION MAKER	Surviving Spouse	Executor/Trustee
MAIN TOOL	IRC §2518 Disclaimer	Form 706 Marital Deduction Election (Schedule M)
TIMING PRESSURE	Higher (9-month disclaimer rule)	Lower (Form 706 filing period and extensions)
POST-DEATH FLEXIBILITY	High	High

### TRUST AGREEMENTS & ACCOUNTS

To use the Clayton Election, the trust agreement typically directs that, upon the first spouse's death, assets are allocated to the bypass/family trust, with the marital share passing only to the extent elected on the estate tax return.

Trust accounts should be titled in accordance with the trust agreement. The executor's election on Form 706 determines how much of those trust assets qualify for the marital deduction for federal estate tax purposes.

### KEY TAKEAWAYS



**AUTHORITY**  
**Estate of Clayton v. Commissioner, 976 F.2d 1486 (5th Cir. 1992)** recognizes the validity of the Clayton Election.

The marital deduction election is made through the federal estate tax return (Form 706) and Schedule M, allowing the executor to decide at that time how much property will qualify for the marital deduction.

*This material is for informational purposes only and does not constitute legal or tax advice. Please consult your attorney and tax advisor regarding your specific circumstances.*

Source: Estate of Clayton v. Commissioner, 976 F.2d 1486 (5th Cir. 1992); IRC §2056; Treas. Reg. §20.2056(b)-7

# WHO Gets the Assets (Determines the Beneficiaries)



- **Per Stirpes (By Representation)**

**Example:** Estate = \$5,000,000

My three children share equally. If a child has two children and is deceased, each grandchild receives \$833,333.



- **Per Capita (Equal Shares)**

**Example:** Estate = \$5,000,000

My four grandchildren share equally.  
Each grandchild receives \$1,250,000.

# HOW MUCH They Receive

## (Determines the Dollar Amount)

- **Pecuniary Formula (Fixed Dollar Amount)**

**Example:** “Fund the bypass trust with \$2,000,000.”

The trust receives \$2,000,000,  
and the remainder (\$3,000,000) goes to other beneficiaries.



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- **Fractional Formula (Percentage of Estate)**

**Example:** “Give 40% of my estate to the bypass trust.”

If estate = \$5,000,000, the trust receives \$2,000,000  
(40% of \$5,000,000), and the remainder (\$3,000,000)  
goes to other beneficiaries.



# PECUNIARY FORMULA

## 5 THINGS EVERY ADVISOR SHOULD KNOW

“ Pecuniary formulas give someone a dollar amount. Fractional formulas give someone a percentage. ”

1



### IT CREATES A FIXED DOLLAR GIFT

A pecuniary formula directs a specific dollar amount—not a percentage—to a person or trust.

2



### OFTEN TIED TO THE ESTATE TAX EXEMPTION

Commonly used in credit shelter (bypass) trust planning to fund the trust up to the applicable exclusion amount.

3



### DIFFERENT FROM A FRACTIONAL FORMULA

- Pecuniary Formula = Dollar Amount (e.g., “\$5,000,000”)
- Fractional Formula = Percentage of Estate (e.g., “1/2 of my estate”)

4



### APPRECIATION MATTERS

Asset values may change between death and distribution, affecting the value needed to satisfy the dollar amount.

5



### CAN CREATE INCOME TAX CONSEQUENCES

If appreciated assets are used to satisfy a pecuniary bequest, beneficiaries may recognize capital gain.



### GOTCHAS TO WATCH FOR



#### 1. ASSET VALUE RISK

If the estate is less valuable than expected, the fixed dollar amount may not be available, potentially requiring liquidation of other assets or creating inequity among beneficiaries.



#### 2. INFLEXIBILITY

Pecuniary formulas do not adjust for changes in family size, needs, or circumstances, which can lead to unintentional unfairness or outdated results.



#### 3. TAX AND LIQUIDITY CONCERNS

Funding a pecuniary amount with appreciated assets can trigger capital gains tax, reduce liquidity, and create administrative complexity.



### ADVISOR TAKEAWAY:

Pecuniary formulas give someone a dollar amount.  
Fractional formulas give someone a percentage.



### SOURCES:

Treasury Regulations  
§20.2053-1(b)(1)

Jonathan G. Blattmachr &  
Marshall B. Kapp, Jr., *Estate  
Planning—Principles & Strategies*

Leimberg Estate Planning  
Newsletter



# 5 THINGS ADVISORS SHOULD KNOW

## About Fractional Formulas in Trusts

1



### THEY CREATE FAIRNESS AND FLEXIBILITY.

Fractional formulas allow trustees to make proportional distributions based on a standard (e.g., per stirpes) rather than fixed dollar amounts—helping ensure fairness as values and family circumstances change.

2



### THEY HELP TRUSTS ADAPT OVER TIME.

They provide built-in flexibility to adjust for changes in family size, needs, or situations without requiring trust amendments or court involvement.

3



### THEY SUPPORT TRUST PURPOSES AND INTENT.

Fractional formulas help align distributions with the grantor's goals—balancing care, incentive, protection, and long-term stewardship.

4



### THEY REQUIRE CLEAR DRAFTING AND DISCIPLINE.

Effective use depends on precise language, thoughtful design, and careful administration to avoid ambiguity and unintended outcomes.

5



### THEY BENEFIT FROM HOLISTIC PLANNING.

Fractional formulas work best when integrated with overall estate, tax, and family governance strategies.



“Fractional formulas are one of the most powerful and underused tools a drafter can employ to ensure fairness, flexibility, and fidelity to intent in trust distributions.”



## GOTCHAS TO WATCH FOR

1



### UNINTENDED INEQUALITY OR OUTCOMES.

If not carefully designed, fractional formulas can produce results the grantor didn't anticipate, especially when family circumstances change dramatically (e.g., blended families, estrangement, special needs).

2



### COMPLEXITY IN ADMINISTRATION.

Trustees must value assets accurately and apply formulas consistently—across different asset types, timing, and market conditions—which can be administratively complex and costly.

3



### POTENTIAL FOR DISPUTES.

Beneficiaries may not understand how the formula works or why outcomes differ, which can lead to perceived unfairness and family conflict—or even litigation.

— Robert S. Keebler, J.D., LL.M.  
*The Definitive Guide to Trusts*  
(2nd Ed., 2023)