Preserving Wealth Through Tumultuous Times

With the constant back and forth between Democrats and Republicans, stock market volatility, rising concerns about bank failures and tax impermanence, it is safe to say that there is considerable anxiety among us. How can one expect to implement long-term trust strategies utilizing all the benefits of estate planning with such disorder?

Fortuitously, families can develop more clarity through trusts. We can structure trusts that benefit multiple generations, but how can we do this with the possibility of changes in the future to the family or the law? Creating trust agreements that will encompass the administration, investment, and distribution of trust property over decades is difficult.

Dynasty Trusts - or trusts that continue for the benefit of multiple generations - have become the standard. These trust agreements can be flexible to address changes in the lives of beneficiaries and the governing laws by:

1) Choosing the right trustee
2) Defining trust beneficiaries
3) Incorporating powers of appointment
4) Consenting to trust decanting

CHOOSING THE RIGHT TRUSTEE

Choosing the right trustees for an irrevocable trust that is intended to continue for generations into the future is critical to the trust's success and longevity. Typically, the initial thought is to name one or more family members as Trustee(s) who can then appoint additional family members because they will better understand the varying needs of the beneficiaries and will keep the costs of administration down. However, family members will not be able to fulfill all their fiduciary obligations without hiring legal, investment, and tax advisors. These expenses will add up and can cost more than a corporate trustee, which will be able to meet all fiduciary obligations under one roof for one fee.

Conversely, forcing trust beneficiaries to be stuck with the wrong trustee without a reasonable means for removing and replacing the trustees could land the family in court. It is crucial to build provisions into the trust agreement that allow beneficiaries or a trust protector to remove and replace trustees without court intervention.

Selecting a trustee is one of the most important decisions when creating a long-term trust, either with inheritance protection trust or dynasty trust provisions. Thoughtful consideration should be given to naming a corporate fiduciary, either alone or as a co-trustee with a family member or trusted advisor. A corporate trustee will function as a neutral party to oversee discretionary distributions and investment strategies that benefit both current and remainder beneficiaries. Additionally, corporate trustees will provide stability and continuity across generations, therefore avoiding strife and disharmony within the family.

DEFINING TRUST BENEFICIARIES CAREFULLY

The right amount of reflection needs to be given to who to include as trust beneficiaries today, tomorrow and years from now. Should adopted children be included? How about children born using "reproductive technology"? In the past the definition of a "descendant" was straightforward, but today it can encompass much more.

While one cannot foresee everything that will happen in the future, there should still be thoughtful consideration as to who may receive the benefits of the trust long after the trust is created. Classifying the beneficiaries who will benefit from the trust will allow for a smooth transition across generations and prevent litigation.

POWERS OF APPOINTMENT TO CHANGE BENEFICIARIES

If there are concerns about how children, grandchildren, or great grandchildren will eventually grow up, flexibility can be provided into any trust by granting a surviving spouse or other beneficiary the ability to include or exclude family members, non-family members and/or charities through a power of appointment.

A power of appointment is important when a trust is designed as a dynasty trust and one or more beneficiaries do not have children. Another use of a power of appointment is to consent for the inclusion or exclusion of charitable beneficiaries. Trust structuring should incorporate planning for flexible provisions to react to future conditions.

Powers of appointment are becoming increasingly popular for several reasons in facilitating future flexibility. The powers can be limited or broad, without creating any gift tax or estate tax problems.

TRUST DECANTING PROVIDES FLEXIBILITY

Trust decanting involves taking funds from an existing trust and distributing them to a new trust that has been modified with favorable terms. Decanting may be sanctioned under state law or the trust document itself and should be included as a possibility in every trust agreement.

Motives for decanting may include any of the following:

- Amending the trustee succession provisions.
- Providing investment or distribution flexibility and control through Direction Advisors that direct the trustees.
- Converting a trust that terminates when a beneficiary attains a certain age into a dynasty trust.
- Provides better spendthrift protection from creditors.
- Elucidating ambiguities or drafting errors in the existing trust.
- Changing the governing law or trust situs to a beneficial trust jurisdiction.
- Modifying powers of appointment.
- Merging similar trusts into a single trust or creating separate trusts from a single trust.
- Adjusting the trust terms to provide for a special needs beneficiary.

Including the authority to decant a trust inserts flexibility into the trust agreement from the beginning, reducing the risk that any beneficiary will end up in court to fix a trust that no longer makes practical or economic sense.

To learn more about our trust solutions, please visit **www.wealthspiretrust.com**.