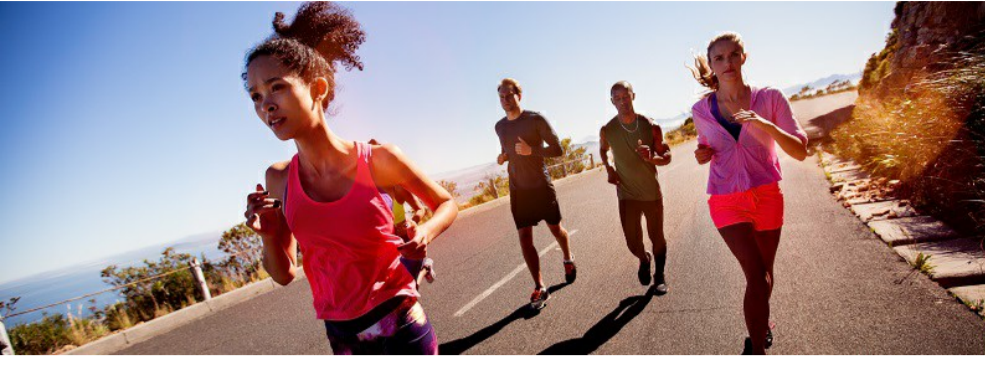


3 ways to help create a lasting dynasty trust

Drafting flexible trust documents can benefit your family for generations to come.

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Key takeaways

- ✓ It's unlikely that a trust set up today will continue to work the way you intended decades from now.
- ✓ Changes in legislation and your family's circumstances could result in your trust becoming less effective over time.
- ✓ Side letters, corporate trustees, and trust protectors may help keep the trust on track and serving your family, even when changing circumstances threaten to undermine your intentions.

Families seeking to preserve their wealth across generations often employ an irrevocable dynasty trust, which can protect assets from estate and generation-skipping transfer taxes, as well as creditors. However, this requires the grantor of the trust to cede control of the assets to a trustee, who manages them in accordance with the terms laid out in the trust documents. Once established, the trust generally cannot be changed, as doing so would risk the assets being brought back into the estate for estate tax purposes.

But how can you be sure that the terms you draw up in the present will still be meaningful 2 or 3 generations in the future? Given the persistent debate in Washington over the size of the estate tax exemption and the rules governing grantor trusts, it's unlikely that a trust set up today will continue to work the way the grantor intended decades from now. Your family's circumstances are likely to change as well, and depending on the provisions of your trust documents, the trustee may be unable to adequately address them.

When working with your attorney to draft the trust documents, your attorney may suggest certain provisions that are designed to both preserve your intentions for your family's wealth and allow the trust to adapt to changing times. Here are 3 common ways that lawyers try to build flexibility into an irrevocable trust in an effort to better serve a grantor's intentions for generations to come.

1. Make the grantor's intentions clear with a side letter

A trustee's job becomes more complicated over time, especially once the grantor has passed and can no longer be consulted. For example, perhaps a grantor had named a young beneficiary who they felt was not prepared to responsibly receive distributions at the time the trust was established. As the beneficiary matures and demonstrates sound financial judgment, should the trustee be allowed to increase discretionary distributions? If the grantor's feelings on the matter weren't clearly articulated, the trustee may not be able to modify their approach to distributions as the situation evolves.

A [side letter](#), or letter of intent, can help provide the necessary context for the trustee, providing them with more confidence when making decisions in your absence. The side letter is not legally binding, and it cannot contradict the terms of the trust documents. What it does, however, is clearly express your intent in a way that could help the trustee exercise, or not exercise, their discretion when making distributions.

The letter can be as detailed as a grantor wishes, but typically, it's good to provide specifics about why the trust was set up in the first place, what the grantor's personal philosophy on wealth, investing, and spending is, and what they hope their family is able to accomplish with the money in the future. Practical details are helpful too. "I have seen grantors list their advisors and their contact information, and provide a comprehensive list of their assets along with where they're located—whether it's at a bank or hidden in their house," says Lisa Pro, vice president, Advanced Planning at Fidelity Investments. "I've witnessed situations where it took the surviving family members years to track down all the assets and close the estate. A well-drafted side letter would've made things much easier."

2. Maintain continuity and objectivity with a corporate trustee

Because so much relies on the interpretation of the trustee, who you select for this role is critical. While many grantors choose family members or close advisors, such as a family lawyer or accountant with whom they have a long, trusted relationship, these people may lack the time, experience, and resources to appropriately execute what is a very complex and time-consuming job. In addition to managing distributions, trustees are expected to make investment decisions for the assets in the trust, keep adequate records, and to ensure tax preparation is completed. They also occasionally need to mediate disputes or facilitate communication between beneficiaries, which can be especially challenging for a trustee who is also a member of the family.

Naming a bank or trust company to serve as a [corporate trustee](#) could help ensure that those important tasks are handled professionally. A corporate trustee is also more likely to be familiar with the latest in trust law and could help anticipate the need for action ahead of federal or state legislation that might reduce the effectiveness of the trust. This is particularly important for a multigenerational trust that is intended to survive for decades. A corporate trustee can also conduct an objective assessment of distribution requests and provide an impartial perspective that could help resolve intrafamily disputes more amicably. Perhaps most importantly for a dynasty trust, a corporate trustee can provide long-term continuity of management, removing the potential risk that could come from future successor trustees who are less familiar with the original grantor's intent and objectives.

"Even if you do decide to choose someone close to you, consider with your lawyer whether to name a corporate trustee as a co-trustee," says Pro. "That way, you strike a balance by having a trustee who knows you and your family well and a trustee with the resources necessary to handle the more technical parts of the role."

3. Enlist a trust protector to represent the grantor's interests

While a grantor generally cannot modify the terms of an irrevocable trust once it is established, they may be able build in the flexibility for future changes by including the option to appoint a trust protector when drafting the trust documents. "The rules for trust protectors are different in every state, so it's important to learn the details from your attorney," says Pro. "But generally, trust protectors are permitted to make modifications to the administrative aspects of the trust to ensure that the trust is compatible with current law."

However, even if your state grants trust protectors certain powers with regard to modifying trusts, you, as the grantor, will need to explicitly detail which powers you wish the trust protector to have in the trust documents. These powers are separate from the power and authority of the trustee. You should consult with your attorney about what powers are permitted in your state and what impact they could have on your trust if exercised.

Such powers could include:

- Oversight of the trustee, including approval or rejection of investment and distribution decisions
- Removing, replacing, or appointing additional trustees
- In some cases, adding or removing beneficiaries as family circumstances change
- Modifying the trust agreement as laws change to maintain legal protections and tax benefits

The trust protector helps to supervise the trustee and ensure that the goals and objectives of the grantor are fulfilled. While their powers can be substantial, it's important to ensure that they are not so broad that the trust protector might be legally considered a trustee and become subject to the same fiduciary responsibilities. Pro notes that while the trust protector provision must be in the trust documents from the start, a grantor doesn't necessarily need to name one right away. "Because trust protectors typically exercise their powers infrequently, it may be wise to wait until an issue arises to have one appointed."

Preparing for the long term

Putting assets in a trust for the benefit of future generations of your family is a powerful planning strategy, and it's vitally important that your intentions and motivation are shared with your beneficiaries along with the money. Side letters, corporate trustees, and trust protectors may help keep the trust on track and serving your family, even when changing circumstances threaten to undermine your plan. Speak with your attorney about what might make sense for your personal situation.

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