Morgan Stanley

Preparing for Your Meeting with an Estate Planning Attorney

Questions/answers, definitions and ideas
for structuring your personal trust

You have worked long and hard to achieve success and build wealth for you and your family. There have been numerous challenges along the way. You may be at a point now where your greatest challenge is preserving your wealth and building a plan for its transition to those you choose in a way you choose.

Welcome to estate planning. Estate planning carries many definitions and often means different things to different people. Your plan should be customized to provide instructions on how things you own, including financial assets, are to be managed and/or distributed during your life, during incapacity and at your death. Your plan should specify who your beneficiaries are and how they are to benefit from what you leave behind.

Many want their estate plan to have certainty and simplicity. However, an effective estate plan has to address the exact opposite – uncertainty and complexity. To put your estate planning blueprint into motion, you may need to consider the creation of one or more trusts. Trusts are legal documents that contain the instructions to implement your estate plan. And yes, unless you have experience reading and understanding these types of documents, they may bring another level of confusion to your efforts.

A key resource for you during this estate planning process is an experienced estate planning attorney. He or she will meet with you to develop your plan and write a Will, trust and possibly other legal documents. This guide is designed to help you prepare for your meeting with your estate planning attorney. It includes some questions and answers, definitions and ideas you might want to consider when meeting with your attorney.

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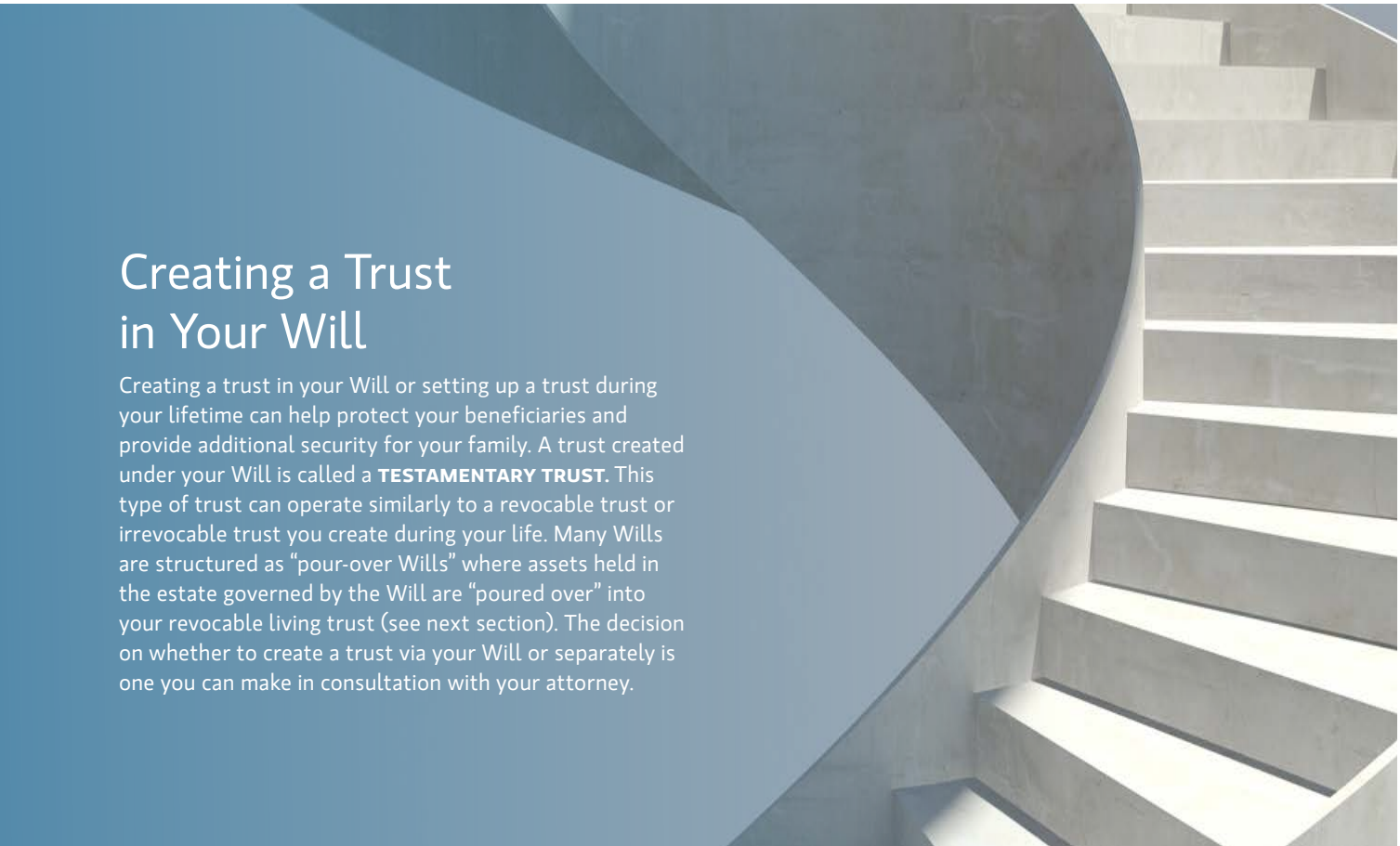
YOUR WILL — PERHAPS THE MOST BASIC BUT NECESSARY DOCUMENT

Whether you're a young adult, middle-aged or a senior citizen, there are important reasons why you need a Last Will and Testament (a "Will"). It doesn't matter if you are single, married, have children or do not have children. A Will transfers your assets according to your directions. This helps your family maintain control of assets and minimizes the government's role in the distribution of your estate.

A Will is a legal document that you create to outline your instructions for the distribution and management of your property after your death. It also appoints those responsible for completing these tasks. As one of the most important documents you will ever sign, a Will enables you to decide who will receive your assets, how they will receive them and when they will receive them. Creating a Will to ensure your family's well-being is usually simple and inexpensive but it must be in writing and meet certain formalities required by state law.

If you do not have a Will, state law dictates who your beneficiaries will be and how they will share your estate. In addition, the basic other pitfalls of dying without a Will include:

- Your wishes will be ignored
- A stranger may become your Executor or Personal Representative
- The court will appoint a Guardian for your minor children
- Your estate may miss tax saving opportunities
- Your children may receive their inheritance NOW (think age 18)



Creating a Trust in Your Will

Creating a trust in your Will or setting up a trust during your lifetime can help protect your beneficiaries and provide additional security for your family. A trust created under your Will is called a **TESTAMENTARY TRUST.** This type of trust can operate similarly to a revocable trust or irrevocable trust you create during your life. Many Wills are structured as "pour-over Wills" where assets held in the estate governed by the Will are "poured over" into your revocable living trust (see next section). The decision on whether to create a trust via your Will or separately is one you can make in consultation with your attorney.

What a Will Does and Doesn't Do

Your Will determines the disposition of the property owned or titled in your name at the time of your death. For example, your Will enables you to:

- Provide for your family's future financial needs
- Choose an experienced Executor (or Personal Representative) to see that your wishes are followed
- Select the Guardian who you believe is best suited for taking care of your minor children and their inheritance which ensures that your minor children will not end up in a conservatorship situation
- Establish trusts to protect and manage the inheritances of minor or financially inexperienced beneficiaries as well as to protect these inheritances from the claims of creditors including in the case of divorce
- Establish trusts and other estate planning strategies designed to help minimize tax burdens
- Help assure prudent and experienced management of your assets
- Enjoy peace of mind now knowing that your family and other beneficiaries will be taken care of according to your wishes
- Ensure that your personal belongings such as jewelry, heirlooms, etc. will go to those who you wish

Your Will does not generally control the disposition of property that is not solely in your name as the time of your death or controlled by specific beneficiary designations. Examples include:

- Jointly Owned Assets – Any assets owned as "joint tenants with rights of survivorships" will pass directly to the surviving joint owner
- Life Insurance – Typically, the policy will enable the owner of the policy to name a beneficiary
- Retirement Accounts (IRAs, 401(k)s, etc.) – Like an insurance policy, these accounts are paid to the beneficiaries that you have named.
- Financial Accounts with a Named Beneficiary (such as a transfer on death account) – Many financial institutions will enable the account owner to direct the disposition of the account on his/her death pursuant to a "Transfer on Death" designation on file for the account allowing the account to pass directly to the named beneficiary

In your Will, you name an **EXECUTOR** (or, in some states, called a **PERSONAL REPRESENTATIVE**) to carry out the distribution and management of your estate. Anyone other than a minor or incompetent individual can be an Executor. You can choose a spouse, relative, friend, attorney or professional fiduciary. It is a good idea to also name a contingent (back-up) Executor to take over in case your primary Executor cannot serve or becomes unable to serve. Typical Executor duties under your Will include:

- Collecting, managing and conserving estate assets
- Notifying your creditors and paying all valid debts
- Collecting any debts, life insurance proceeds or retirement plan benefits due the estate
- Managing and investing estate assets
- Selling assets to pay estate taxes and expenses
- Keeping detailed records and submitting them to your beneficiaries and/or the probate court for approval
- Distributing estate assets to your beneficiaries
- Hiring an attorney or tax specialist to prepare and file all required federal and state tax returns and other tax-related requirements

Serving as Executor is often an arduous and complex task. The task of settling an estate often takes more than a year and, depending on the complexity of the estate, could continue for several years.

Another function of your Will is to name a **GUARDIAN** for your minor children. The Guardian you choose in your Will is the person who will raise your children and manage the inheritance you leave them in the event of your death (and the death of your spouse). You should also name a contingent Guardian in case your primary Guardian is not willing or able to accept the responsibility of raising your children. Keep in mind that if you do not have a Will naming a Guardian for your minor children, the probate court will do so and it can select someone other than a relative.

Finally, your Will is likely to need updates as time moves on and life changes. Births, deaths, marriages, divorces, relocations to another state, tax law changes, income changes, inheritances and many more life events could call for an update to your Will. It's often a good idea to review your Will at least every 2-4 years and revise it whenever warranted, such as when your personal or financial circumstances significantly change. A Will can be changed, modified or entirely revoked before death.

YOUR REVOCABLE LIVING TRUST – A FLEXIBLE FINANCIAL AND ESTATE PLANNING TOOL

A revocable living trust is established while you are alive through a formal written legal document. The trust agreement allows you to transfer ownership of your property and/or assets from your name to the name of the trust. The terms of the trust agreement determine how your assets are managed while you are alive and how assets are to be held or distributed after your death.

There are several components of a revocable living trust, all of which you have control over:

- You are the grantor or creator of the trust
- Similar to your Will, your revocable living trust is highly personal and customized to your situation and family
- You may act as the trustee of your revocable living trust during your lifetime. Your trust agreement should also list one or more successor trustees who takes over the trusteeship typically upon your incapacity or death.
- You name the beneficiaries of your trust. Beneficiaries can include anyone – family members, friends, colleagues. Beneficiaries can also include charities. In addition, beneficiaries can include funding other trusts. Multiple beneficiaries are common.

As its name implies, your revocable living trust can be revoked, changed or terminated at any time. Typically, your revocable living trust becomes irrevocable upon your death. By itself, a revocable living trust does not reduce any estate tax liabilities. However, it is common for a revocable living trust to be structured where upon your death, certain tax savings, deferrals and minimization strategies can be established.

Advantages/Disadvantages of a Revocable Living Trust

ADVANTAGES OF A REVOCABLE LIVING TRUST

FLEXIBILITY – A revocable living trust allows the client to control everything about the trust; perhaps most important are the instructions for the future management and distribution of trust assets.

AVOIDANCE OF PROBATE – Probate is the legal process required to determine that a Will is valid. Probate can be costly and time consuming and follows state law where you die. Your Will is also filed with Probate Court where the deceased person resides making it a document that can be viewed by the public. Many fund and utilize revocable living trusts to avoid the probate process. And, a revocable living trust remains private.

CONTINUITY OF MANAGEMENT DURING DISABILITY – A revocable living trust may be the best way to ensure that assets remain available to you should you become physically or mentally incapable of managing your affairs. Many believe that a Power of Attorney ("POA") can provide continuity of management but many times, the POA does not provide details on how the assets will be managed or utilized. The successor trustee named in your revocable living trust takes over as trustee should you become incapacitated, thus allowing for continuous management and a way to provide financial resources for you and others who may be dependent on support.

AVAILABILITY OF ASSETS AT DEATH – Assets in a revocable living trust at your death are generally available to pay end-of-life expenses more quickly than waiting for the completion of the probate process.

DISADVANTAGES OF A REVOCABLE LIVING TRUST

RE-REGISTRATION OF PROPERTY – Assets funding the trust must be re-registered in the name of the trust prior to death in order to avoid probate. This can be cumbersome, especially with an asset like real estate.

LEGAL/ADMINISTRATIVE COSTS – Depending on the complexity of your estate or assets, a revocable living trust may cost more to create than a typical Will. In addition, if there is the need for an amendment to your revocable living trust as your wealth changes or if there are life changes, there will be a legal cost for that document preparation. Finally, any trustee you name for your revocable living trust may charge a fee for its services. This, of course, will not apply if you are serving as your own trustee, which is likely during your life.

MYTHS ASSOCIATED WITH A REVOCABLE LIVING TRUST

MYTH: A REVOCABLE LIVING TRUST SAVES ON TAXES – No, a revocable living trust does not save on income taxes or estate taxes. During the grantor's life, assets in a revocable living trust are treated as if they are your own property for estate tax purposes and trust activity is captured on your personal tax return.

MYTH: HEIRS CANNOT CHANGE A REVOCABLE LIVING TRUST – When the revocable living trust becomes irrevocable at your death, changes to the trustee are likely to be allowed. In addition, depending on which state governs the trust, it is possible that certain terms of the trust can be changed. Finally, a beneficiary can always petition the court seeking either a revision to the terms of the trust agreement or to terminate the trust.

MYTH: A REVOCABLE LIVING TRUST PROTECTS ASSETS FROM CREDITORS – This is not true. Creditors may reach the assets in your revocable living trust during your lifetime.

MYTH: ASSETS ARE DISTRIBUTED MORE QUICKLY FROM A REVOCABLE LIVING TRUST – This is not always true. While some assets may be released to pay for end of life medical expenses or taxes, there is often a notice period for creditors to access trust assets. There is also a settlement period, which can take several months.

MYTH: LOWER ADMINISTRATIVE COSTS – As noted above, a revocable living trust can include legal and/or administrative fees that can add up. These costs may be less or more than the costs associated with creating and probating a Will.

Despite some disadvantages and myths associated with a revocable living trust, many find that this basic estate planning tool is an excellent and flexible complement to a Will and other planning documents.

Language Allowing for Trust Distributions

As mentioned, your revocable living trust becomes irrevocable at death. Your revocable living trust may form one or more irrevocable trusts for beneficiaries. You can also establish an irrevocable trust for beneficiaries during your life. Your Will can also create an irrevocable trust. No matter how an irrevocable trust is created, there will be distributions provisions within the document that outline how money comes out of the trust to beneficiaries and for what reasons.

The distributions provisions of an irrevocable trust are often the most important and misunderstood provisions of a document. The distribution provisions of your document are created by you – you decide how liberal or restrictive they are for releasing money to your beneficiaries. Prior to deciding on how money comes out of your trust and when, it is necessary to understand the two distribution components that will make up your irrevocable trust: income and principal.

One can think of income and principal as two separate buckets. The income bucket is usually comprised of interest from fixed income investments and dividends from equity positions and rent or royalty payments. The income bucket is usually much smaller than the principal bucket. The principal bucket is everything else in trust that is not income. With most irrevocable trusts, the trustee must separate the income generated from the trust from the principal of the trust. Here's a closer look at the way distributions from each bucket can be structured:

DISTRIBUTIONS OF INCOME – As mentioned, an irrevocable trust's income component is usually bond interest and stock dividends (it can be income from other trust assets). In your document, you create the language how the trustee can distribute any income generated from the trust to beneficiaries. This usually happens one of two ways:

- **AUTOMATICALLY** Some trust agreements provide that the trustee *shall pay* net income generated by the trust to beneficiaries in convenient installments each year (i.e., monthly or quarterly).

- **DISCRETIONARY** Some trust agreements require the trustee to determine *whether or not to pay* out income generated by the trust to beneficiaries. Leaving the decision on whether or not to pay out income to the trustee's discretion may be accompanied by some ascertainable standards for the trustee to use in its decision making process. For example, the trustee may have the discretion to distribute net income to beneficiaries at least quarterly for reasons such as health, education, maintenance and support (also known as HEMS, see page 9). There could also be instructions that in its decision making process, the trustee is to take into account the beneficiaries' other sources of income or current standard living. When distributions of income are at the discretion of the trustee, it will often evaluate the distribution request of the beneficiary versus what the language allows in the trust agreement.

DISTRIBUTIONS OF PRINCIPAL – A vital part of your trust document – and one that can lead to much confusion and/or angst among your beneficiaries – is the language governing distributions of principal. Many trust beneficiaries seek to tap into this larger bucket of trust funds for things like purchasing a car, paying for college, repairing a roof, paying bills, meeting medical costs, etc. … all things that may not be covered by current income flow or readily available funds. Similar to above, it is common for a trust agreement to contain language outlining instructions for the trustee when deciding on whether or not to make distributions of principal. These decisions are at the discretion of the trustee and one of the main responsibilities of a trustee:

- **DISCRETIONARY** Trust provisions covering principal distributions commonly instruct the trustee, in its discretion, to make distributions to beneficiaries for health, education, maintenance and support (HEMS). Again, there may be additional language requiring the beneficiary to provide tax returns or a budget to justify the distribution request. Or, the distribution request may have to fall in line with the beneficiary's current standard of living and/or other sources of income.

"FIVE AND FIVE POWER"– In addition to principal and income distribution language, the document might have what's known as "Five and Five Power" (also known as "5 x 5 Power" or "Five by Five Power"). This provision gives the beneficiary the power to annually withdraw the greater or lesser (you chose which one) of: a) $5,000 or b) 5% of the fair market value of the trust's assets. Trustees like this power because it is mandatory and they do not have to exercise discretion in making the distribution.

HEMS is short for Health, Education, Maintenance and Support. HEMS language helps a trustee decide how and if it can make distributions from a trust.

Health, Education, Maintenance and Support (HEMS)

Perhaps one of the most important parts of your trust are the instructions to a trustee on how to make distributions from the trust. *"How I can get money out of the trust?"* is usually the leading question of a trust beneficiary.

Distribution provisions are not determined by the trustee – they are written by you as the grantor with the assistance of your attorney when drafting the trust agreement or Will. It is simply (or not so simply) the job of the trustee to follow those distribution instructions. These instructions can be as basic as distributing all of the assets to beneficiaries at your death. Or they can be rather complex, confusing and vague, which could also call for a gradual distribution of assets over a beneficiary's lifetime.

Regarding distribution provisions, the phrase **HEMS** is commonly used. HEMS is short for Health, Education, Maintenance and Support. HEMS language helps a trustee decide how and if it can make distributions from a trust. When a document says the trustee, in its discretion, may make distributions from the trust for health and education, these are pretty easy to determine and self-explanatory. A gray area often involves maintenance and support. What is maintenance and support? Well for different beneficiary situations it means different things. For the ultra-high-net-worth family, maintenance and support could mean expensive cars or vacation homes. For less wealthy families, maintenance and support could mean a car but not one that is six figures. Maintenance and support distribution requests also usually involve home improvements. Upgrading a bathroom or putting on a new roof on the house are necessities that can be justified for a principal distribution. It might be tougher for a trustee to permit a new in-the-ground pool or new addition to a house for a virtual golf driving range as a principal distribution.

What's important to note, however, is when crafting the principal distribution provisions, you, as the grantor, can make the language as liberal or restrictive as you want. And, you can have different provisions for different beneficiaries.

Age-Based Distributions

Another component in your trust is how long the trust is to last for beneficiaries. There is great flexibility here. The trust could last for a short amount of time (even less than one year) or for multiple generations (even hundreds of years or forever).

Many trusts have distribution provisions that are age based. For example, if a child is the beneficiary of a trust that his/her parents are setting up, he/she can receive 25% of the trust outright upon attaining age 25. He/she gets 50% of the trust value upon attaining age 30. There's a 75% distribution upon turning age 35. And finally, a full distribution at age 40. The percentage payouts and the

ages on which that occurs is up to you as the grantor of the trust. Age-based required distributions do not necessarily mean that the beneficiary can't get the principal until each age requirement is met. The trustee, if they are given discretion to do so, could make principal distributions along the way.

Distribution language also can be based on achievements or successes in the life of the beneficiary. More liberal distribution provisions can be considered by the trustee if the beneficiary is gainfully employed, uses the funds to purchase a primary residence, uses the funds to enter into a business, graduates from college, remains free of substance abuse ... all items that would have to be proven to a trustee, which could make it easier for the trustee to make the distribution. Again, you as the grantor control this language and its requirements.

Provisions Dealing with Special Issues Relating to a Beneficiary

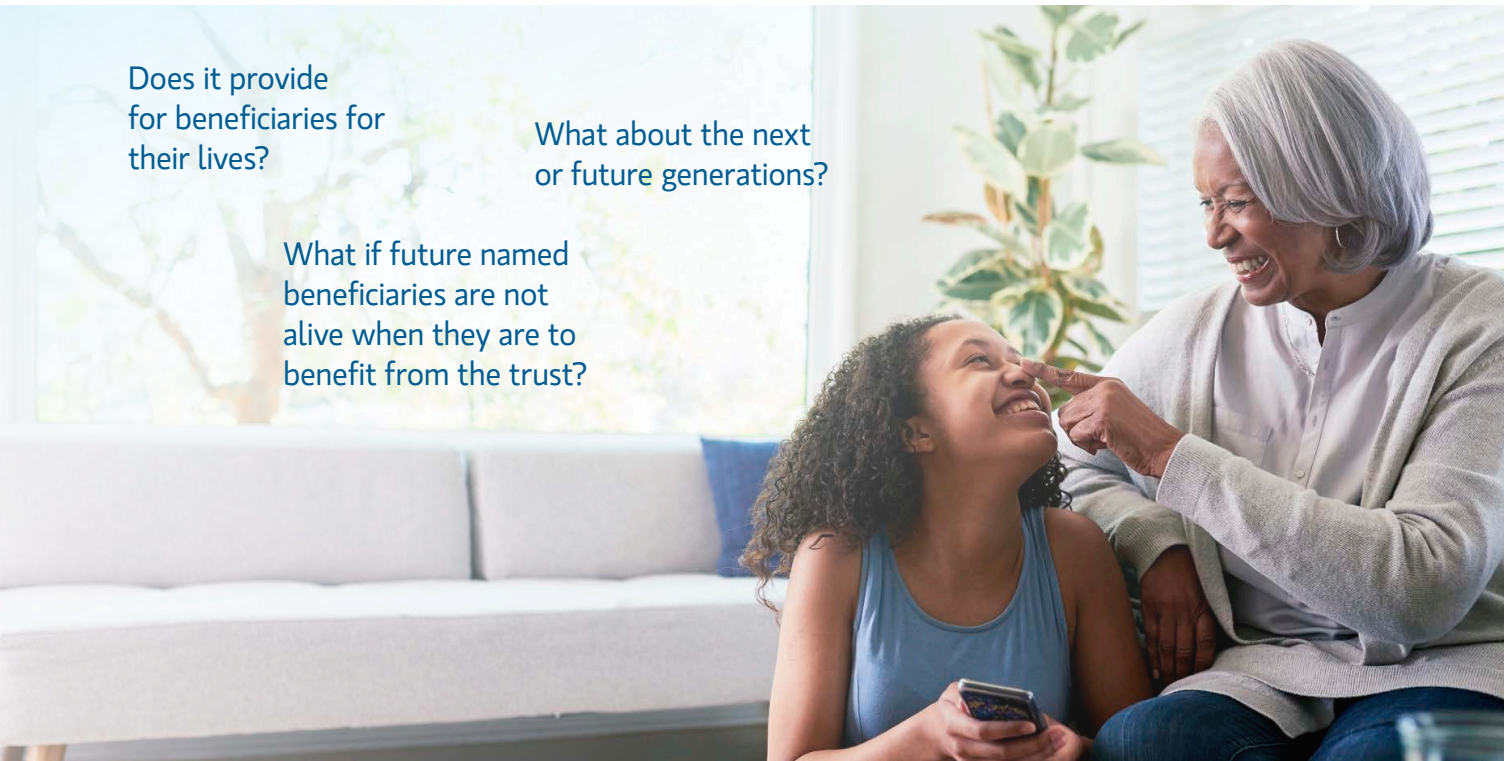
More and more trust documents are being written to have provisions built into them so that a trustee can handle a beneficiary who may have substance abuse, addiction and/or mental disorders. These provisions can include instructions for the trustee regarding requirements for the testing and treatment of a beneficiary. Instructions are also usually included to suspend distribution payments to a beneficiary who continues to have substance abuse problems and then to allow distributions to return to a beneficiary who has overcome abuse problems.

Provisions Dealing with a Special Needs Beneficiary

Unfortunately, many trust documents and Wills today have to include provisions for covering beneficiaries who may have special needs or are later in a situation where they could be receiving financial aid from the government. If you have a special needs child who is financially dependent on you now and may be receiving government assistance, the creation of a Special Needs Trust from your revocable living trust or Will is often a good idea to protect the long-term financial well-being of these dependents.

How Long Should My Trust Last?

Like the other aspects of your trust document, you decide how long the trust is to last (as permitted by applicable state law, which varies). Does it provide for beneficiaries for their lives? What about the next or future generations? What if future named beneficiaries are not alive when they are to benefit from the trust? Your estate planning attorney can help you map out the lifespan of your trust. It's important to remember, however, that there are no right or wrong answers. Your trust can have a very short timeframe or it can span multiple generations (i.e., Dynasty Trust).



WHAT IS A DIRECTED TRUST?

Whether created from a Will, revocable living trust or independently by a grantor during life, most irrevocable trusts are discretionary trusts. A discretionary trust is one where typically the trustee has full control over all aspects of the trust. This includes investment discretion and distribution decision making.

But irrevocable trusts can be structured differently. They can be written so that one or more discretionary powers is removed from the trustee's control and given to someone else. Trusts that are structured this way are referred to as **DIRECTED TRUSTS.** With a directed trust, investment authority and/or distribution authority can be given to a person who is either a special trustee or not otherwise acting as a trustee. This bifurcation of duties could provide more flexibility for the grantors and trust beneficiaries regarding investment and distribution decision making.

Within the directed trust world, there is usually a subset of terms:

INVESTMENT DIRECTION ADVISOR – This individual or committee is often made up of family members, friends, colleagues or professional advisers of the grantor. The grantor appoints the Investment Direction Advisor(s) in the trust agreement. The Investment Direction Advisor directs investment decisions – the trustee does not have investment authority. This arrangement is particularly useful if the trust holds a closely-held or family-owned stock or business. Sometimes, the grantor can be named as the Investment Direction Advisor – consult with your estate planning attorney if this strategy makes sense for your directed trust.

DISTRIBUTION ADVISOR – This individual or committee is usually made up of the similar individuals listed as Investment Direction Advisor candidates. The grantor appoints the Distribution Advisor(s) in the trust agreement. The Distribution Advisor directs the trustee as to when and how the beneficiaries will receive discretionary distributions from the trust based on the standards contained in the trust agreement. This arrangement can give added flexibility to family members. Generally, it is not a good idea for the grantor to be named as the Distribution Advisor but other family members may be considered for this role.

A question that often surfaces regarding a directed trust is, when an Investment Direction Advisor and a Distribution Advisor are in place, what is the role of the trustee? What is the trustee actually doing? In fact, the directed trustee is doing much less when compared to serving as a discretionary trust. Its investment risk is significantly reduced since it doesn't make investment decisions; its distribution decision making is absent since it lies with others. As an Administrative Trustee of a directed trust, the named trustee is often a corporate trustee located in a state with favorable and modern trust law guidelines.

Governing Law and Trust Situs

As if proper estate planning isn't complicated enough, you will also have to consider how governing law and trust situs impacts your planning strategies. Trusts are often created to be governed by the state you reside in. For example, if you live in New York, your trust document will say that the governing law is New York. The term "governing law," when applied to a trust, is used to govern the validity of the trust document and the construction of the trust document. If you move to another state, you do not necessarily have to amend your document for that new domicile – your trust would still be a valid trust in that new state (some states, however, may still seek to tax the trust). It may still be advisable to update a revocable living trust because there could be state estate tax differences between the state you set it up and in the one you move to. The trustee of your trust – whether that is you during life or a successor trustee when you are no longer serving – should follow state law that governs your trust. The trust is still valid if you move to another state; however, some states are getting aggressive about taxes so they should consider meeting with a local attorney and having it reviewed and potentially revised.

But it doesn't stop here. There may be a second state that can control in your trust document – the state in which the trust is administered. This is the trust's situs or jurisdiction. While the governing law dictates the creation of the trust document, the trust situs dictates where your trust is being administered and how taxes may impact your trust.

State rules involved with your trust's jurisdiction or situs vary. Certain state jurisdictions are far more attractive than others, especially with regard to asset protection, multi-generational planning and tax efficiencies. Many high net worth families are taking advantage of "wealth friendly" state jurisdictions by utilizing a trustee located in one of these favorable states such as Alaska, Delaware, Nevada or South Dakota (several other states are improving their laws but these are the top tier). You do not have to live in these states nor have assets in these states to take advantage of the favorable estate planning advantages they offer – your trustee simply needs to administer the trust in one of these states.

Please note that governing law and situs discussions primarily focus on irrevocable trusts. You should consult with your estate planning attorney and accountant on the topic. That said, high net worth families who seek sophisticated estate planning strategies and tax efficiencies for their wealth – both now and in the future – should learn how a favorable trust jurisdiction can impact the preservation and transition of their wealth.

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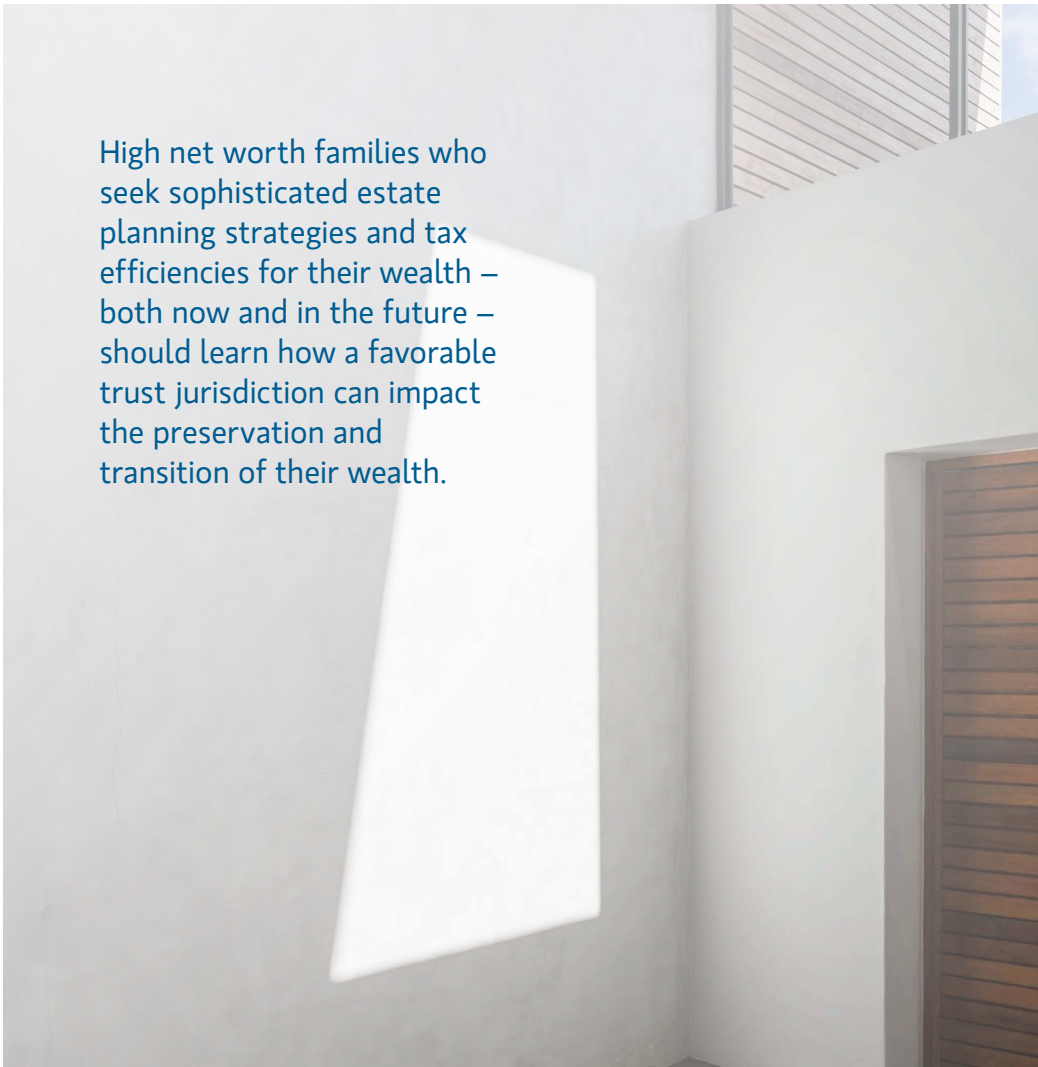


THE TRUSTEE OF YOUR TRUST

When meeting with your attorney to create your Will or trust, you decide on the identity of the trustee, as well as the scope of the trustee's powers and discretions. A trustee has the fiduciary responsibility to manage, administer and distribute trust assets according to the terms of the trust document. A trustee is required to follow rigorous standards set out in applicable state law, and to act impartially and exclusively in the interest of the current beneficiaries and the remaindermen of the trust.

You may select an individual or an entity as the trustee of your trust. If you are creating a revocable living trust, most likely, you do not need to name a corporate trustee in a current role. As long as you are alive, healthy, and competent and want to maintain in full control of the trust, you should name yourself (possibly along with your spouse) as the trustee. A corporate trustee for a revocable living trust is usually not necessary.

Within your Will or revocable living trust, however, there should be provisions outlining a successor trustee. A successor trustee takes over from you as trustee typically upon your death, incapacity or resignation as trustee. Whom you name as successor trustee is an important component of your revocable living trust or Will because that individual or entity will have significant responsibilities and liabilities as a fiduciary over possible irrevocable trusts. The chart on the following page lists a number of questions to consider when choosing between a natural person as trustee and a corporate trustee.

Some of the requirements of a trustee of an irrevocable trust include being able to handle many fiduciary-, administrative and investment-related requirements, such as:

- Holding trust property and/or assets
- Investing trust assets
- Making distribution decisions of trust income and/or principal to beneficiaries, as directed in the trust agreement
- Making tax decisions and elections concerning the trust and filing its tax returns
- Keeping records of all trust transactions
- Issuing regular statements of account activity and trust-related tax reports to trust beneficiaries
- Explaining the trust provisions to beneficiaries and answering any questions the beneficiaries may have concerning the trust
- Making reports available to probate court if the trust is created under a will
- Working with the family's other professional advisers such as attorneys and accountants

Choosing a Trustee

A trustee is responsible for a number of tasks, most of which are simple and straightforward and some of which are complex. Either way, these tasks must be performed with the best interests of the trust beneficiary(ies) taken into account and with the highest level of integrity.

A trustee is considered to be a fiduciary and, as a fiduciary a trustee is required to manage, preserve and administer a trust with as he or she would exercise on his or her own behalf. A trustee's duties include:

- Acting only in the best interest of the trust and its beneficiaries
- Remaining impartial by not favoring the interests of one beneficiary over another (unless the trust stipulates this to be so)
- Managing assets and fulfilling trust provisions with reasonable care

You may select an individual or an entity (i.e., bank or trust company) as trustee for your trust. You may be able to serve as trustee of the trust while you're alive and you can have multiple trustees named as fiduciaries. As outlined below, there are several items to consider when choosing between an individual and a corporate trustee.

Choosing Between a Corporate Trustee and a Natural Person

KEY ATTRIBUTES	KEY QUESTIONS	CORPORATE TRUSTEE	NATURAL PERSON AS TRUSTEE
Experience	Does the trustee have full-time, experienced personnel devoted to the highly complex and time-consuming tasks of properly managing a trust?	**YES**	**?**
	Does the trustee have a deep understanding of individual family members, family history and dynamics, individual and group challenges and opportunities?	**?**	**?**
	Could multiple generations of a family name the same trustee to ensure continuity and consolidation of financial affairs?	**YES**	**NO**
Financial Resources	Are the beneficiaries of the trust protected from loss in the case of breach of fiduciary duty?	**YES**	**?**
	Can the trustee be sued for breach of fiduciary duty and charged for improper conduct or for failing to act when action was required?	**YES**	**YES**
	Will banking authorities periodically subject the trustee to scrutiny, supervision and audit?	**YES**	**NO**
Administrative Capabilities	Is the trustee familiar with legal requisites?	**YES**	**?**
	Can the trustee's experience in trust administration relieve individuals of burdensome administrative details?	**YES**	**?**
	Are accounting, audit, administrative and investment experience and facilities of the trustee provided without additional cost?	**YES**	**?**
	Can the trustee provide continuity of management without regard to illness, incapacity, death, vacation or business trips?	**YES**	**?**
	Does the trustee have the facilities and experience needed to collect debts, income, accounts receivable and other funds owing to the trust?	**YES**	**?**
Impartiality/ Nature of Relationship	Is the trustee free from personal bias regarding beneficiaries?	**YES**	**?**
	Are the trustee's services provided pursuant to a professional business relationship rather than as an accommodation, sense of family obligation or personal favor?	**YES**	**?**
Costs	Will the trustee act without compensation?	**NO**	**?**

Reasons to Consider a Corporate Trustee

When deciding on whether to name a corporate trustee or an individual trustee as fiduciary of your irrevocable trust, you might want to consider the following:

ADMINISTRATIVE EXPERIENCE – Because a corporate trustee administers trusts on a daily basis, they are familiar with all kinds of trusts, tax and estate planning strategies. They are also cognizant of the legal responsibilities of a trustee. A corporate trustee has to manage the assets in the trust now and/or after the grantor's death as directed in the document. This includes the buying and selling of assets, paying bills, filing tax returns, maintaining accurate records and distributing income and assets. Corporate trustees have experience with all kinds of assets, including stocks and bonds, real estate, farms, closely-held businesses, mineral rights/properties, collectibles, etc.

KEEPING THE PEACE – When a family member is named as trustee of an irrevocable trust, this can often lead to disputes, battles and even litigation between family members. In addition, the individual family member as trustee may have his or her own life, family and job to concentrate on instead of devoting the proper time to administering the trust.

INVESTMENT MANAGEMENT EXPERIENCE – Corporate trustees give their full attention to managing trust assets. This includes being familiar with investments strategies, asset allocation and portfolio construction.

REGULATORY OVERSIGHT – A corporate trustee is regulated by state and/or federal agencies. In addition, many court jurisdictions view corporate trustees as "experts" and expect them to meet higher standards than an individual trustee. Although a corporate trustee may find today's regulatory environment over-burdensome, you, as creator of the trust should have some peace of mind knowing that banks and trust companies are constantly being watched and monitored by government agencies.

RELIABILITY/PERPETUAL EXISTENCE – A corporate trustee won't become ill or die, divorce, go on vacation, move away or become distracted by personal concerns or emotions as an individual trustee might. Today's corporate trustees often have Trust Officer teams and support staff to provide day-to-day administrative services for the trust and its beneficiaries.

OBJECTIVITY – While it may seem rather cold and impersonal, a corporate trustee makes decisions without emotion and according to the trust document. Individual trustees – especially family members serving in this role – often find this very difficult to do.

REFERRAL RESOURCES – The corporate trustee is often connected to advice and referrals for tax and estate planning

issues. This includes the legal community and accountants/CPAs. The corporate trustee often works with the client's other advisers to find solutions to complex planning situations.

The most frequent objection to using a corporate trustee is **cost.** Compensation paid to a corporate trustee, however, is generally not much greater than an individual fiduciary is entitled to charge. An individual trustee would most likely have to retain the services of a number of different professionals or entities, such as accountants, lawyers and investment managers, who have never worked together and who may not be able to coordinate their efforts. With a corporate trustee, trained specialists minimize expenses through efficient trust management and administration and economies of scale.

Consider a Trust Protector

If you're thinking about including family members as a trustee of your trust but have concerns that this arrangement could cause conflicts, you might want to consider the role of a Trust Protector. A Trust Protector is a third party named in a trust agreement who is given special powers by the grantor. The purpose of utilizing a Trust Protector is to help make sure the intentions of the grantor are carried out – it can add an additional layer of control, flexibility and security. The role and specific powers you grant to a Trust Protector are spelled out in the trust agreement that you put together. Some of the powers you can give to a Trust Protector in your document are:

- Power to remove and appoint the trustee
- Power to change the situs of the trust, which may be useful if changing governing trust laws in other states are advantageous to trust beneficiaries (i.e., a change of situs to a state with no state taxes)
- Power to terminate the trust (i.e., if the trust is small and not economical to continue)
- Power to amend and modify the trust agreement
- Power to determine distributions from the trust
- Ability to name a successor Trust Protector

A Trust Protector is not a trustee. Instead, it is someone other than a beneficiary of the trust who you want to help oversee certain aspects of the trust because the Trust Protector may know the family or beneficiaries and be more of a "human" connection to everyone than a professional or institutional trustee. In many cases, it is a family member but that family member is not in a fiduciary role, which is often of comfort to you as the grantor and that family member who you're naming as Trust Protector. A Trust Protector cannot be added to an existing irrevocable trust – its use is generally with newly written trusts. And, not all state law allows for a Trust Protector so be sure to check with your estate planning attorney.

Document Provisions Related to Changing a Trustee

Most trust documents contain language allowing for the trustee to resign. If the trustee resigns, the successor trustee becomes the acting trustee. Related to this, your Will or trust document will likely have provisions allowing the ability to remove a trustee and appoint a new trustee. This power is usually given to you as the grantor and, if not serving, to a beneficiary(ies). It may also be given to a Trust Protector. Without the ability to remove and appoint a trustee, the trust beneficiary will have to petition a court to make such a change.

Additional language you may want to consider as part of your document is whether to have certain requirements of your trustee. For the individual trustee, requirements could include attaining a certain age or being or not being related to beneficiaries (independent trustee). For a corporate trustee (which is also an independent trustee), a requirement can be that a corporate trustee is required. And if one is required, language can be included that it has assets under trust administration of a certain amount and/or has capital and surplus amounts of a certain size (this is all to ensure that a well-established bank or trust company is put in place).

Corporate Co-Trustee

Appointing a corporate trustee in your trust is not always an exclusive choice. Many feel that while they appreciate all the advantages that a corporate trustee brings to the arrangement, they and future beneficiaries of the trust may feel more comfortable having another family member, relative or trusted adviser (person) serving along with the corporate trustee. The individual co-trustee may know the family members better and can assist in making determinations about the needs of the beneficiaries. Some individual co-trustees are given distribution decision-making power over the corporate co-trustee. Often, the individual/corporate trustee co-arrangement shares in decision making processes.

UPDATING YOUR DOCUMENTS; BEYOND WILLS AND TRUSTS

Estate planning is a fluid process. Creating a Will or a trust is the obvious necessary first step but as life changes, your documents may require updating, revisions or total do-overs. Changes to your Will are done through either a Codicil to your Will or a brand new Will document. Changes to your revocable living trust are done with an Amendment or a totally restated revocable living trust document.

Changes to your documents often occur with life changes events. These include:

- Births, deaths, marriages, divorces
- Changes in wealth
- Changes in tax laws
- New special needs situations
- Philanthropic endeavors
- Selling a family-owned business

Changing an Irrevocable Trust

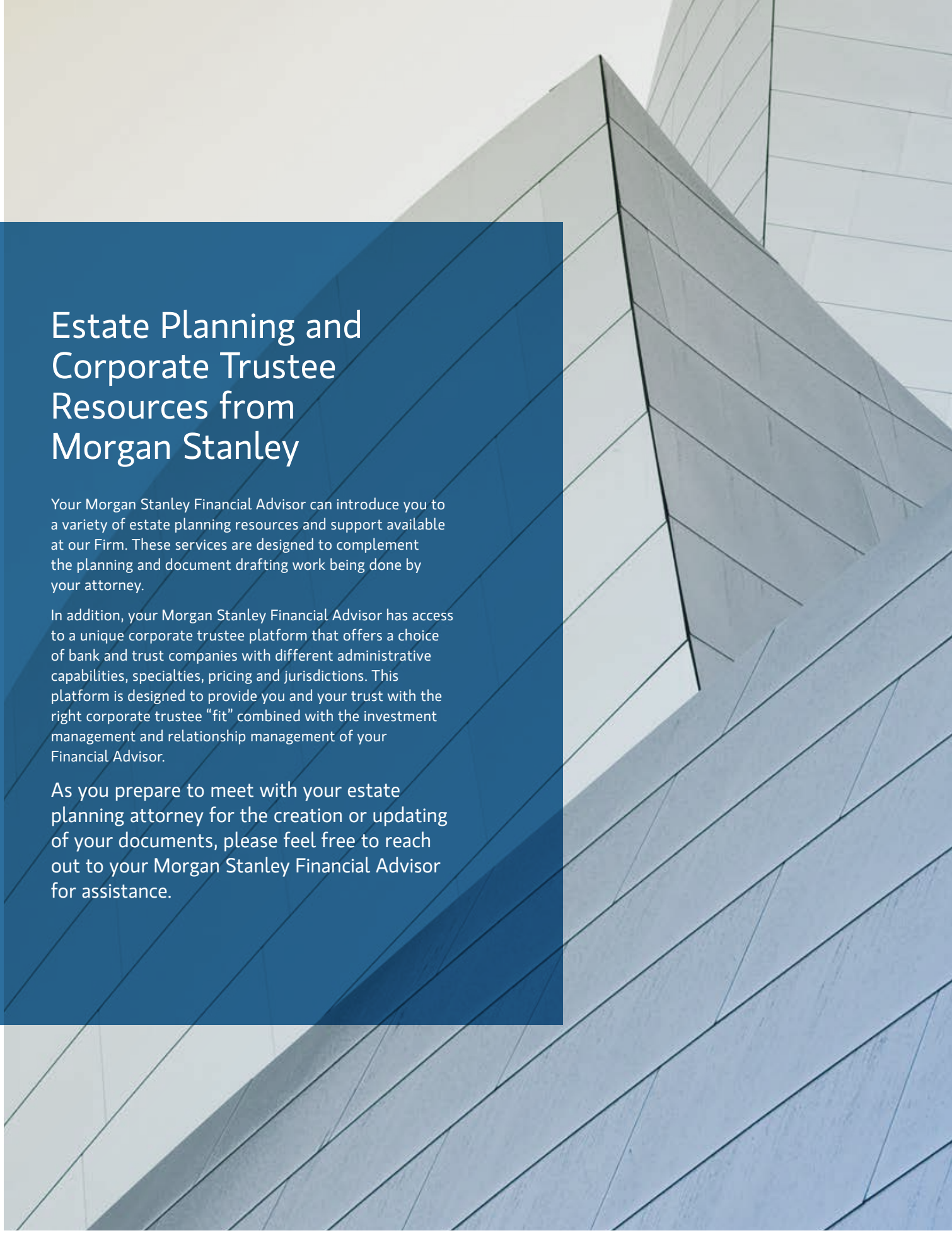
If you are creating an irrevocable trust now during your life, generally, it cannot be changed easily. Your trust agreement may allow for a change of the trustee and/or jurisdiction. But changes to beneficiaries and the terms of how beneficiaries receive income or principal from the trust are much more difficult to change.

That said, some grantors and beneficiaries of trusts find success in changing provisions of an irrevocable trust by obtaining court approval for the revision. Still another way to possibly change an irrevocable trust is by having the trust governed by a state law that allows for a restructuring of the trust agreement. Whether via court or through trust laws in a certain state, any changes to an irrevocable trust must first be discussed with an estate planning attorney.

Other Estate Planning Tools

When you meet with your estate planning attorney, discussions about Wills and trusts are probably not the only topics you'll be discussing. There are other critical estate planning documents that you should consider such as Health Care Proxy, Health Care Directive (Living Will) and Power of Attorney. Your estate plan comprises of all of these tools and should be reviewed and updated throughout your life and as life around you changes.

While the documents discussed here – Wills, trusts, health care proxy and power of attorney – are the "core" of your estate plan, it is also important to coordinate everything that affects the disposition of your property at death. Thus, when meeting with an estate planning attorney, it is important to share with him/her how all of your property is owned (jointly or single name), who the beneficiaries are of any retirement plans (IRAs, 401(k)s, etc.) and how any life insurance is owned and who are the beneficiaries of such policies. An estate plan that fails to coordinate all of this may not be consistent with how you want all property distributed or managed at death.



Estate Planning and Corporate Trustee Resources from Morgan Stanley

Your Morgan Stanley Financial Advisor can introduce you to a variety of estate planning resources and support available at our Firm. These services are designed to complement the planning and document drafting work being done by your attorney.

In addition, your Morgan Stanley Financial Advisor has access to a unique corporate trustee platform that offers a choice of bank and trust companies with different administrative capabilities, specialties, pricing and jurisdictions. This platform is designed to provide you and your trust with the right corporate trustee "fit" combined with the investment management and relationship management of your Financial Advisor.

As you prepare to meet with your estate planning attorney for the creation or updating of your documents, please feel free to reach out to your Morgan Stanley Financial Advisor for assistance.