

BLUE PAPER

EXECUTIVE SUMMARY

SPRING 2010

This report summarizes U.S. Trust's blue paper on trends impacting trusts and wealth transfer. To receive a more in-depth report or to discuss this information in light of your particular wealth planning objectives, please contact a [U.S. Trust advisor](#).

The Trustasaurus Trap

Designing Trusts for the 21st Century

Many existing trusts may be too rigid to adapt to a rapidly changing world, and many new trusts are being created with potentially outdated assumptions. But trusts need not go the way of the dinosaurs. Old trusts can be brought back to life, and new trusts can be designed with flexibility for the future.

MAYBE IT'S FALLOUT FROM watching reruns of *Happy Days* or *Father Knows Best*. Maybe it's an unintentional side effect of form documents. But for whatever reason, many trusts are being created today that ignore decades of demographic changes, changes in the law, and the ongoing evolution of the investment world. Many oft-used trust provisions no longer reflect the current reality, nor do they offer sufficient flexibility to address future changes in personal and financial affairs.

To succeed, trusts need to be responsive and anticipatory. They need to be flexible. New trusts can be designed with that flexibility. Even in the case of existing trusts, that flexibility can often be retrofitted with the aid of experts. Important questions need to be asked and answered, and trust provisions need to be adjusted accordingly and then monitored from that point forward. In other words, if trusts aren't up to date, they need to be. And then they need to anticipate that times will, and do, invariably change.

CORE CONCEPTS

- **The changing landscape.** Demographic changes have been significant in recent decades, particularly with regard to trends in marriage, divorce and family creation. Nontraditional families are becoming increasingly common, women's roles are evolving, and life expectancies have increased for everyone — all of which impact planning needs. Similarly, tax trends and changes in the law, as well as the ongoing evolution and increasing integration of the financial planning and investment worlds, add to the need to be flexible in planning. Many existing trust documents haven't kept pace with these changes; worse, many new trust documents are often created using old assumptions about

DESIGNING TRUSTS FOR THE 21st CENTURY

SPOUSES NOW TEND TO FUNCTION AS PARTNERS IN MANAGING FAMILY FINANCES, WHICH RAISES QUESTIONS, FOR INSTANCE, ABOUT THE CONTINUED USE OF RESTRICTIVE TRUSTS FOR A SURVIVING SPOUSE.

families and generations — often jeopardizing efforts to fulfill the grantor's intentions.

- **New branches for family trees, new planning headaches.** Spouses' roles have evolved in the past few decades. Spouses now tend to function as partners in managing family finances, which raises questions, for instance, about the continued use of restrictive trusts for a surviving spouse. Also, evolving family structures and new reproductive technologies are redefining the parent-child relationship from both cultural and legal perspectives. Knowing how to define a class of trust beneficiaries — who is included and who is not — is obviously of great importance. Once this is determined, however, there are other considerations. How can "affluenza" be avoided? Should children be treated equally or equitably? Do incentives make sense? These issues, and other family dynamics, need to be explored and addressed, including those that relate to future generations.

- **Practical strategies for bringing trusts into the 21st century: Flexibility is critical.** Revising antiquated distribution standards to fit better with lengthening life spans, granting rights of withdrawal to beneficiaries, providing flexible standards of invasion to trustees, granting general or limited powers of appointment, creating sprinkling trusts, and even allowing for flexibility in a trust's duration — these are all effective methods of increasing a trust's adaptability and ability to keep pace with changing times.
- **Selecting fiduciaries: Weighing the pros and cons of family members, attorneys and corporate fiduciaries.** Given the increasing trust trends of more sophisticated investment choices, longer duration and complicated distribution provisions, the role of the trustee has become increasingly complex. Choosing the right trustee is more crucial to a trust's success than ever before. Family members, attorneys and corporate fiduciaries are among the various options available.

This report is provided for informational purposes only and was not issued in connection with any proposed offering of securities. It was issued without regard to the specific investment objectives, financial situation or particular needs of any specific recipient and does not contain investment recommendations. Bank of America and its affiliates do not accept any liability for any direct, indirect or consequential damages or losses arising from any use of this report or its contents. The information in this report was obtained from sources believed to be accurate, but we do not guarantee that it is accurate or complete. Always consult with your independent attorney, tax advisor, investment manager and insurance agent for final recommendations and before changing or implementing any financial, tax or estate planning strategy.

Information in this material is not intended to constitute legal, tax or investment advice. If any information is deemed "written advice" within the meaning of IRS Regulations, please note the following:

IRS Circular 230 Disclosure: Pursuant to IRS Regulations, neither the information, nor any advice contained in this communication (including any attachments), is intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

U.S. Trust, Bank of America Private Wealth Management operates through Bank of America, N.A. and other subsidiaries of Bank of America Corporation.

Bank of America, N.A., Member FDIC | AR40N005

FOR FIDUCIARY USE ONLY

ustrust.com