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Trust UPDATE



April 2021

Absolute loyalty

So, you've decided on a trust plan. It may be a living trust for yourself, a marital trust for your spouse, testamentary trusts for your heirs, or one of the many other possible wealth management needs that are best addressed with a trust.

Next question, who will be your trustee? The choice of trustee will be crucial to the success of your plan.

"Fiduciary duty—what's that?"

Trusts are not ordinary investment accounts, even though sound asset management is central to every trust. The trustee of every trust has specific legal duties to the trust and to its beneficiaries. (See "The fiduciary duty checklist" for an itemization.) Most importantly, a fiduciary must put the interests of trust beneficiaries ahead of his own.

Bank trust departments and trust companies are fiduciaries, and always have been. You could say that we were the pioneers of fiduciary responsibility.


The management of a trust involves much more than day-to-day investment supervision,

important though that may be. Trusts typically have several beneficiaries, and these beneficiaries often have interests that are adverse to some extent. They may be of different generations, for example, and their interests in the trust may vest at different times, perhaps years apart. The trustee has fiduciary obligations to each of the beneficiaries, and satisfying these disparate objectives is one of the core responsibilities of trusteeship.

Some trusts permit invasion of principal, either subject to a standard or in the trustee's sole discretion. Some trusts "spray" their income to beneficiaries, in amounts determined appropriate by the trustee. Some trusts include accounting flexibility; that is, items that normally might be credited to principal (such as capital gains) may, should the trustee



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The fiduciary duty checklist

The American College of Trust and Estate Counsel, a professional organization of lawyers dedicated to improving probate and trust practices, created *What It Means to Be a Trustee: A Guide for Clients*. The *Guide* notes that the following obligations are imposed upon the trustees of most trusts:

- ☒ Duty to administer the trust by its terms.
- ☒ Duty of skill and care.
- ☒ Duty to give notices.
- ☒ Duty to furnish information and to communicate.
- ☒ Duty to account.
- ☒ Duty not to delegate.
- ☒ Duty of loyalty.
- ☒ Duty to avoid conflict of interest (applies when a trustee is also a beneficiary).
- ☒ Duty to segregate trust property.
- ☒ Duty of impartiality.
- ☒ Duty to invest.
- ☒ Duty to enforce and defend claims.
- ☒ Duty of confidentiality.

Although one might have an intuitive understanding of what each of these duties might entail, they can be quite complex in specific cases. Entire legal treatises might be written about any one of these duties, as well as upon their interactions. Every trustee is charged with having this body of legal knowledge at his or her fingertips at all times.

Absolute loyalty . . . *continued*

so decide, be applied instead to income. Decisions such as these are essential to the success of the trust plan.

One might expect the job to be time consuming, and one would be entirely correct. It's understandable, then, that any individual would hesitate to take on the burden of trusteeship when there is an alternative available.

The ability to say no

A trust is, essentially, a long-term wealth management plan created by a trust's grantor. The plan implements the grantor's values and vision. The trustee promises to implement that plan in a manner consistent with the trust's purposes and instructions.

Does it ever happen that events outstrip the grantor's vision, so that some modifications are needed? Of course. A wide range of developments, from the very good to the very bad, may make the exercise of prudent judgment by the trustee necessary to further the trust's purposes.

Does it ever happen that beneficiaries would like to have the plan modified, because they don't agree fully with the grantor's vision? Yes, that happens as well. It may happen that a beneficiary wants access to trust capital earlier than provided in the trust, or for purposes outside the trust's limits. Very often beneficiaries don't understand fully the benefits of a trust-based wealth management plan. The trust document should address this possibility. Its provisions must be followed to the letter.

Making your choice

Selecting your trustee will be among the most important decisions that you make, after you've decided that a trust is right for you. Here are some questions that you might put to the potential candidates:

- For how many trusts have you served as trustee?
- What size trusts have you managed?
- How is your trust division staffed?
- What happens if my regular trust officer is unavailable?
- How will conflicts among beneficiaries be handled?
- Can I have a family member serve as cotrustee?
- Where are your offices? Are they close to the beneficiaries?
- Can you tell me about your recordkeeping systems?
- How frequently will I meet with a trust officer?
- What do you charge for trusteeship?

May we tell you more?

We are well qualified for all the tasks of trusteeship. It is a job that we do every day, with our full attention. We are staffed for it, experienced, and always ready to serve.

When you are ready to take the serious step of including a trust in your long-term financial and wealth management plans, please call upon us to learn more about how we may be of service to you. We look forward to answering all of your questions. □

By the numbers, federal transfer taxes

From time to time, the IRS issues a snapshot on an item of interest. In February a “one sheet” summary of the federal estate tax through 2019 was published [<https://www.irs.gov/pub/irs-pdf/p5332.pdf>]. Estate taxes are paid nine months after death, so this report is the first indication of the effect of the 2017 doubling of the amount exempt from federal estate tax. It covers those who died in 2018, whose estate tax returns were generally submitted in 2019.

As expected, the number of estate tax returns fell roughly in half. The report does not separate taxable from nontaxable returns. Large estates may be nontaxable because both the marital and charitable deductions have no dollar limits on them.

Estates smaller than the tax filing threshold may nevertheless file an estate tax return so as to secure the Deceased Spouse's Unused Exemption amount. With this election, family protection from the federal estate tax may roughly double, depending upon the dates of death.

As expected, the estate tax revenue also fell, but by less than half. That's because the new law exonerated smaller estates but had relatively less impact on the largest estates that provide the bulk of estate tax revenues.

As expected, the states with the largest populations have the most estate tax returns, although California seems to have more than its share of top wealth holders. The IRS also broke down the number of estate tax returns per 100,000 of population, and then a very different picture emerged. On a per capita basis, Wyoming has the most estate tax returns, followed by the District of Columbia. South Dakota is in a dead heat with California on this metric. See the graphs on this page for details.

The largest estates consist primarily of stocks, bonds, and real estate. Pensions, 401(k)s, and other tax-preferred savings come in at 10% or less.

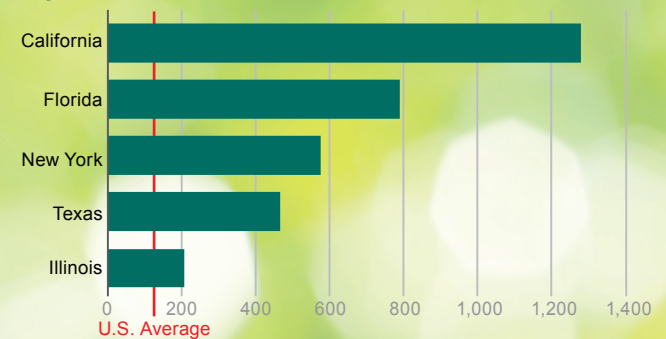
Gift tax

The most recent IRS “one sheet” report on gift tax returns is for the 2018 returns reporting taxable gifts made in 2017. The report suggests that once the lifetime gift tax exemption was doubled on December 22, 2017, the flow of taxable gift returns was sharply reduced, as donors waited for the larger exemption to take effect on the first day of 2018. There were 25.4% fewer gift tax returns filed for 2017 than for 2016, and gift tax liability declined by a whopping 51.8%.

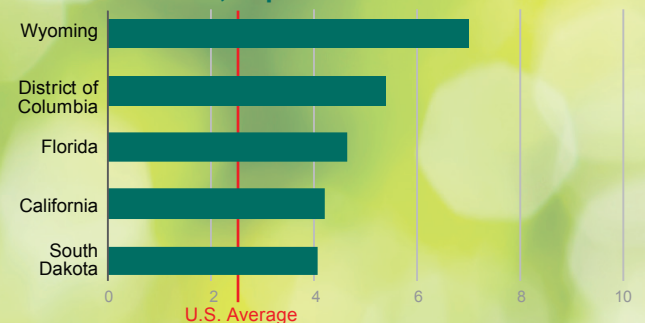
A gift tax return is required if the donor gives more than the “annual gift tax exclusion” to any single person in one year. The exclusion was \$14,000 in 2017; it is \$15,000 this year. Filing the return does not mean that there is a tax liability, as gift taxes won't be payable until the federal exemption is fully consumed. The gift tax exemption is the same as for the estate tax, \$5.49 million in 2017 and \$11.7 million this year.

In 2017, donors reported gifts of \$69.4 billion. Thanks to usage of the exemption or other deductions, only 0.5%

Number of Estate Tax Returns Filed in 2019, Top 5 U.S. States



Estate Tax Returns Filed in 2019 Per 100,000 Adult Residents, Top 5 U.S. States



Source: IRS.gov

of the gift tax returns filed by women were taxable, and for men only 0.4%. The report does not include total gift tax revenue.

Roughly one-third of the 2017 reported gifts were made in trust. Interestingly, the largest category of reported gifts was cash, with second place occupied by stocks, bonds, and other funds. Donors reported gifts of \$17.8 billion to charity. Donors from California, Florida, and New York made up 30.2% of all gift tax returns filed.

Estate planners often recommend making taxable lifetime gifts rather than waiting for death to transfer assets, even though doing so uses up the available estate tax exemption. In addition to the family circumstances that may prompt a major gift, there are three potential tax benefits for gifts. First, asset appreciation after the gift avoids both estate and gift tax. Second, because of the intricacies of the calculations it turns out that the federal exemption shelters more in gift transfers from tax than it does for estate transfers.

Finally, the federal exemption from estate and gift tax is scheduled to be cut roughly in half in 2026 under current law. Some in Congress have advocated accelerating that change. A major gift before the change takes place “locks in” today's larger exemption.

Major transfers only should be undertaken with professional supervision from an experienced estate planner. We are here to help. □

The new game on Wall Street

“We’re seeing a phenomenon that I have never seen; it’s insane.”

—Jim Cramer, quoted on *cnet.com*.

Investment analyst, commentator, and columnist Jim Cramer thought he had seen everything in his long career until the GameStop phenomenon hit. The price for GameStop shares became completely unmoored from traditional financial analysis. Shares that had long traded in the \$10 range were suddenly at \$50, \$100, \$200—some trades executed at over \$400 before prices began coming back down to earth.

What caused this remarkable roller coaster ride? No one knows for certain, but the conventional narrative was that amateur investors who had obtained “free” brokerage accounts had banded together via internet chat boards that exist to share investment ideas. They spotted the fact that the short interest in GameStop (investors who had sold the stock short expecting the price to fall) was 140% of the total shares in the hands of the public. By bidding up the price of GameStop, these amateurs induced a “short squeeze”; that is, the short sellers had to cover their bets at the higher prices, which in turn caused prices to go still higher. Indeed, some hedge funds reported losing billions of dollars on their short sales in that time frame.

The idea that amateur investors might have the ability to band together to move markets has been disconcerting to many. However, if the answer were that simple, the price of GameStop would not have surged again in March. The incident might provoke regulatory reaction from the SEC, but just what that might entail is unclear at the moment.

In the aftermath of the GameStop frenzy, a bright light was shone on the companies offering “free” brokerage accounts, companies that had lowered the barriers to entry to stock trading for amateurs with small portfolios. How can any service be provided without cost? In the case of these brokers, they sell their order flow to the market makers. Some brokerages take a percentage of those profits as their payment for the order flow.

This practice is legal, but it is not clear how many customers of these “free” brokers really understand what their true investment costs may be. Some investors prefer to get their trading intelligence from their fellow amateurs, and that is perfectly fine. It’s a free country.

Most investors prefer to get some input from experienced professionals. That would be us. We offer investment management services at very competitive prices—but not “free.” The proven wisdom is that if you don’t pay for a service on the internet, you are not a customer, you are the product, as information about your interaction with the “free” service will be sold.

To learn more about our services for investors, make an appointment to meet with one of our professionals at your earliest convenience. □



**Let us help you choose
the best options for
preserving your wealth.**

Our Trust Division is staffed with friendly and knowledgeable advisors to help you make the best decisions for managing your assets and transferring them accordingly when the time comes.

**For more information, call
(870) 793-4441.**

