# Trust is the word for inheritance riches

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I recently heard from a private investor that inherited wealth is like driving a car and not having to pay for petrol. The benefactor provides a valuable boost but cannot determine how well the beneficiary steers or what his or her final destination will be.

This metaphor, extended slightly, underscores the value for many families of bequeathing large fortunes in trust: using a legal structure to transfer wealth may help shape outcomes by imposing guardrails and laying down some rules of the road.

For those who create trusts, the most important step is often deciding whether to impose strict controls on distributions or allow more flexible terms and bestow discretion on a trustee. Wealthy families wrestle constantly with the formula.

“Money [passed on to heirs] usually has more destructive rather than constructive power,” says one wealthy investor who participated in a recent online dialogue hosted by the Institute for Private Investors, a peer networking organization for ultra-wealthy families. But, he adds, it doesn’t have to be that way if you are diligent in drafting provisions to cover educational and medical expenses, provide safety nets or even offer salary-matching provisions.

Some say too many provisions can be a problem, however. “The dead hand exercising control from beyond the grave can lead to inter-familial contention and resentment,” says another IPI member.

The stewards of family wealth agree on at least one point: selecting the right trustees is essential to keeping a trust functioning smoothly and as it was intended.

So where to begin? In many jurisdictions, fiduciary duties can be shared among, delegated to, or divided up among multiple trustees, including family members, a non-family adviser such as a lawyer, or a trust company (known in industry parlance as a corporate trustee). One useful approach is to first identify what a grantor seeks to accomplish with the trust and then work out who is most qualified to serve as trustee.

“Ideally it’s somebody with expertise,” says Peter Pell, vice-president and private client adviser in the New York City office of Wilmington Trust. “The word expertise means ‘judgment that is in line with what the grantor’s would have been’.”

The exercise is slightly more complicated when evaluating corporate trustees, who can add continuity and professionalism to the process and may be particularly valuable in helping steward multi-generational or dynastic trusts. Stability and a presence in favorable trust locales such as Delaware or South Dakota are important considerations. But families should also explore an institution’s approach to tackling tough decisions, such as requests for discretionary distributions. These are typically dealt with by a committee of senior trust professionals, not just the trust officer, says James Kronenberg, principal and associate fiduciary counsel at Bessemer Trust in New York.

Yet there are downsides to working with corporate trustees. An institution may reject the appointment of outside money managers or deliver subpar investment performance. And quality of service could deteriorate following a merger or because of staff turnover.

“I have had to deal with by far both the best and worst trust officers I have ever encountered,” says one IPI member of his experience with the wealth management division of a big bank.

One solution that many families recommend is to appoint a “trust protector”, someone with authority to replace any trustee. Another strategy is to allow a majority of adult beneficiaries to replace corporate and non-family trustees.

An increasingly popular strategy for encouraging meaningful engagement with trustees is to appoint beneficiaries as co-trustees, a role that can also help prepare inheritors for the responsibilities of wealth.

For tax reasons, beneficiaries typically don’t participate in distribution decisions, but they can be a voice at the table when it comes to investment issues. “It gives beneficiaries a feeling of ownership over the trust and a connection to the trustees,” says Kronenberg.

One IPI member who is co-trustee of her mother’s irrevocable trust agrees, saying: “I am glad to have the advice and protection of the corporate trustee.”

Grantors with dynastic intentions must think ahead and consider protocols for empowering the selection of successor trustees.

A trust protector or majority vote of the beneficiaries may suffice. “I would make this process as easy as possible so trustees don’t have to go through a lengthy court process,” cautions Marianne Young, president of Market Street Trust Company in Corning, New York.

Families such as those served by Market Street have a distinct advantage. Because it is a private trust company – owned by descendents of the founder of Corning Incorporated, the specialty glass and ceramics maker – assuring professionalism and continuity among trustees and their successors is much less of a worry.

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