

Dynasty Trusts: Step Into The Limelight

You may have seen *The Descendants*, a popular movie starring George Clooney. In this Oscar-nominated film, Clooney's character, Matt King, has to make decisions affecting a family trust, which is apparently a "dynasty trust" that holds a large amount of undeveloped land in Hawaii. The decisions affect many people with a stake in the trust and the land.

We don't want to give away any more of the story line for those who haven't seen *The Descendants* and we won't delve into all the details of the trust. But the movie does raise some interesting issues involved in creating or managing dynasty trusts. And you might have a "starring role" of your own.

Basically, a dynasty trust enables a grantor to gift or bequest funds to the trust for the use of beneficiaries and subsequent generations. The goal is to have the trust accumulate the assets while making measured payments to the beneficiaries so the trust assets can continue to grow. This arrangement helps keep the assets safe from estate taxes, generation-skipping taxes, creditors and ex-spouses.

Depending on the state, a trust can last 100 years or more — unless there is a "rule against perpetuities" in the state (for example, a trust might have to end 21 years after the death of certain beneficiaries). Some states apply a rule against perpetuities while other states have no restrictions so this is an important issue to discuss with your estate planning attorney.

In recent years, dynasty trusts have become more popular because of the generous federal exemption from estate and gift taxes for large transfers.

Using a dynasty trust in estate planning can help with some goals you may have:

- Control of assets;
- Tax savings;
- Asset protection;
- Asset valuation and leverage techniques;
- Flexibility; and
- Liquidity.

Questions to Answer

To make management of the trust efficient and smooth, and to ensure all points are covered, a grantor must consider:

- Who will serve as the trustees, advisors, and protectors?
- Who will the beneficiaries be?
- How will the trust be distributed?
- Who has investment responsibility?
- Who sets the terms of continuing trusts?
- Who determines whether there are "share" trusts or a "pot" trust?
- What, if any, are the mandatory distributions?
- What type of lifetime or testamentary power of appointments will be allowed?
- Under what circumstances can a trustee be removed? Who can remove the trustee?
- Where the money will be held? What is the law of the jurisdiction that will govern?

A dynasty trust should be drafted to meet contingencies in the future. The drafter can provide flexibility to the trustee to take into consideration events that may occur in the future by allowing the trustee to:

- Have discretion to make distributions;
- Limit powers of appointment for descendants; and
- Have the power to amend the trust to take advantage of future laws.

Considerations in Choosing a Trustee

In *The Descendants*, the designated trustee, who was George Clooney's character, was a family member responsible for managing the trust. Some grantors choose family members, while others use a corporate trustee.

Four key issues to consider when selecting a trustee are as follows:

1. The trustee should understand the operations of the dynasty trust;
2. The trustee should be able to carry out the trust provisions;
3. The trustee should be able to handle investment and tax decisions; and
4. The trustee should act in an impartial way.

If you're interested in using a dynasty trust for your estate, or you are one of the parties selected to manage a trust, please consult with your estate planning advisor and financial advisor to ensure you're complying with all the technical requirements. You want to help ensure you'll play the role you're required to fulfill in a real-life version of *The Descendants*.

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