Part One

INTRODUCING THE TRUSTSCAPE

Chapter 1

Navigation Works Better When You Have a Destination in Mind

Here's a question that can lead to a world of good. Whether you're a trust creator, trustee, or beneficiary, ask yourself: "What's the single most important reason for the existence of my trust?" Not the sole reason, and not the first one that likely comes to mind, but the one that, upon reflection, takes precedence over any of the others—what is that reason?

Here is a second question that is more future focused: "What's the most important outcome I'd like my trust to accomplish?" Your answers amount to your vision of the "destination." Having a clear destination in mind will influence just about every trust-related decision.

With nearly all our client families, we suggest this thought as the most important reason for creating a trust: To make a gift that promotes growth and thereby lays the groundwork for the beneficiary's true *freedom*. This is in contrast to a mere transfer of assets, which tends to siphon off energy and lead to entitlement.[1]

> The single most important reason for creating a trust is to make a gift that promotes the beneficiary's true freedom.

If you use "freedom" as a standard, the ongoing test becomes whether the existence of the trust—and the relationships created by the trust—enhances rather than diminishes the lives of the beneficiaries. *Enhance* has various meanings, but all of them are positive. Specifically, we mean the type of *enhancement* that helps beneficiaries mature and come to know and pursue their own aspirations.

> Will the existence of this trust, and the relationships created or altered by this trust, enhance the lives of the beneficiaries?

We further suggest that advancing the goal of life enhancement requires moving toward a series of "right" relationships between and among those touched by the trust. In our view, getting these relationships right often means asking different questions from the usual.

What types of inquiry work best? When getting to know a brand new beneficiary, a seasoned trustee might have thoughts like these to offer to that beneficiary:

- This type of relationship is altogether new to you. Although I've been a trustee for many other beneficiaries, our relationship is new and unique to me, as well. So what do you think are some solid steps for us to take toward becoming colleagues in a reciprocal relationship? If I am to mentor you, how would you like to be mentored?
- How can our relationship generate positive energy for each of us, rather than take energy away or make either or both of us feel like we're "mired in quicksand"?
- How can our relationship help to bring your aspirations to life? Aspirations for your family or community, and especially for your individual growth?

Or, suppose a beneficiary is dissatisfied with his or her relationship with the trustee. This inquiry is more self-directed:

- What have I (the beneficiary) contributed to our falling out?
- What's a step—no matter how small—I might take toward getting us back into "right" relationship?
- Who do I know who might help me think this situation through?

Decades of experiencing both right relationships and those that are off track have led the authors to conclude that the highest duty of both trustee and beneficiary is to tackle this question: If the trust should end and the assets be distributed to the beneficiary tomorrow, would the beneficiary have the knowledge, the maturity, and the competency to receive and steward the funds well?

It follows that the trustee's highest duty is to prepare the beneficiary to take that event in stride. And the corollary: the beneficiary's highest duty is to prepare him- or herself.

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While the task of preparing someone else or preparing oneself to receive assets is very real, the *distribution* envisioned is hypothetical. It exists as a thought experiment. We want beneficiaries to develop the skills and maturity to integrate the distribution well, not because the distribution will likely take place (it probably won't), but because those skills and maturity are also requisite to living well itself.

Beyond the Thought Experiment

For some families, *termination* and distribution are more than a thought experiment. These families are wrestling with how to approach impending distributions of large sums—some of which have been held in trust for generations.

Let us explain. As 2012 came to a close, business was booming for tax lawyers. There was a rush to create new trusts, driven by fear: Would the amount one could pass from one generation to the next, and do so tax free, be dramatically reduced? Not wishing to take that chance, many trusts were cobbled together as the clock ticked toward midnight on December 31.

Although the timing had an element of drama, the motivation was not new.

Trusts, like wines, have "vintage" years. During a vintage year, the creation of a large number of trusts is triggered by fiscal events (tax law changes) or nontax legal events (e.g., the elimination of the Rule Against Perpetuities). Dynastic families also have their own vintage years driven by family circumstances.

The significance is that some families will have batches of trusts "maturing" (either terminating or being transformed) at roughly the same time.

Some vintage years include:

1931: Many trusts were created in anticipation of 1932, when the top estate tax rate jumped from 20 percent to 45 percent and the estate tax exemption dropped from $100,000 to $50,000.
1933: Trusts created in anticipation of 1934, when the maximum estate tax rate increased to 60 percent.
1934: Another vintage year in anticipation of the maximum estate tax rate increasing to 70 percent and estate tax exemption decreasing to $40,000.

Trusts created during the 1930s are maturing now—all these decades later—due to deaths of the trusts' measuring lives (people now in their 80s), which means that many families have to prepare beneficiaries to receive trust assets. In these families—for the first time in generations—beneficiaries will receive substantial distributions as trusts terminate.

This is why the duty to help prepare beneficiaries to integrate distributions well is more urgent than just a thought experiment.

Of course, we are writing this book not only for families facing the termination of "vintage" trusts from the 1930s. There are many other reasons that a family may face a trust termination. (Apart from more common reasons, it is always possible that Congress could raise the income tax on trusts significantly or pass other legislation unfriendly to trusts. In that event, families would be tempted to look into unwinding existing trusts.) And even if you are not facing a termination now, the question of, "What would we do if we had to terminate this trust?" can help focus attention on the way that your family is handling current distributions. As we will see, the distributive function is really the heart of trusts, and the determining factor as to whether trusts succeed or fail in growing the family's human capital.

Questions for Reflection

- What do you think are some valid reasons—the purpose and, to some extent, the destination—that should drive creation of a trust?
- What do you think should be the highest duties of the trustee and beneficiary?
- What other duties would you see as either complementary or even superior to these in your particular case?

Note

1. For more on the difference between "gifts" and "transfers," see James E. Hughes Jr., Susan E. Massenzio, and Keith Whitaker, *The Cycle of the Gift: Family Wealth & Wisdom* (New York: Bloomberg, 2013).