

I N S I D E   T H E   M I N D S

# Best Practices for Structuring Trusts and Estates

*Leading Lawyers on Drafting a Flexible  
Plan, Protecting the Client's Assets, and  
Leveraging Tax Strategies*

2015 EDITION



ASPATORE

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Customized Approach with an  
Emphasis on Trust Planning  
and Structuring Will Result  
in Effective Estate Plan

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## **Introduction**

I find the trusts and estates field extremely challenging and rewarding. The significant increase in the transfer tax exemptions in 2010 may have lessened the need for transfer tax planning for many clients, but there are still many aspects of wealth transfer and wealth planning that need to be addressed, and there is a great need for trusts and estates lawyers who are knowledgeable, practical, and good problem solvers. As with many things, there is more than one way to be a good trusts and estates practitioner, and you need to determine your focus and the way you plan to excel as a lawyer. I will share some of my best practices, and hopefully some of this insight will be helpful to others striving to improve their skills in the trusts and estates field.

This chapter focuses on three topics. First, I suggest some of my best practices for the estate planning process in general. Second, I discuss the importance of fully understanding the power and uses of trusts, which are frequently a central part of an estate plan. Third, I discuss current estate planning topics (other than the planning issues that are more likely to occur in everyday practice) that have been hot topics in my practice over the past year or so, and will likely continue to be hot topics for the next few years. As trusts and estates is a changing and evolving field (in large part due to constant changes in society and new laws), this last section would have been quite different had I been writing it just a few years ago. This underscores the nature of the trusts and estates field as a challenging and evolving field of practice.

## **Practice Tips for an Effective Estate Plan**

The following are some of the practices that I believe are important to help myself and my client develop the most effective estate plan. I believe it is important to have some guiding principles that will prepare you to be a good advisor and that you will use in developing an effective estate plan for a client.

The first step occurs before I meet the client. It seems obvious, but you need a thorough understanding of the applicable laws, and this is a continuing process, even for experienced lawyers. This starts with knowledge of the applicable trust code and probate code. As tax is almost always a relevant consideration, you

should also have a good working knowledge of the potential taxes that are applicable. This includes transfer taxes, income taxes, and state taxes. You should also have a good working knowledge of the other fields that can impact estate planning, such as asset protection, entities (corporations, LLCs, partnerships, etc.), entity selection issues, and family law. Many articles are written on estate planning topics, and you should find time to read the articles that would be most helpful to your particular practice.

On state law matters, it is very helpful to read the recent appellate cases, as those will reflect current issues and uncertain issues in the law. The issues determined in many of these cases can and should be addressed in your form documents to respond to the particular issue.

When I work on international planning matters, I also learn a lot by observing how trusts are structured and drafted in non-US jurisdictions, and by observing the trust law of non-US jurisdictions. I find that this gives me a broader perspective on using trusts domestically.

The next step in the process is getting client information, both personal and asset information, to help you give the best advice. This is not just the basic factual information that the client will write down on paper before coming in, but the responses you get during your in-person meetings with the client. I will typically begin the initial meeting with the open-ended request for the client to tell me about the client's family, and the client's goals in estate planning. The best results will be obtained if the client meetings are conversations with the client rather than simple information-gathering exercises.

It is very important to understand that the process with each client is not one size fits all. Some clients will be engaged with the planning process, and some simply will not be engaged. For those who are not engaged, you may have to move forward with the process with less information, and your goal may be to get documents signed with a less refined estate plan because that will still be a great improvement over no estate plan. Each client engagement will develop differently.

After structuring an estate plan for the client, careful drafting of the estate plan is critical. This starts with your internal forms used to begin the

drafting process. We spend a lot of time with our forms and are constantly tinkering with them to make our documents more simple and clear without losing the desired result, as well as to address new or changing legal issues. Examples of recent changes we made to our forms were to address the authority of an agent under a durable power of attorney and the personal representative regarding digital property (such as access to information relating to online accounts), and to address the definition of an individual's children as it relates to assisted reproductive technologies (for example, whether to include a child born after death through assisted reproductive technologies). In many cases, our “default” provisions are based on past client discussions and our sense of what the majority of clients would want, and this is also subject to change as we get client feedback. We also point out these issues to clients in meetings or document summaries and let them know that they can change them or we can have additional discussions about the issues.

While the estate planning document assembly systems available for purchase are certainly beneficial to some, we have chosen to utilize our own forms, even with the significant time that this requires, because we feel that the drafting process is so important and that the use of our own forms makes us much better and competent with the drafting process. Careful drafting requires diligence, and you cannot be lazy when it comes to good drafting. The document is our ultimate product for the client and if you fail at this point—either to capture the client's intent or to say it in a clear and unambiguous way—then you have failed the client.

Some lawyers find the more sophisticated planning much more interesting and may be tempted to push through the core estate plan, but the initial focus must be on completing the “core” estate planning documents, including the revocable living trust, pour-over will, durable power of attorney, health care advance directive, and living will. Developing the core estate planning documents will form the basis of your advice and the more sophisticated planning can expand from there.

Ultimately, my goal is to be the trusted advisor for the family who perceives value in my advice and work product. To achieve this, I view my practice as a personal service business and I focus on responsiveness and customizing the process for each client.

## Understanding and Implementing the Power of Trusts

Because trusts are frequently a central part of an estate plan, I believe it is critical for the estate planning practitioner to fully understand the nature of a trust and what a trust can accomplish, and to be able to explain trusts to clients. Trusts are powerful and flexible tools that can accomplish many goals in the wealth transfer process. A full understanding of trusts and the ways that trusts can be structured is critical to meet the client's objectives.

Trusts are unique legal arrangements. A trust is not an entity, but rather is a relationship between the trustee and the beneficiaries. This fundamental concept is important to understanding and explaining trusts.

If a trust is utilized, the client needs to understand that a trust will almost always create multiple beneficial interests, and those beneficial interests will typically be competing interests. For example, if a trust is created for an individual's surviving spouse and the surviving spouse is the trustee of the trust, the client may think that the surviving spouse will have full control over the trust during life and will not have to answer to the beneficiaries entitled to the trust assets upon the death of the surviving spouse, typically the children. However, the surviving spouse will have a duty to report to the children during the surviving spouse's life, and would have to answer to the children for breaches of trust. This aspect frequently comes as a surprise to clients, and they need to understand this aspect to determine if a trust structure will be appropriate for their particular situation.

Generally, the applicable trust code will provide for default rules applicable to all trusts, but in most cases the trust instrument can override the default rules. It is very important to understand the default rules and the rules that can be modified in the trust instrument. Examples of trust issues that arise in structuring a trust are the duty to report and account to beneficiaries, means of representing and binding trust beneficiaries on trust matters (sometimes called "virtual representation"), rights of creditors of trust beneficiaries to reach trust assets, standards for trust investments such as the prudent investor rule, and methods to relieve trustees for liability for actions taken as trustee.

When reviewing trusts prepared by others, I commonly see trusts for a beneficiary that terminate at a specific age and require all of the trust property to be distributed to the trust beneficiary. Forcing out trust distributions will expose the property to the beneficiary's creditors and may increase the exposure of the property to the claims of a spouse in the event of death or divorce. Rather than a trust structured with outright distributions at a certain age, I now generally recommend trusts that will remain in existence for the beneficiary's lifetime. The basic dispositive provisions of the trust would provide that the trustee has the authority to distribute trust property for the health, education, maintenance, or support of the trust beneficiary. I typically also include a provision that permits an "independent trustee" (i.e., a trustee who is not a beneficiary of the trust, a contributor to the trust, or someone related to a beneficiary or contributor) to make distributions to the trust beneficiary for any reason. The beneficiary's descendants may also be included as discretionary beneficiaries, with a direction that the beneficiary is the "primary beneficiary" whose needs should be considered first.

By keeping the property in lifetime trusts, there are potential important benefits to the trust beneficiary, and I explain to the client that this is a form of doing estate planning for the beneficiary. A lifetime trust likely provides some protection of the trust assets from the beneficiary's creditors. A lifetime trust will also keep the assets segregated from the beneficiary's personally owned assets so that the assets may not be "marital property" that could be subject to the claims of a spouse in the event of divorce. If the assets are retained in the lifetime trust, the trust may also protect the assets from the claims of a surviving spouse upon the death of the beneficiary (for example, under Florida law, a surviving spouse of a Florida resident is generally entitled to a minimum of 30 percent of the predeceased spouse's "elective estate"). Lifetime trusts can also be effective in minimizing the total transfer taxes payable upon the death of the beneficiary, resulting in greater amounts passing to or in trust for future beneficiaries (such as the grandchildren). If desired, the beneficiary can be co-trustee of his or her trust at a certain age, or may even be the sole trustee of his or her own trust at a certain age. By allowing the beneficiary to be a trustee or co-trustee, the beneficiary can have a substantial degree of control over the trust while still retaining the potential benefits of the trust.



On the death of the beneficiary, I encourage the client to consider granting the beneficiary the broadest limited power of appointment (the power to appoint any person other than the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate). While the client is, at least initially, typically inclined to require a disposition to the client's descendants, or limiting a power of appointment in favor of the client's descendants only, the flexibility of a broad limited power of appointment can be extremely powerful to take into account changes that will continue to occur over time with families, society, and taxes. A broad limited power of appointment may not be appropriate for all situations, and the client may choose a more limited power of appointment or no power of appointment, but the flexibility of a broad limited power of appointment should be considered by the client.

Clients consistently respond very favorably when you explain that trusts may help protect against claims of a beneficiary's spouse in the event of divorce and claims of a beneficiary's creditors. Depending on the importance of the issue to the client, a spectrum of trust terms can be utilized to protect against the beneficiary's spouse in the event of divorce and creditors. If the client wants the potential benefit of trusts but wants the beneficiary to have as much control as possible, the beneficiary may be sole trustee and may have the discretion to make distributions based on ascertainable standards (for example, health, education, maintenance, and support). However, that structure may weaken the protection from spouses and creditors because of the degree of control that the beneficiary has over trust assets. On the other end of the spectrum, where the beneficiary has the least degree of control over trust assets, the trust would require an "independent trustee" at all times and would grant the independent trustee the broadest discretion to make trust distributions to the beneficiary, and possibly the beneficiary's descendants. This structure is more likely to provide protection from the beneficiary's creditors or a divorcing spouse. The appropriate trust structure will also depend on applicable state law regarding the rights of a beneficiary's creditor to reach trust assets or to compel a distribution from the trust, and these laws will vary by state.

Although lifetime trusts can have significant benefits, the client needs to understand that the benefits of trusts also come with potential administrative burdens, such as the issue of multiple competing interests

in a trust (which increases the likelihood of disputes and litigation), and the need to account and report to trust beneficiaries. However, the potential administrative burdens can often be mitigated by consideration of the issues in the drafting process.

Below, I discuss several additional trust topics that have been hot topics in my practice over the last year or so.

### *“Secret” Trusts*

Many clients want to transfer wealth to their beneficiaries, but are concerned that if the beneficiary has knowledge about the wealth, the beneficiary’s behavior will be affected in negative ways, such as a lower desire to work (the so-called “trust fund baby”). Therefore, a client may want to establish a trust but keep the trust secret from the beneficiary or otherwise limit the beneficiary’s access to trust information, at least until the beneficiary attains a certain age. However, a trustee has a general duty to inform and account to the beneficiary, which is a fundamental concept in trust law. Some states have enacted laws that allow a trust to be “secret” from the beneficiary, or that may limit the beneficiary’s access to trust information. Florida law permits a designated representative (other than the trustee) to represent and bind a beneficiary, including providing the trust accountings to the designated representative instead of the beneficiary. Accordingly, the designated representative would effectively stand in the shoes of the trust beneficiary so that there is still a person to monitor the trustee. As a practical matter, maintaining the trust as secret from a beneficiary may be difficult to achieve over time, even if the trust is governed by the law of a favorable jurisdiction.

### *Incentive Trusts*

The use of incentive trusts continues to be a hot topic of discussion with clients. The term “incentive trust” generally describes a trust that includes provisions that encourage or discourage certain actions by the trust beneficiary. Incentive trusts can help achieve some of the desires of the trust creator relating to how the trust operates for the trust beneficiaries. Incentive provisions can be designed to (i) encourage particular achievements (for example, graduating from college); (ii) discourage certain

activities or associations (for example, marrying certain individuals); (iii) address specific behavioral problems (such as alcohol or drug abuse); or (iv) reflect general goals (for example, requiring distributions to match earned income to encourage productive behavior). Incentive trusts can use financial incentives (for example, permit or require distributions upon certain events), or status incentives (for example, by allowing the beneficiary to control certain matters relating to the trust). However, it should also be kept in mind that there are limits to the effectiveness of incentive trusts in that there may not be the needed flexibility to allow for changing circumstances. For example, if a provision makes a matching distribution for employment income, does the trust take into account the possibility of a disabled beneficiary, or a beneficiary who is “productive” but who has chosen a profession that is low-paying? The incentive trust provisions should be flexible enough to accommodate future technological, personal, and sociological changes, and to avoid unintended consequences. Therefore, an important aspect of drafting incentive trust provisions is to balance the desire to encourage or discourage the specific behavior with the need for some flexibility to adapt to changing circumstances.

As an alternative to incentive provisions that may be inflexible, the trust may include detailed requests by the settlor that are intended as guidelines to assist the trustee when making discretionary distributions, and this is typically my recommended approach. Attached as Appendix F are sample guidelines for a trustee to consider when exercising discretion to make distributions for a beneficiary’s health, education, maintenance, or support. I use this language as a starting point for clients to consider including in their trust instruments.

### *Trusts with Multiple Office Holders*

Structuring trusts with multiple office holders is increasing. Historically, trusts would have a trustee who performed all functions of a trustee, including investments and distributions. A continuing trend is to have multiple parties undertake different responsibilities relating to a trust. For example, a trust could have an investment trustee and a distribution trustee, and could also use a “trust protector” who would have other roles relating to a trust, such as the ability to amend the administration provisions of a trust. States have begun to enact laws to facilitate this multi-party aspect of

trusts. The use of multiple parties will also greatly increase the drafting complexity of a trust agreement.

### *Use of Other States' Trust Laws*

If a client has a goal that may be best accomplished under the laws of another state, consider looking at the trust laws of other states to determine if the client's goal can be best accomplished by utilizing another state's governing law. Recent examples of issues where my clients considered laws of another state that were potentially more favorable include the use of a no-contest provision (to discourage a beneficiary from contesting the terms of a trust), limited disclosure of trust information to trust beneficiaries, the use of directed trustees (where the trustee may be directed by a non-trustee to take certain actions without liability), and self-settled trusts (where the settlor of a trust may be a trust beneficiary without the settlor's interest being subject to the claims of the settlor's creditors). However, using another state's law typically requires some nexus to the other state, such as a trustee resident in that state, and this will likely increase the complexity and costs of the trust.

### *Building Flexibility into Irrevocable Trusts*

As explained above, trusts offer significant tax and non-tax benefits. A trust generally must be irrevocable to achieve the desired tax and non-tax benefits. However, an irrevocable trust does not mean that the terms of the trust cannot be changed if the power to change is appropriately structured. It is important to discuss with the client the means by which an irrevocable trust may be changed, and if desired by the client to incorporate flexibility in the trust structure to address the possibility of changing circumstances. For example, I frequently include in an irrevocable trust agreement the power of an independent trust protector to change the administrative provisions of a trust (for example, the appointment of trustees or trustee powers). The trust protector may be appointed by the settlor or a beneficiary. This additional provision in the trust agreement has permitted relatively quick changes in administrative provisions that would have otherwise required much more complicated solutions to achieve. Changes to administrative provisions may help to reflect tax or other legal changes that affect trust administration, so that the trust will qualify or continue to

qualify as a grantor trust, to achieve classification of the trust as a domestic or foreign trust for United States federal tax purposes, to reflect a change in the place of administration (situs) of the trust or the law governing the administration of the trust, and to correct ambiguities in the trust agreement. Other means of providing flexibility in an irrevocable trust include powers of appointment, trust protector powers to change dispositive provisions, and specific authorization for a trustee to undertake a trust decanting.

## **Current Estate Planning Topics**

In the past year, the following topics have been very active in my practice. I expect these issues will continue to be hot topics in the future.

In many ways, trusts that are “irrevocable” are no longer irrevocable. The procedure of a trust “decanting”—a distribution from one irrevocable trust to another irrevocable trust with one or more of the same beneficiaries—is something that continues to develop. Many states have enacted statutes that permit decantings in certain circumstances (generally, when a trustee has the appropriate discretion to make distributions), and more states are likely to enact similar statutes. Potential reasons for a trust decanting include dealing with changed circumstances of trust beneficiaries, modifying administrative provisions, changing provisions relating to trustees, extending the termination date of trusts, correcting drafting errors, converting a trust to or from a grantor trust, changing the governing law of a trust, and dividing trust property to create separate trusts for the beneficiaries. The tax aspects of trust decantings continue to have some uncertainty. The IRS has indicated that they will publish guidance on the tax consequences of decantings, which may bring greater certainty in this area. The concept of trust decantings also brings to light the need to draft irrevocable trusts as flexibly as possible, with some built-in means to address changing circumstances without the need for a decanting.

With the higher income tax rates and much greater estate and gift tax exemptions that started in 2011, I have put more emphasis on income tax planning. Trusts are generally subject to the highest marginal income tax rate on ordinary income at a relatively small amount (about \$12,000 in 2014). Therefore, there may be an income tax disadvantage to the use of

trusts. The settlor of a trust should consider these issues when structuring a trust, and the trustee of a trust should consider these issues when administering the trust. For example, if a trust beneficiary is in a lower income tax bracket than the trust, consideration should be given to making a distribution to the beneficiary to take advantage of the beneficiary's lower income tax rate. I frequently address issues relating to the new 3.8 percent tax on net investment income, and possible ways to avoid that extra tax. I am also addressing methods to take full advantage of the basis step-up on death. For example, a planning technique that may permit spouses (in non-community property estates) to get a full basis step-up on the death of the first spouse is a joint revocable trust where the first deceased spouse has a general power of appointment over all trust assets.<sup>1</sup> The relative emphasis of income tax planning and transfer tax planning may shift again if the tax rates and transfer tax exemptions change in the future.

Estate planning with international aspects continues to grow in my practice and in many areas of the United States. One common issue that can be complicated with no perfect solution is the acquisition of US real estate (residential or commercial) by foreigners. If a foreigner dies while owning US real estate, the estate tax can be substantial (only the first \$60,000 of value is exempt, and the estate tax rate starts at 26 percent and reaches 40 percent at \$1 million). Possible solutions include acquiring title in the foreigner's individual name (and accepting the risk that the property will not be sold prior to death), life insurance to protect against the risk of the estate tax, ownership through a foreign corporation or foreign partnership, or ownership through a trust. Each one of these possible solutions has pros and cons and there may be no perfect solution for the particular client. Another issue is keeping foreign wealth out of the US transfer tax system when there is a US beneficiary. If a family member is a US person and the family wealth is owned by a foreign individual, then a way to keep the family wealth out of the US transfer tax system forever is for the foreigner to transfer the property to a properly structured trust for the US beneficiaries. This is a simple but very effective means to protect against US transfer taxes. Foreigners are also entitled to a basis step-up on death, and this aspect should be considered when US beneficiaries are involved to maximize the use of that potential benefit.

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<sup>1</sup> See Alan S. Gassman et al., *JEST Offers Serious Estate Planning Plus for Spouses—Part 1 and Part 2*, EST. PLAN. J., Oct.-Nov. 2013, at 3.

Estate planning issues relating to same-sex couples continue to evolve at a rapid pace. I practice in a state that does not recognize same-sex marriages, although, as I write this, state court cases determining that to be unconstitutional are being released frequently, so that may change very soon. For now, there are many issues to consider because same-sex spouses are recognized for federal tax purposes based on the *Windsor* decision,<sup>2</sup> but are not recognized for state law purposes in many states. In the states that do not recognize same-sex spouses, the same-sex spouse will not have many state law property rights and other rights that are provided to different-sex spouses, such as elective share rights, rights in intestacy, and homestead rights. Other rights that may be affected include the right to participate in health care decisions (in the absence of a health care advance directive). Until there is consistency on the treatment of same-sex spouses for federal tax purposes and state law purposes, these issues will continue to present challenges. A significant issue for same-sex spouses in states that do not recognize same-sex marriages is the potential inability to obtain a divorce in the non-recognition state because the state does not recognize the marriage. This may leave a same-sex couple desiring divorce in limbo unless they were married in a state that will permit the divorce of a same-sex couple without a residency requirement. I have worked on same-sex prenuptial agreements and the issues discussed above present significant challenges that need to be addressed in the prenuptial agreements.

Portability—the ability of the first deceased spouse to transfer his or her unused estate tax exemption to the surviving spouse—continues to be a very important new aspect of estate planning. In many ways, portability has greatly simplified planning because it has eliminated the need for the first deceased spouse to have assets to fund a credit shelter trust, and that aspect often presented some practical difficulties and implications. However, portability has also produced more options in the estate planning process, and in that sense it has complicated the process in some ways. For example, creating and funding a credit shelter trust for the surviving spouse still has many potential tax and non-tax benefits. Credit shelter trusts also shelter from the estate tax all appreciation of trust assets occurring after the death of the predeceasing spouse, whereas an outright transfer to the surviving spouse would not do that. Credit shelter trusts may be structured to allow

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<sup>2</sup> *Windsor v. United States*, 133 S. Ct. 2675 (2013).

for tax-free transfers to the client's children (or other descendants) during the life of the surviving spouse. Credit shelter trusts also offer non-tax advantages, such as potential protection from the creditors of the surviving spouse and potential protection from the claims of a subsequent spouse of the surviving spouse in the event of death or divorce. Portability does not apply to the generation-skipping transfer (GST) tax exemption amount, and therefore unused GST exemption of the predeceased spouse may be wasted, potentially resulting in greater GST taxes on assets ultimately passing to the grandchildren. The client needs to understand the advantages and disadvantages of relying on portability as part of the estate plan. Therefore, while portability has simplified estate planning in many ways and clearly is a positive change, that does not mean it has necessarily simplified the estate planning process in all cases.

As discussed earlier in this chapter, there may be ways to structure a trust at the drafting stage to lessen the likelihood that a beneficiary's interest in a trust will be a property interest that is subject to the claims of a divorcing spouse, or will be considered as a means of support when determining spousal support. I have been consulted in divorce cases where one of the spouses had a significant interest in trust and the other spouse was either attempting to treat the trust as a means of support when determining spousal support, or to treat the interest in trust as a property interest that was considered in the equitable distribution determination. This is where drafting of the trust to minimize exposure in divorce meets the real world of the divorce proceeding. I expect to continue to see more divorce cases with these issues as trusts become more common.

Grantor trusts, trusts where the grantor is considered the owner of trust assets and is taxed on trust income for federal income tax purposes, continue to offer meaningful planning opportunities. Grantor trust treatment effectively allows the settlor of the trust to make an additional tax-free gift to the trust in an amount equal to the income taxes paid by the settlor, and the trust assets would appreciate on a tax-free basis. This can result in a very powerful means to reduce the settlor's estate. However, this also means that the burden of the income tax payment is on the settlor, and not on the trust and its beneficiaries. This aspect needs to be carefully considered and a means to "turn off" grantor trust status during the settlor's life should be considered. If the trust beneficiaries are in a lower income tax bracket than the settlor,



then the transfer tax benefits of grantor trust status also needs to be weighed against the possible income tax disadvantage of a grantor trust.

## Conclusion

I have found that it is difficult to replace actual experience when it comes to being a good trusts and estates practitioner. It has been said that it takes 10,000 hours to become a master of a particular skill. Experience, of course, comes with time, but you can accelerate your experience by constantly learning about the field. This can come from learning from others, such as reading this book or from reading the many good articles available in our field. I have also learned a lot by just reading the many state court cases and tax law cases that come out. I actually find the cases to be good reading, quite often just for the stories they tell. You can also learn a lot from the mistakes of others. As the saying goes, “Any old fool can learn by his own mistakes! A wise man learns from the mistakes of others! So do wise advisors!” A good practitioner should be flexible, should always be learning, and should always be looking at his or her processes and documents with a critical eye so that they can be improved.

## Key Takeaways

- The significant increase in the transfer tax exemptions may have lessened the need for transfer tax planning for many clients, but there are still many aspects of wealth transfer and wealth planning that need to be addressed, and there is a great need for trusts and estates lawyers who are knowledgeable, practical, and good problem solvers. You should consistently make the effort to prepare yourself to be the most effective lawyer for your client.
- Because trusts are frequently a central part of an estate plan, it is critical for the estate planning practitioner to fully understand the nature of a trust and what a trust can accomplish, and to be able to explain trusts to clients. Trusts are powerful and flexible tools that can accomplish many goals in the wealth transfer process. A full understanding of trusts and the ways that trusts can be structured is critical to meet the client’s objectives.
- It is important to discuss with the client the means by which an irrevocable trust may be changed and if desired by the client to

incorporate flexibility in the trust structure to address the possibility of changing circumstances.

- Make sure your clients understand that, although trusts can have significant benefits, they also come with potential administrative burdens, such as the issue of multiple competing interests in a trust (which increases the likelihood of disputes and litigation), and the need to account and report to trust beneficiaries. Clients need to understand trusts to determine if a trust structure will be appropriate for their particular situation.
- When a trust provides the trustee with discretion to make distributions to a beneficiary or beneficiaries, consider including detailed requests by the settlor that are intended as guidelines to assist the trustee in determining whether to make a discretionary distribution.

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