

■ Financial Sustainability

◆ Financial Modeling

- ▶ Many financial models used to illustrate the asset accumulation in long-term trusts inadequately assess the impact of the two critical phenomena in trust management:
 - The expansion of beneficial interests through generations
 - The timing and extent of trust distributions tied to beneficiaries' life stages

◆ Reproductive Data

- ▶ The mean age of a mother at first birth is 25.2 years in the United States.
- ▶ Significant differences in age at first birth exist among U. S. States and among racial and ethnic groups:
 - Massachusetts has the highest average maternal age at first birth – 27.7 years
 - Mississippi has the lowest average maternal age at first birth – 22.6 years
 - Asia Pacific Islander women had the oldest maternal age at first birth - 28.5 years
 - Alaskan native women had the youngest maternal age at first birth - 21.9



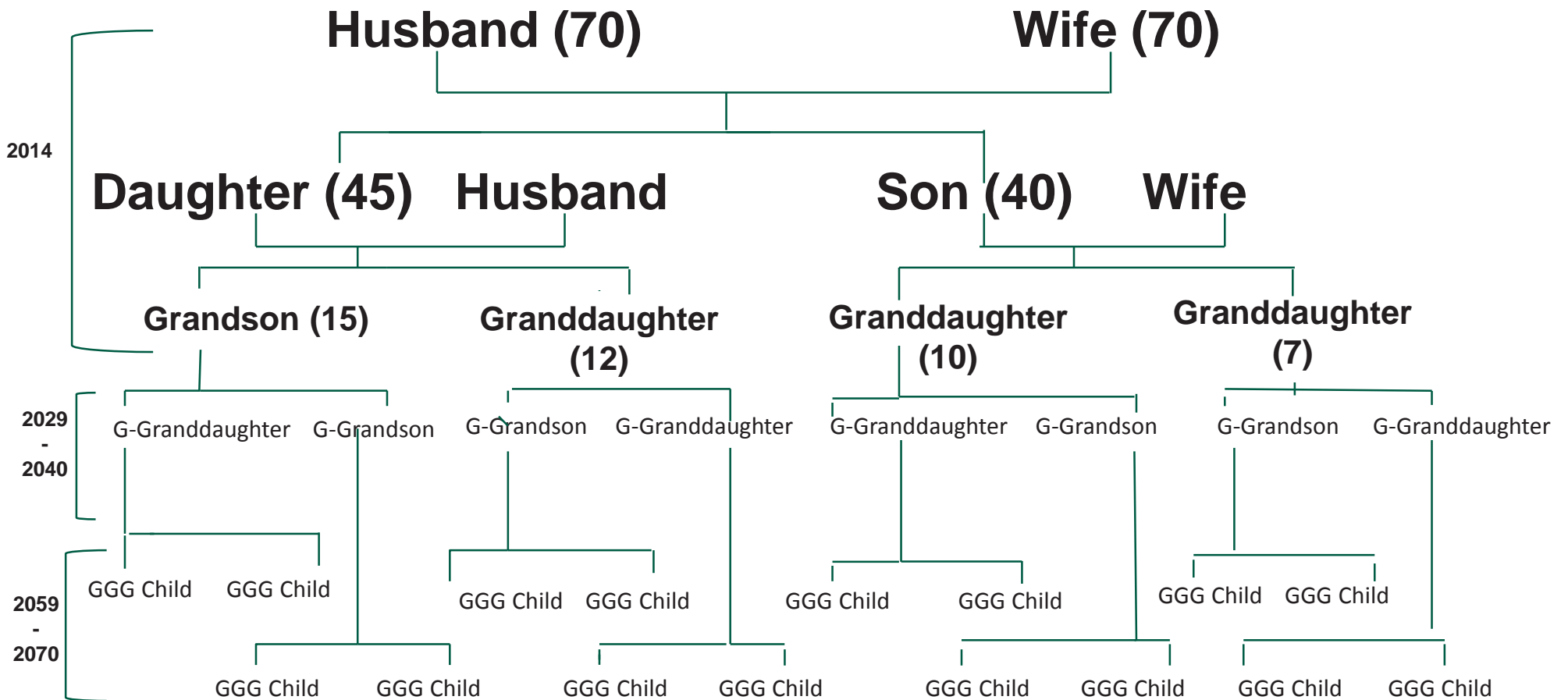
Financial Sustainability of Long Term Trusts

- ▶ Fertility rates in the United States have declined over the last three generations, from a high of 3.0 births per women, for women born in 1935, to 2.0 births per woman, for women born in 1960.
 - The total fertility rate (TFR) for the United States in 2013 was 1.86 births per woman.
- ▶ Statistical data on the average age difference between siblings are difficult to interpolate from census data. I have assumed a three year gap between first and second children for modeling purposes.





Family Growth



Northern Trust



Long Term Trust Model I

- \$5.12 Million Trust Subject to Fiduciary Income Taxes

Long Term Trust Model I

DYNASTY TRUST

Cash Flow Summary

Annual Inflows

Description	Start Year	End Year	Amount	Type	Valuation	Increase
You do not have any inflows						

Annual Expenses

Description	Start Year	End Year	Amount	Type	Valuation	Increase
Annual Distribution	2022	2024	1.0%	Expense	Real	0.0%
Annual Distribution	2025	2026	2.0%	Expense	Real	0.0%
Special Principal Distribution	2027	2027	100,000	Expense	Nominal	0.0%
Annual Distribution	2027	2029	3.0%	Expense	Real	0.0%
Special Principal Distribution	2030	2030	100,000	Expense	Nominal	0.0%
Annual Distribution	2030	2032	4.0%	Expense	Real	0.0%
Annual Distribution	2030	2038	5.0%	Expense	Real	0.0%
Special Principal Distribution	2032	2032	100,000	Expense	Nominal	0.0%
Special Principal Distribution	2035	2035	100,000	Expense	Nominal	0.0%
Annual Distribution	2039	2050	6.0%	Expense	Real	0.0%
Annual Distribution	2051	End of Plan	7.0%	Expense	Real	0.0%



DYNASTY TRUST

Current Portfolio Analysis

Page 7



Northern Trust

Long Term Trust Model I

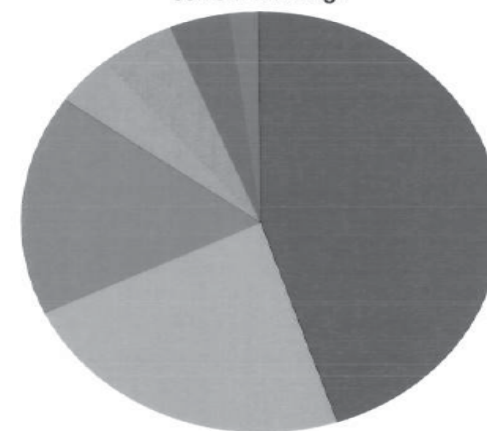
DYNASTY TRUST

Current Allocation

Current Portfolio - Aggregate

Description	Market Value (USD)	Percent
Equity	2,304,000	45.0%
Large Cap	921,600	18.0%
Mid Cap	128,000	2.5%
Small Cap	128,000	2.5%
International Developed	716,800	14.0%
International Emerging	409,600	8.0%
Fixed Income	1,177,600	23.0%
Municipal	819,200	16.0%
High Yield	256,000	5.0%
Inflation-Linked	102,400	2.0%
Hedge Funds	870,400	17.0%
Hedge Funds	870,400	17.0%
Private Equity	204,800	4.0%
Private Equity	204,800	4.0%
Real Estate	256,000	5.0%
Real Estate Securities	102,400	2.0%
Direct Real Estate	153,600	3.0%
Commodities	204,800	4.0%
Commodities	204,800	4.0%
Cash & Short term Investments	102,400	2.0%
Cash & Short term Investments	102,400	2.0%
Total	5,120,000	100.0%

Current Holdings



Expected Portfolio Statistics *

Annualized Total Return (pre-tax)	7.0%
Annualized Total Return (after-tax)	5.7%
Expected Standard Deviation (pre-tax)	10.6%
Sharpe Ratio (pre-tax)	0.52
Yield (pre-tax)	2.2%

*See "Important Information Regarding Hypothetical Projections". Past performance does not guarantee future results. Total returns are before the deduction of fees.



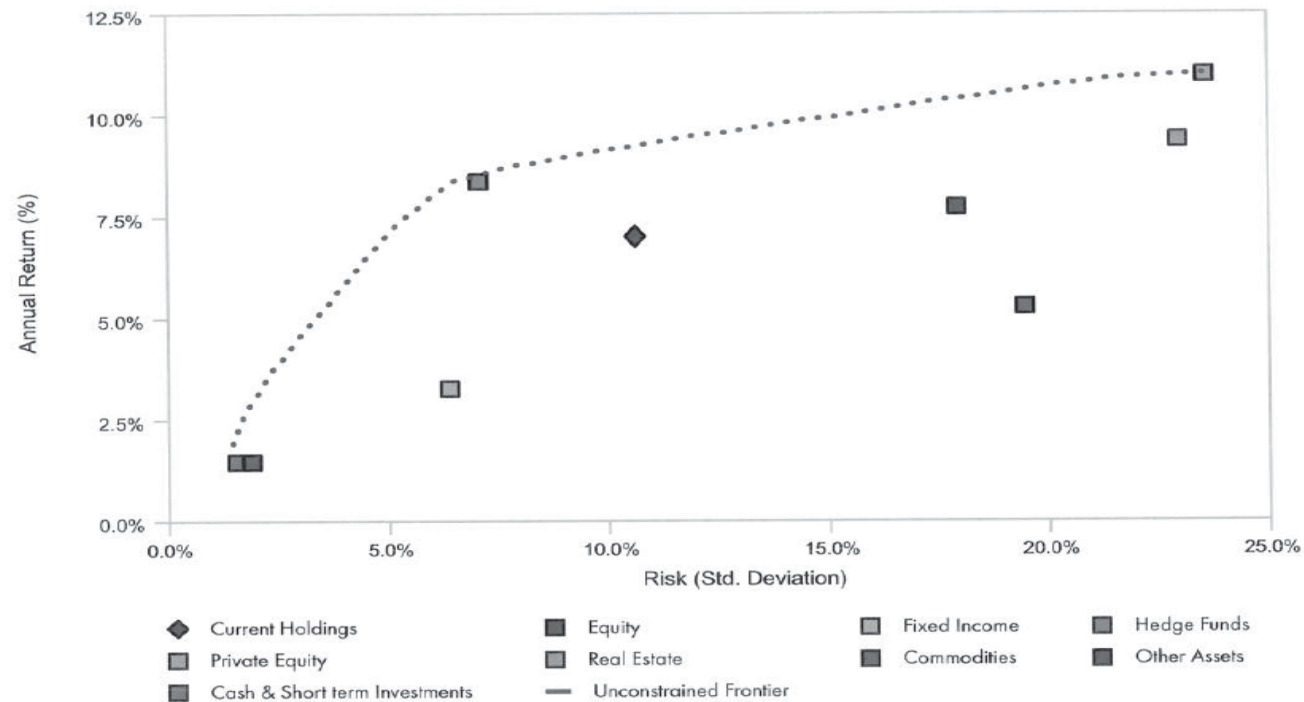


Long Term Trust Model I

DYNASTY TRUST

Expected Risk vs. Return

Current Portfolio - Aggregate



* See "Important Information Regarding Hypothetical Projections". This chart is for illustrative purposes and not intended to be representative of any specific investment vehicle. Past performance does not guarantee future results. Total returns are before the deduction of fees.

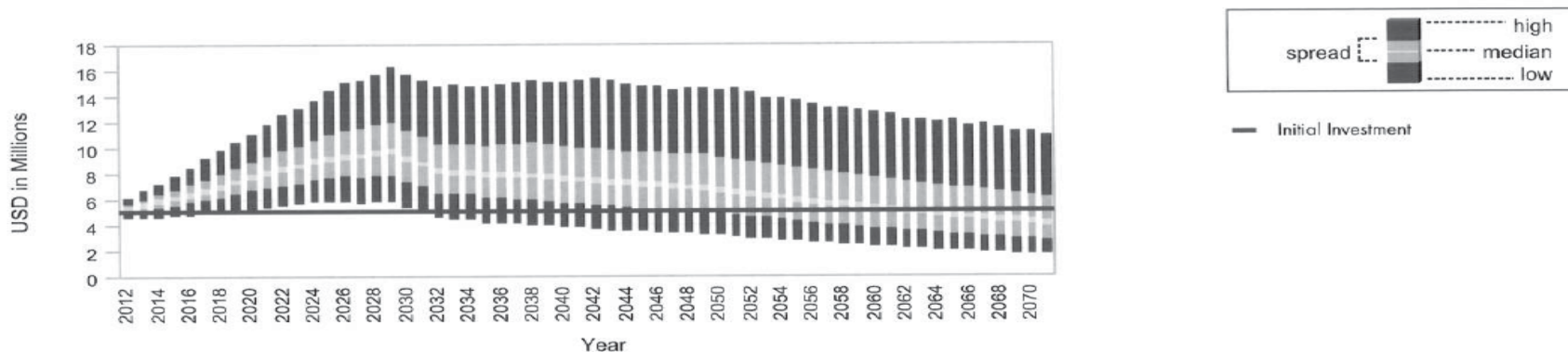


Long Term Trust Model 1

DYNASTY TRUST

Wealth Projection All Years

Current Portfolio* - Aggregate



Year	5 th Percentile	25 th Percentile	Median	75 th Percentile	95 th Percentile
2012	4,656,379	5,102,074	5,384,103	5,667,655	6,117,283
2013	4,607,421	5,213,957	5,637,934	6,073,560	6,701,113
2014	4,660,036	5,394,698	5,914,883	6,441,184	7,297,361
2015	4,729,004	5,588,929	6,157,820	6,822,680	7,843,719
2016	4,771,607	5,782,825	6,443,967	7,216,377	8,492,424
2017	4,910,394	5,947,914	6,734,471	7,609,826	9,175,659
2018	5,040,236	6,195,887	7,041,392	8,025,981	9,842,540
2019	5,129,078	6,433,510	7,380,083	8,429,487	10,408,264
2020	5,221,426	6,710,349	7,710,780	8,886,262	11,119,328
2021	5,396,117	6,884,593	8,062,191	9,438,636	11,846,911
2022	5,474,102	7,047,710	8,320,430	9,803,906	12,561,635
2023	5,629,080	7,281,978	8,615,967	10,222,253	13,094,979
2024	5,782,697	7,521,959	8,967,528	10,653,251	13,714,493
2025	5,856,858	7,645,034	9,162,738	11,007,927	14,393,384

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Long Term Trust Model I

DYNASTY TRUST

Wealth Projection All Years

Current Portfolio* - Aggregate

Year	5 th Percentile	25 th Percentile	Median	75 th Percentile	95 th Percentile
2026	5,872,510	7,802,471	9,368,777	11,420,529	15,007,312
2027	5,702,544	7,748,291	9,380,327	11,525,944	15,258,991
2028	5,807,206	7,856,938	9,587,914	11,775,489	15,632,363
2029	5,824,341	7,907,912	9,800,184	12,001,674	16,276,786
2030	5,365,368	7,424,699	9,200,250	11,375,940	15,647,472
2031	5,066,878	7,073,067	8,769,296	10,943,964	15,215,200
2032	4,610,081	6,525,052	8,226,946	10,375,246	14,743,352
2033	4,535,189	6,502,454	8,136,151	10,344,989	14,900,064
2034	4,464,260	6,420,152	8,116,912	10,329,165	14,829,098
2035	4,190,393	6,140,816	7,953,980	10,193,570	14,823,643
2036	4,128,686	6,096,303	7,965,626	10,238,179	14,987,658
2037	4,108,221	6,028,336	7,941,187	10,250,619	15,130,535
2038	4,072,083	6,009,682	7,847,867	10,440,978	15,290,161
2039	3,936,712	5,847,859	7,772,225	10,305,146	15,022,306
2040	3,918,906	5,766,899	7,626,417	10,135,500	15,153,477
2041	3,840,787	5,632,495	7,542,200	10,075,768	15,281,308
2042	3,707,829	5,603,089	7,458,411	9,965,522	15,312,597
2043	3,590,606	5,471,759	7,360,138	9,887,201	15,204,190
2044	3,592,618	5,385,033	7,300,988	9,743,205	14,976,130
2045	3,477,568	5,302,088	7,192,881	9,764,084	14,776,040
2046	3,392,136	5,215,962	7,088,924	9,658,881	14,720,718
2047	3,357,475	5,154,590	6,958,145	9,566,674	14,503,102
2048	3,349,675	5,086,787	6,934,420	9,498,434	14,552,892
2049	3,287,523	5,030,949	6,811,123	9,488,470	14,559,012
2050	3,205,973	4,917,842	6,705,126	9,303,935	14,503,412
2051	3,049,943	4,785,025	6,549,639	9,137,194	14,571,496
2052	2,969,915	4,684,374	6,402,590	8,963,068	14,240,819
2053	2,951,072	4,561,366	6,262,038	8,757,879	13,847,432

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Long Term Trust Model I

DYNASTY TRUST

Wealth Projection All Years

Current Portfolio* - Aggregate

Year	5 th Percentile	25 th Percentile	Median	75 th Percentile	95 th Percentile
2054	2,787,293	4,415,889	6,150,330	8,579,294	13,883,300
2055	2,715,655	4,278,608	5,930,528	8,513,641	13,707,258
2056	2,680,376	4,179,152	5,793,352	8,269,292	13,351,681
2057	2,609,860	4,031,745	5,677,215	8,106,323	13,137,077
2058	2,485,124	3,956,249	5,575,158	8,037,923	13,122,575
2059	2,413,391	3,804,437	5,427,467	7,853,186	12,914,344
2060	2,342,582	3,721,715	5,290,293	7,634,478	12,770,044
2061	2,250,283	3,682,651	5,170,971	7,504,980	12,646,861
2062	2,162,711	3,590,139	5,052,009	7,316,456	12,196,571
2063	2,081,174	3,475,922	4,946,442	7,230,586	12,084,189
2064	2,041,841	3,373,123	4,824,371	7,113,405	12,022,366
2065	1,989,146	3,255,855	4,707,531	6,952,855	12,172,915
2066	1,928,199	3,176,766	4,614,928	6,856,955	11,768,993
2067	1,844,309	3,092,442	4,496,652	6,719,009	11,875,074
2068	1,823,750	3,018,987	4,396,464	6,587,753	11,611,936
2069	1,754,234	2,962,732	4,320,036	6,409,759	11,266,168
2070	1,715,776	2,876,561	4,219,377	6,299,712	11,290,663
2071	1,666,642	2,799,429	4,107,506	6,189,398	10,944,159

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Long Term Trust Model II

- \$5.12 Million Trust with Grantor Trust Status until 2026



Long Term Trust Model II

DYNASTY TRUST

General Information

Personal Information

Date of Birth	Dynasty Trust 15MM
Proposed Retirement Date	03/01/2012
Life Expectancy	03/01/2026
Time Horizon	100
	60

Investment Objective

Growth with income

Financial Information

Account	Market Value Date	Market Value
5MM	03/19/2012	5,120,000
Total		5,120,000

Effective Tax Rates

Pre-Retirement Tax Rate	0.0%
Post-Retirement Tax Rate	43.4%
Capital Gains Tax Rate (Current Year)	0.0%
Dividend Tax Rate (Current Year)	0.0%



Long Term Trust Model II

DYNASTY TRUST

Cash Flow Summary

Annual Inflows

Description	Start Year	End Year	Amount	Type	Valuation	Increase
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Annual Expenses

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Annual Distribution	2022	2024	1.0%	Expense	Real	0.0%
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Special Principal Distribution	2030	2030	100,000	Expense	Nominal	0.0%
Annual Distribution	2030	2032	4.0%	Expense	Real	0.0%
Annual Distribution	2030	2038	5.0%	Expense	Real	0.0%
Special Principal Distribution	2032	2032	100,000	Expense	Nominal	0.0%
Special Principal Distribution	2035	2035	100,000	Expense	Nominal	0.0%
Annual Distribution	2039	2050	6.0%	Expense	Real	0.0%
Annual Distribution	2051	End of Plan	7.0%	Expense	Real	0.0%





DYNASTY TRUST

Current Portfolio Analysis

Long Term Trust Model II

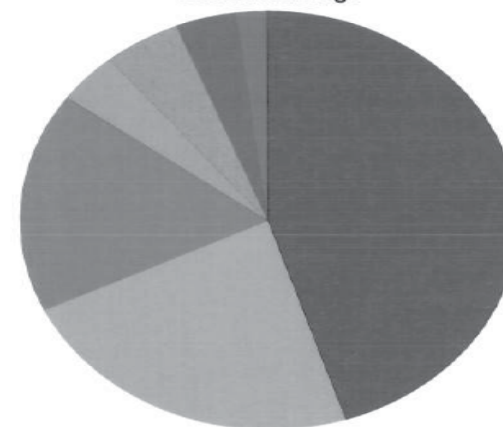
DYNASTY TRUST

Current Allocation

Current Portfolio - Aggregate

Description	Market Value (USD)	Percent
Equity	2,304,000	45.0%
Large Cap	921,600	18.0%
Mid Cap	128,000	2.5%
Small Cap	128,000	2.5%
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Real Estate Securities	102,400	2.0%
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Commodities	204,800	4.0%
Cash & Short term Investments	102,400	2.0%
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Total	5,120,000	100.0%

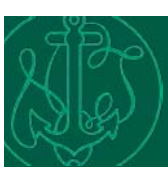
Current Holdings



Expected Portfolio Statistics *

Annualized Total Return (pre-tax)	7.0%
Annualized Total Return (after-tax)	7.0%
Expected Standard Deviation (pre-tax)	10.6%
Sharpe Ratio (pre-tax)	0.52
Yield (pre-tax)	2.2%

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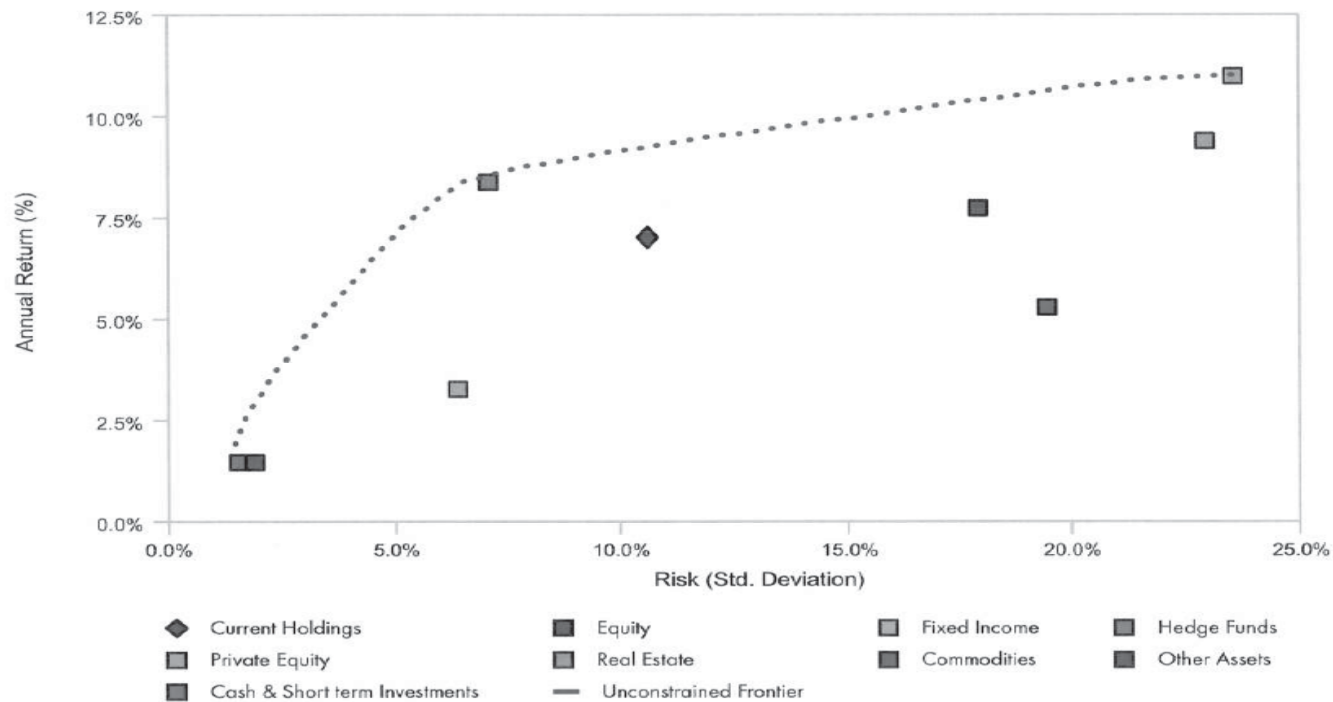


Long Term Trust Model II

DYNASTY TRUST

Expected Risk vs. Return

Current Portfolio - Aggregate



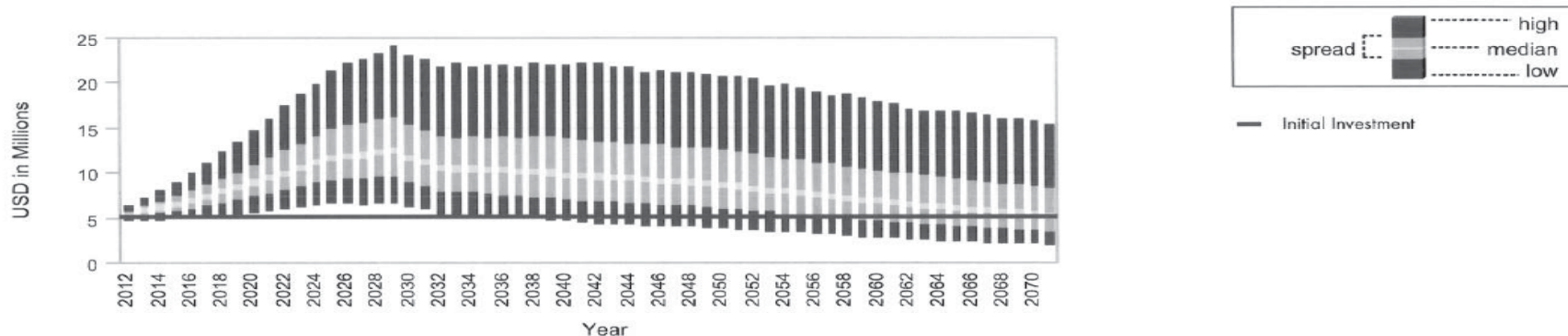
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Long Term Trust Model II

DYNASTY TRUST

Wealth Projection All Years

Current Portfolio* - Aggregate



Year	5 th Percentile	25 th Percentile	Median	75 th Percentile	95 th Percentile
2012	4,672,521	5,118,217	5,453,925	5,815,488	6,382,567
2013	4,649,303	5,286,878	5,803,648	6,374,647	7,249,459
2014	4,748,302	5,530,877	6,200,661	6,929,639	8,162,989
2015	4,861,401	5,797,825	6,572,498	7,529,152	9,021,706
2016	4,923,217	6,085,295	6,986,377	8,114,519	10,022,493
2017	5,102,822	6,335,148	7,448,551	8,751,420	11,187,578
2018	5,268,117	6,709,398	7,933,388	9,408,805	12,351,441
2019	5,420,159	7,033,318	8,476,473	10,098,275	13,413,270
2020	5,568,398	7,470,008	8,986,109	10,911,777	14,645,346
2021	5,842,945	7,753,236	9,532,556	11,776,165	16,043,873
2022	5,996,600	8,047,890	10,007,212	12,500,580	17,581,347
2023	6,206,967	8,447,763	10,553,510	13,292,114	18,706,792
2024	6,402,320	8,877,641	11,203,056	14,119,612	19,917,125
2025	6,584,314	9,175,226	11,669,600	15,004,852	21,452,846

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Long Term Trust Model II

DYNASTY TRUST

Wealth Projection All Years

Current Portfolio* - Aggregate

Year	5 th Percentile	25 th Percentile	Median	75 th Percentile	95 th Percentile
2026	6,646,939	9,345,378	11,864,617	15,488,173	22,171,201
2027	6,447,996	9,333,441	11,963,506	15,688,312	22,639,112
2028	6,598,298	9,522,302	12,221,199	15,972,710	23,253,477
2029	6,595,055	9,619,225	12,446,544	16,299,474	24,141,818
2030	6,129,718	8,998,781	11,726,665	15,410,038	23,141,070
2031	5,877,886	8,592,526	11,223,414	14,839,891	22,659,095
2032	5,293,507	7,972,083	10,533,020	14,086,542	21,695,088
2033	5,234,460	7,956,786	10,460,385	13,956,090	22,189,558
2034	5,212,816	7,841,204	10,467,479	14,037,844	21,729,445
2035	4,899,808	7,598,544	10,282,982	13,871,470	21,948,476
2036	4,846,864	7,583,781	10,284,489	14,042,286	22,040,393
2037	4,869,018	7,466,223	10,217,582	13,922,226	21,866,517
2038	4,828,938	7,364,921	10,216,834	14,175,482	22,198,822
2039	4,675,096	7,177,098	10,037,965	14,032,302	22,111,509
2040	4,635,915	7,139,882	9,809,012	13,836,530	21,939,199
2041	4,533,062	6,908,129	9,781,515	13,623,925	22,132,422
2042	4,362,302	6,855,134	9,623,333	13,507,930	22,206,677
2043	4,281,737	6,782,702	9,535,521	13,396,659	21,825,435
2044	4,196,172	6,682,533	9,515,999	13,313,707	21,826,107
2045	4,118,791	6,565,203	9,350,952	13,294,650	21,139,889
2046	3,968,539	6,489,055	9,150,242	13,182,704	21,342,639
2047	4,012,515	6,398,741	9,001,390	12,922,014	21,052,323
2048	3,983,396	6,344,066	8,968,589	12,795,194	21,199,155
2049	3,893,888	6,212,909	8,829,037	12,746,377	20,930,080
2050	3,816,663	6,082,244	8,716,231	12,641,801	20,706,481
2051	3,628,268	5,949,212	8,540,775	12,345,907	20,760,516
2052	3,554,208	5,813,819	8,290,573	12,110,943	20,472,335
2053	3,516,989	5,678,642	8,063,793	11,799,349	19,659,091

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Long Term Trust Model II

DYNASTY TRUST

Wealth Projection All Years

Current Portfolio * - Aggregate

Year	5 th Percentile	25 th Percentile	Median	75 th Percentile	95 th Percentile
2054	3,418,146	5,437,475	7,989,365	11,623,083	19,860,705
2055	3,329,506	5,281,954	7,728,126	11,448,997	19,400,781
2056	3,203,823	5,131,845	7,531,586	11,159,990	18,993,001
2057	3,123,026	5,008,132	7,329,513	11,060,719	18,650,312
2058	2,979,990	4,897,516	7,217,989	10,773,741	18,713,070
2059	2,860,324	4,769,249	7,037,977	10,561,392	18,423,591
2060	2,803,352	4,655,510	6,866,399	10,362,970	18,041,270
2061	2,706,407	4,584,582	6,703,621	10,141,310	17,743,901
2062	2,587,439	4,474,747	6,587,681	10,016,432	17,091,562
2063	2,546,775	4,351,343	6,366,839	9,820,228	16,867,438
2064	2,454,019	4,221,843	6,227,783	9,596,703	16,929,708
2065	2,399,467	4,042,055	6,118,980	9,321,847	16,986,627
2066	2,324,394	3,985,453	5,921,167	9,157,392	16,599,257
2067	2,224,961	3,879,463	5,835,984	8,950,132	16,417,425
2068	2,216,490	3,788,068	5,682,600	8,854,299	16,095,633
2069	2,131,098	3,703,613	5,582,638	8,745,498	15,972,086
2070	2,033,369	3,605,270	5,417,596	8,508,691	15,732,629
2071	1,979,640	3,524,210	5,300,404	8,368,222	15,438,286

Values displayed are in Nominal terms. * See "Important Information Regarding Hypothetical Projections". This material contains forward-looking statements. Statements that are not historical or current facts, including statements about beliefs and expectations, are forward-looking statements. Forward-looking statements involve inherent risks and uncertainties, which could cause actual results to differ materially from future results expressed or implied by such forward-looking statements. See Appendix for further information.



Financial Modeling: Implications for Estate Planning & Trust Design

- Role and Design of Financial Models
- Trust Design Issues
 - ▶ Trust Design
 - ▶ Breadth of Beneficial Interests
 - ▶ Differentiation of Discretionary Standards
 - ▶ Trust Modification
 - ▶ Trust Termination
- Asset Allocation/Asset Selection
- Income Taxation
- Family Expectations



Demographic Changes

- ◆ Increased Life Expectancies
- ◆ Greater Diversity in Domicile
- ◆ Situs Selection & Modification
- ◆ Changes in Family Composition
- ◆ Generational Overlap
- ◆ Expansion of Marriage and Definition of Spouse
- ◆ Diversity of Cultural Perspectives on Estate Planning and Inheritance
- ◆ Changing Economic and Market Conditions: Investment Practices
- ◆ Reproductive Variables

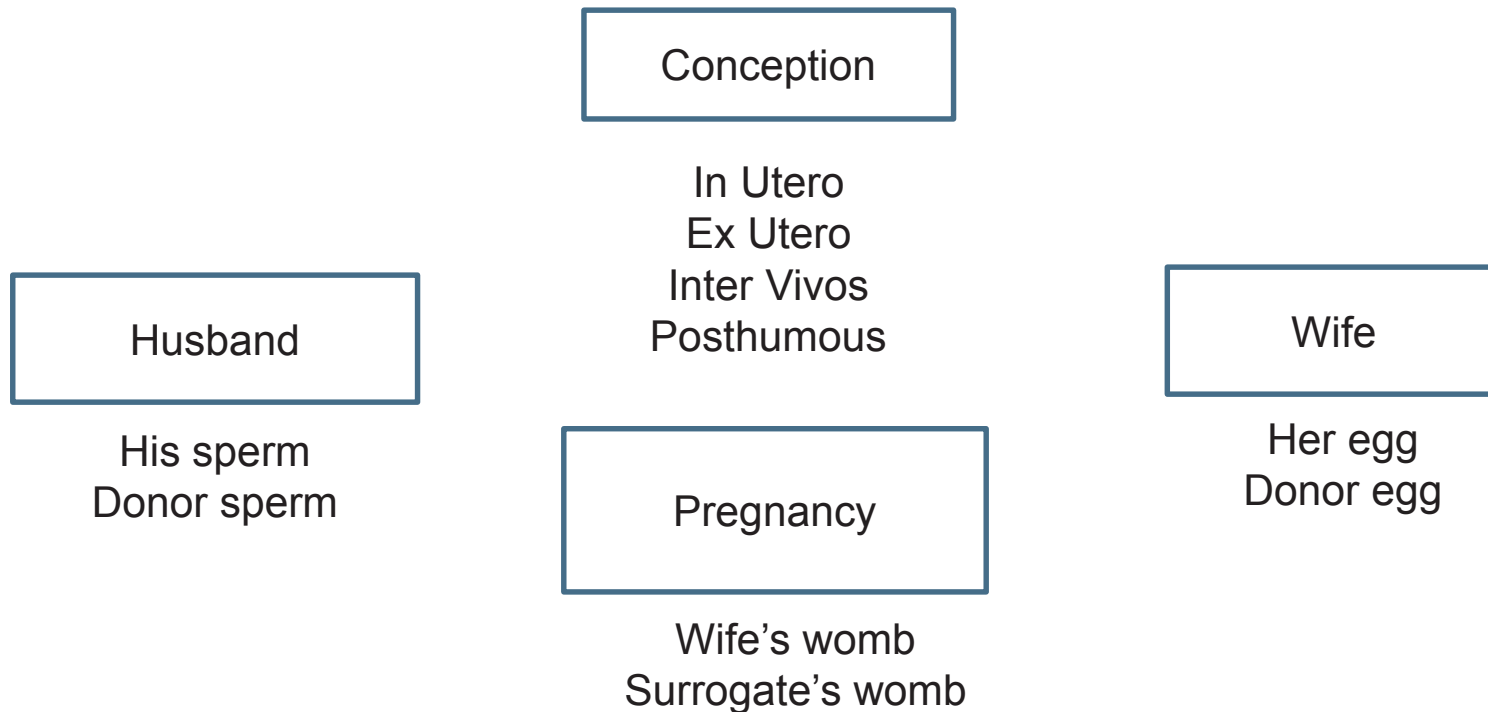


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Demographic Changes

- ◆ Reproductive Variables



- ◆ ART Children
 - Who Is a Descendant?
- ◆ ART Children and Inheritance
 - Uniform Probate Code §2-120 (As Amended, 2008)
 - "The New Genesis in Estate Planning," Bruce Stone, Goldman, Felcoski & Stone, P.A. 2013 Heckerling Institute on Estate Planning



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◆ Tax – Driven Estate Planning Paradigm





Navigating the Estate Planning Minefield

Assets

Family Birth Dates,
Addresses, Marital Status

Grantor Retained
Annuity Trusts

Irrevocable Life
Insurance Trusts

Revocable Trusts

QPRT's

Beneficiary
Designations

CRT'S

QTIP's

Personal Financial
Statements

Family Limited
Partnerships

Charitable
Remainder Trusts

GRAT's

FLP's

Title Insurance
Policies

Qualified Terminable
Interest Property Trusts

Qualified Personal
Residence Trusts

Pour-Over Wills

Liabilities

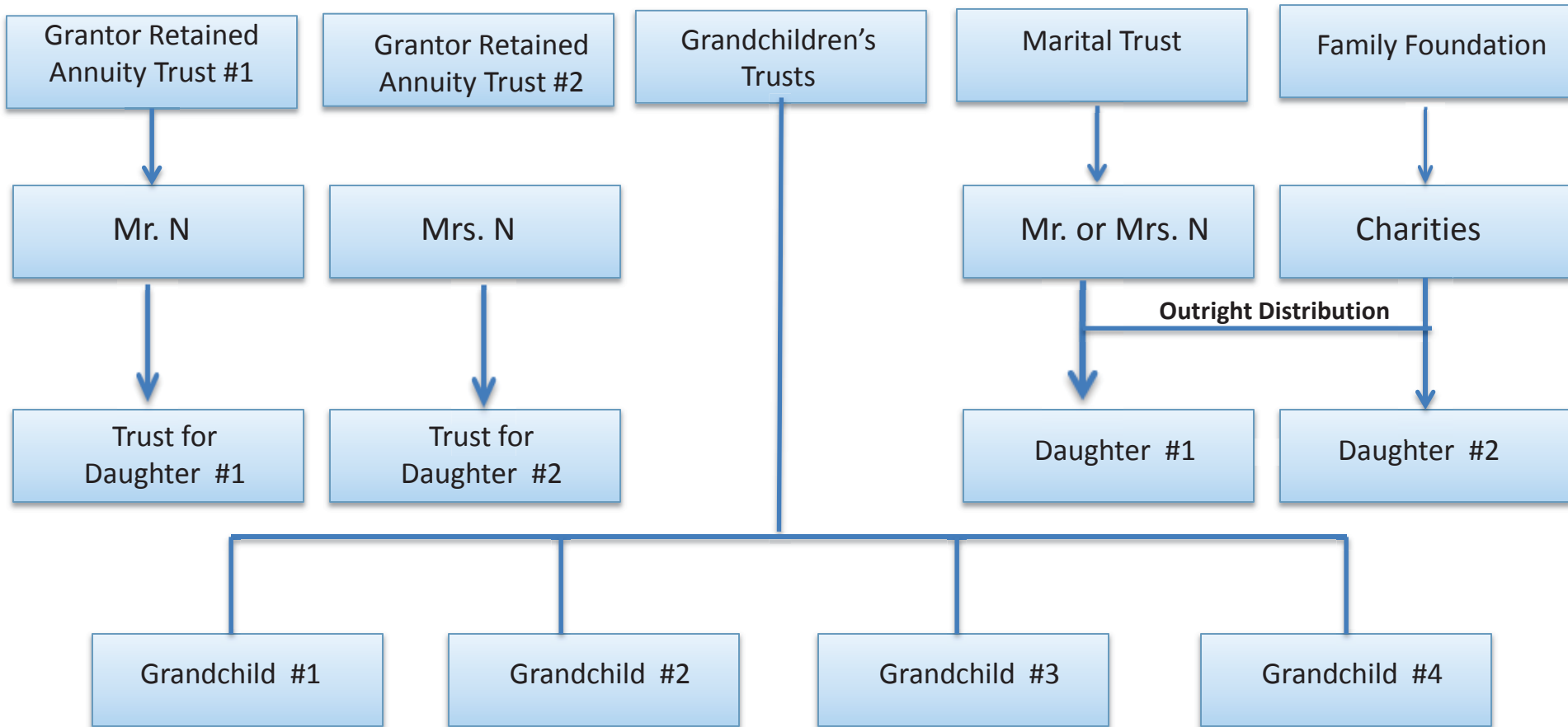
ILIT's



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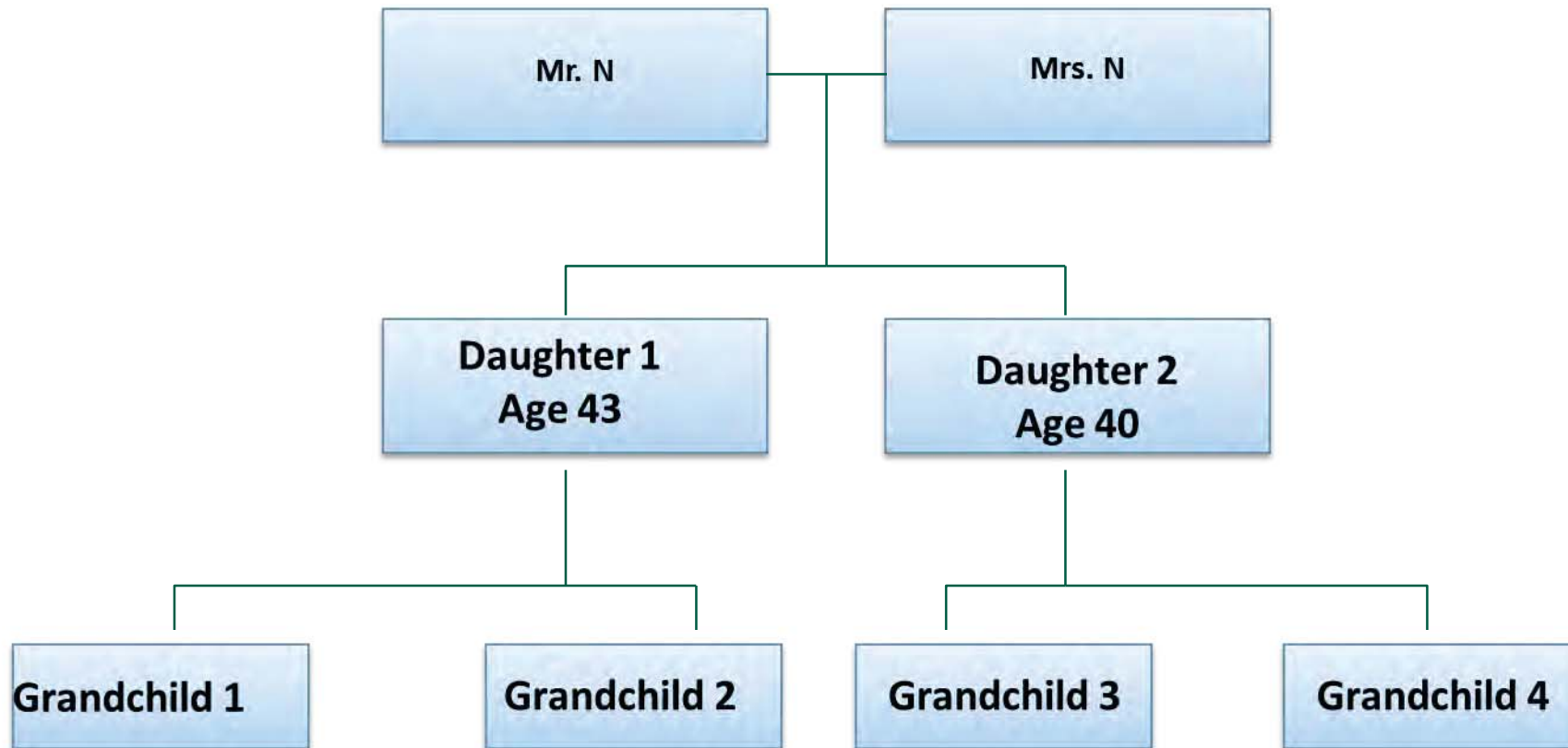


Mr. and Mrs. N. Estate Plan

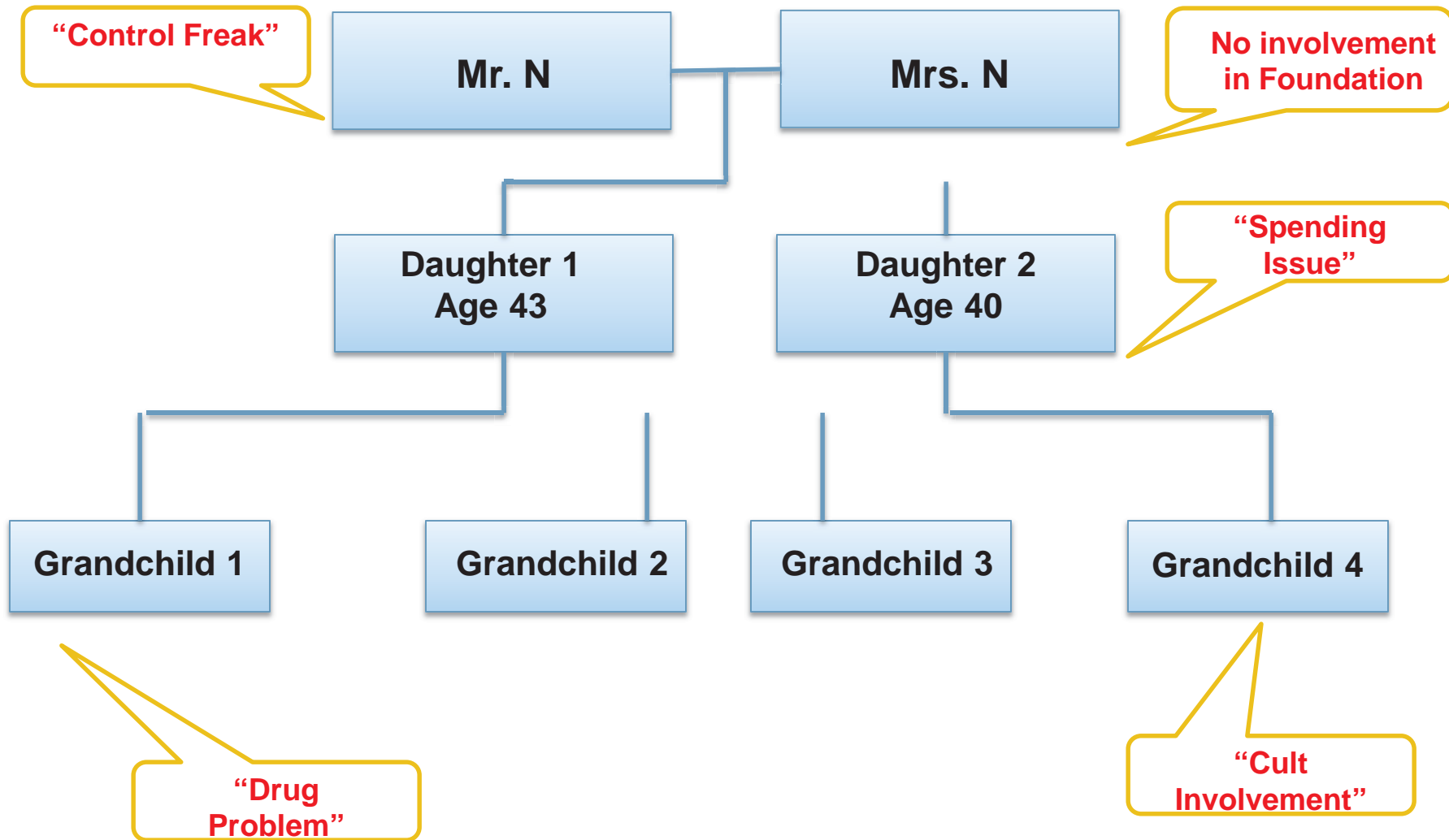




Mr. and Mrs. N. Family



Mr. and Mrs. N. Family Reality



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Family Wealth (Redefined*)

■ Human Capital

- ◆ Family members' personalities, gifts, vocations

■ Intellectual Capital

- ◆ Learning, communication, decision making

■ Social Capital

- ◆ Family's engagement with society

■ Financial Capital

- ◆ Assets and property

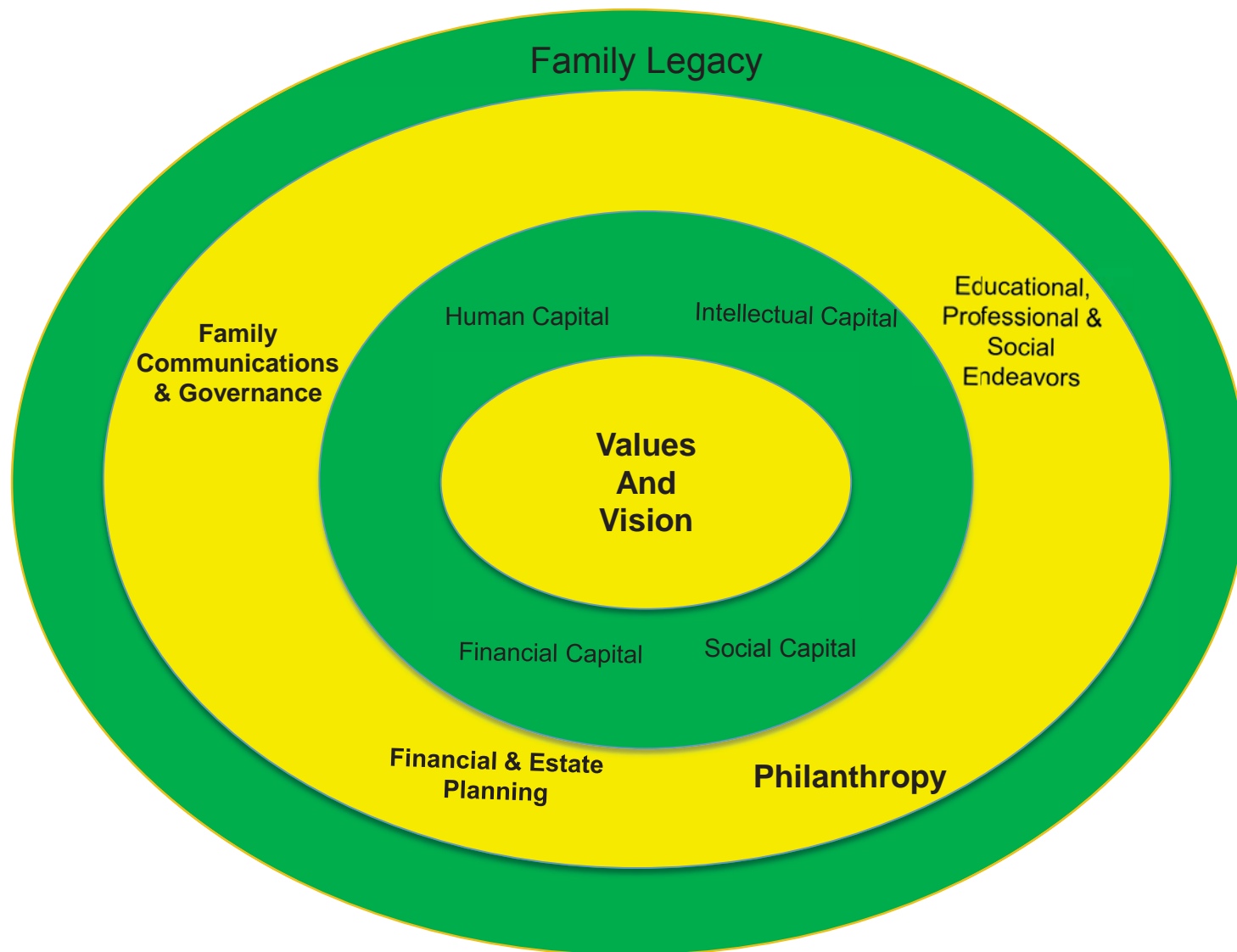
*Wealth in Families, Charles W. Collier, Harvard University, 2006



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Wealth Planning (From the Inside Out)



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Estate Planning – Essential Questions

- To Whom
- How Much
- When
 - ◆ To Give
 - ◆ To Discuss
- In What Form
 - ◆ Outright or in Trust
 - ◆ Distribution Standards

“Freedom of disposition, or donative freedom, encompasses several distinct yet related ideas – the right to give property away during life and to pass it on at death, the right to choose who gets it, the right to choose the form in which they get it, and the right to give another person the right to make those choices even after your death.”

Thomas P. Gallanis, Family Property Law: Cases and Materials on Wills, Trusts and Future Interests 350-351 (5th ed. 2011).



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Trust Design: Statements of Intent



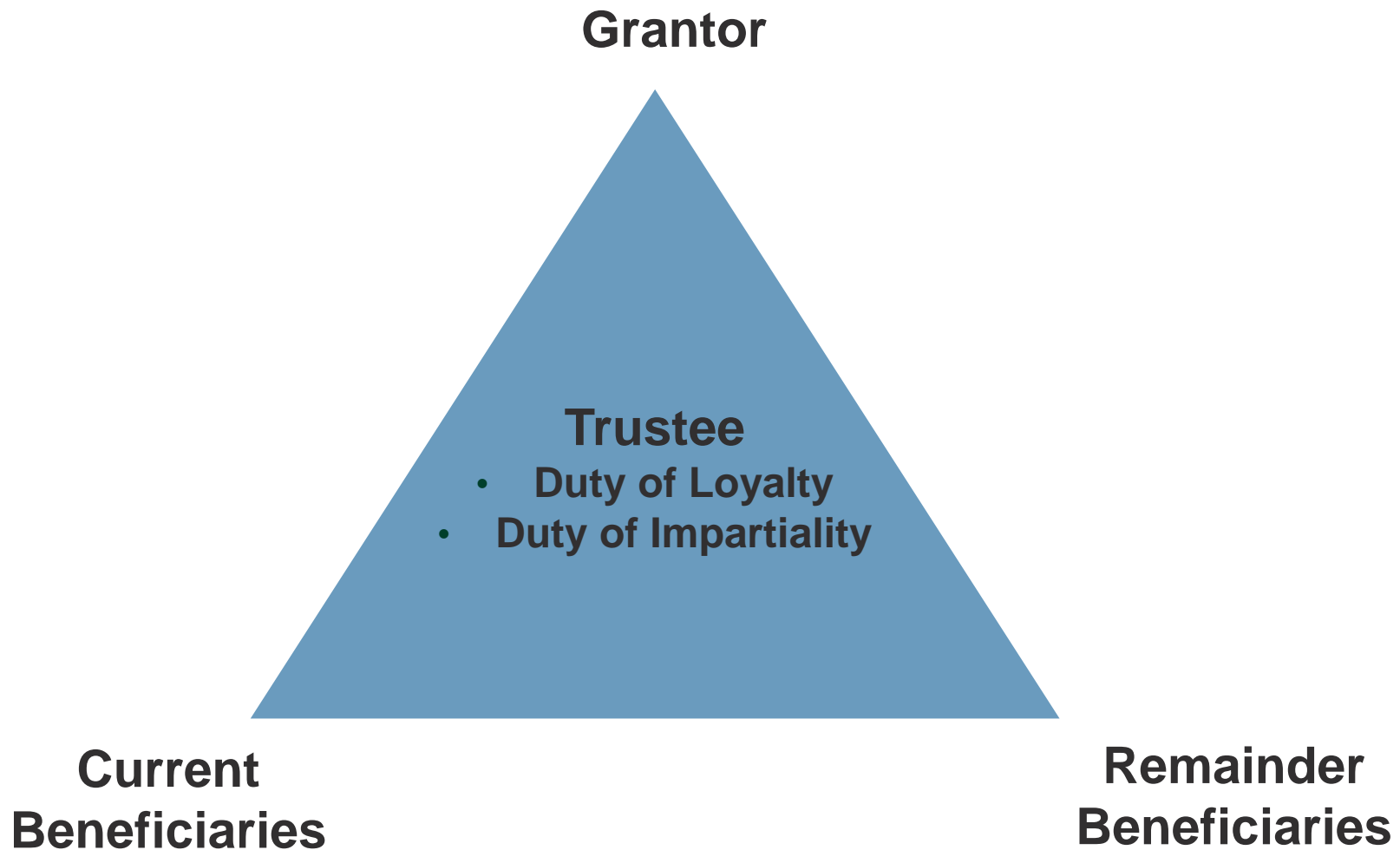
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Demographic Changes

- ◆ Increased Life Expectancies
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- ◆ Changing Economic and Market Conditions: Investment Practices
- ◆ Reproductive Variables

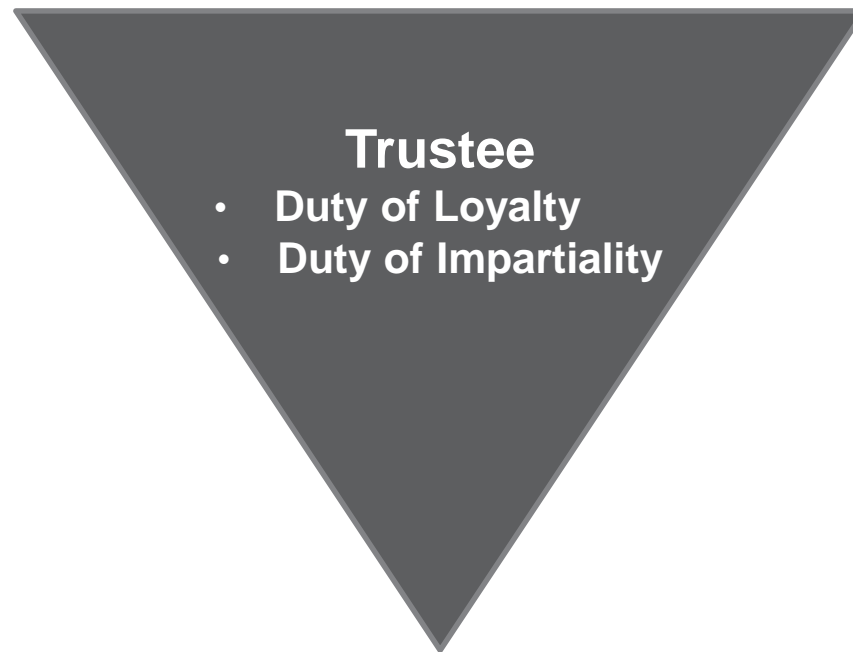
Trust Design: Grantor Intent & Fiduciary Flexibility



Trust Design: Grantor Intent & Fiduciary Flexibility

Trust Design / Grantor Intent

- Allocation of Fiduciary Responsibility
- Discretionary Powers
- Powers of Appointment
- Trustee/Advisor Succession



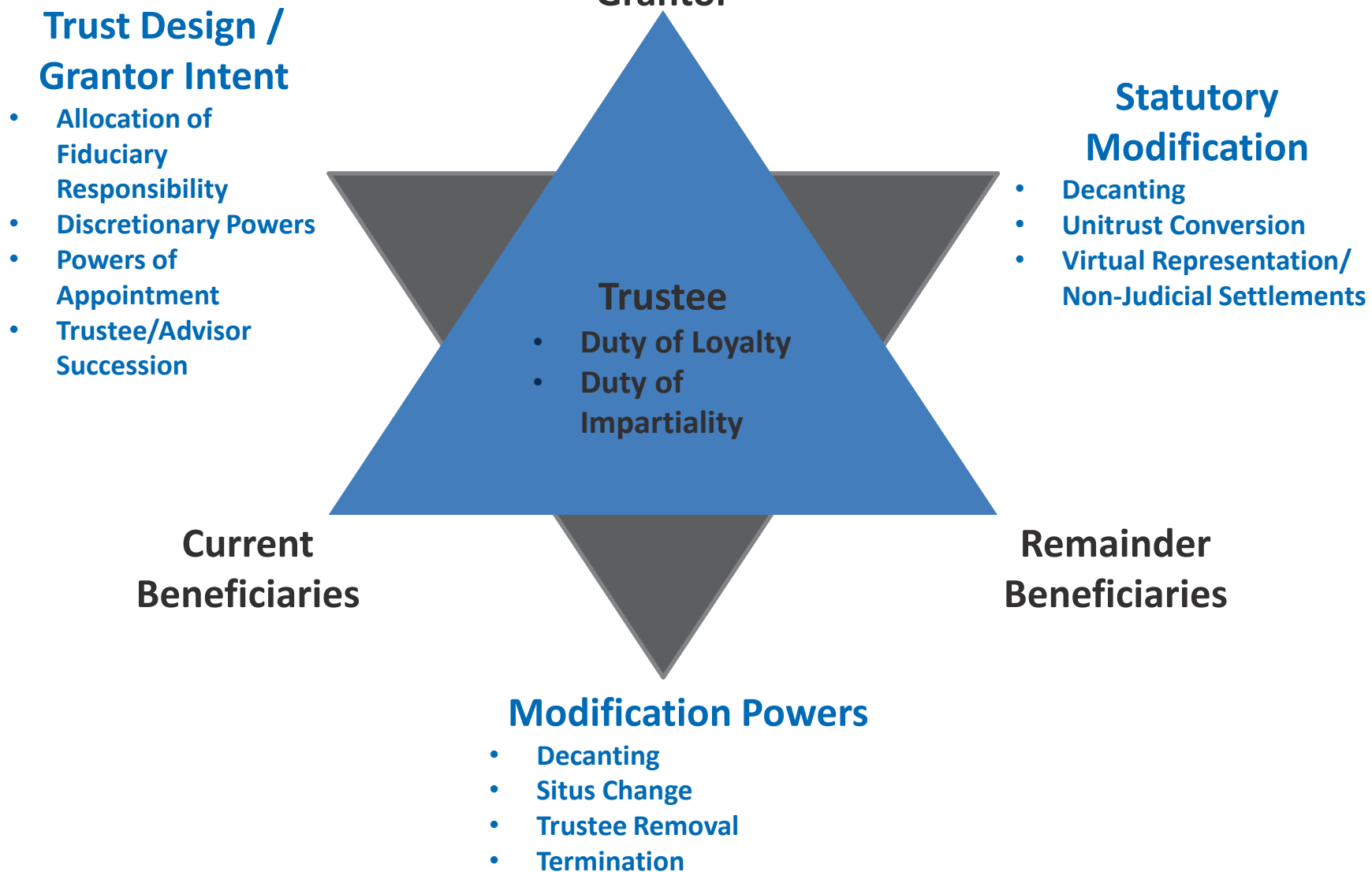
Statutory Modification

- Decanting
- Unitrust Conversion
- Virtual Representation/ Non-Judicial Settlements

Modification Powers

- Decanting
- Situs Change
- Trustee Removal
- Termination

Trust Design: Grantor Intent & Fiduciary Flexibility





Statements of Intent

■ Tension Between Settlor Control, Beneficial Interests, and Flexibility

■ Evolution of Standards for Early Termination and Trust Modification

- The Claflin Doctrine: Early termination of a trust may be allowed so long as it does not frustrate a **Material Purpose** of the settlor. Claflin v. Claflin (20 N.E. 454, Mass.1889).
- Restatement (Third) §65: **Material Purposes** are not readily to be inferred
- The Uniform Trust Code requires determination of a trust's **Material Purpose** for:
 - §111: Non-Judicial Settlement Agreements
 - §411: Modification or Termination by Consent
 - §412: Modification of Termination Because of Unanticipated Circumstances

■ Instructions to the Trustee (and Other Fiduciaries)

◆ Letters of Wishes

- ▶ External
- ▶ Generally unenforceable (in the U. S.)

◆ Precatory Language

- ▶ Internal
- ▶ Aspirational

◆ Statement of Intent

- ▶ Language within the trust department
- ▶ Demonstrates unique grantor intent
- ▶ Ties that intent to the trust (material purpose)
- ▶ Expresses grantor's view on modification and termination
- ▶ Provide context for various discretionary powers

◆ Public Policy Limitations



Statements of Intent

■ Communications to Beneficiaries

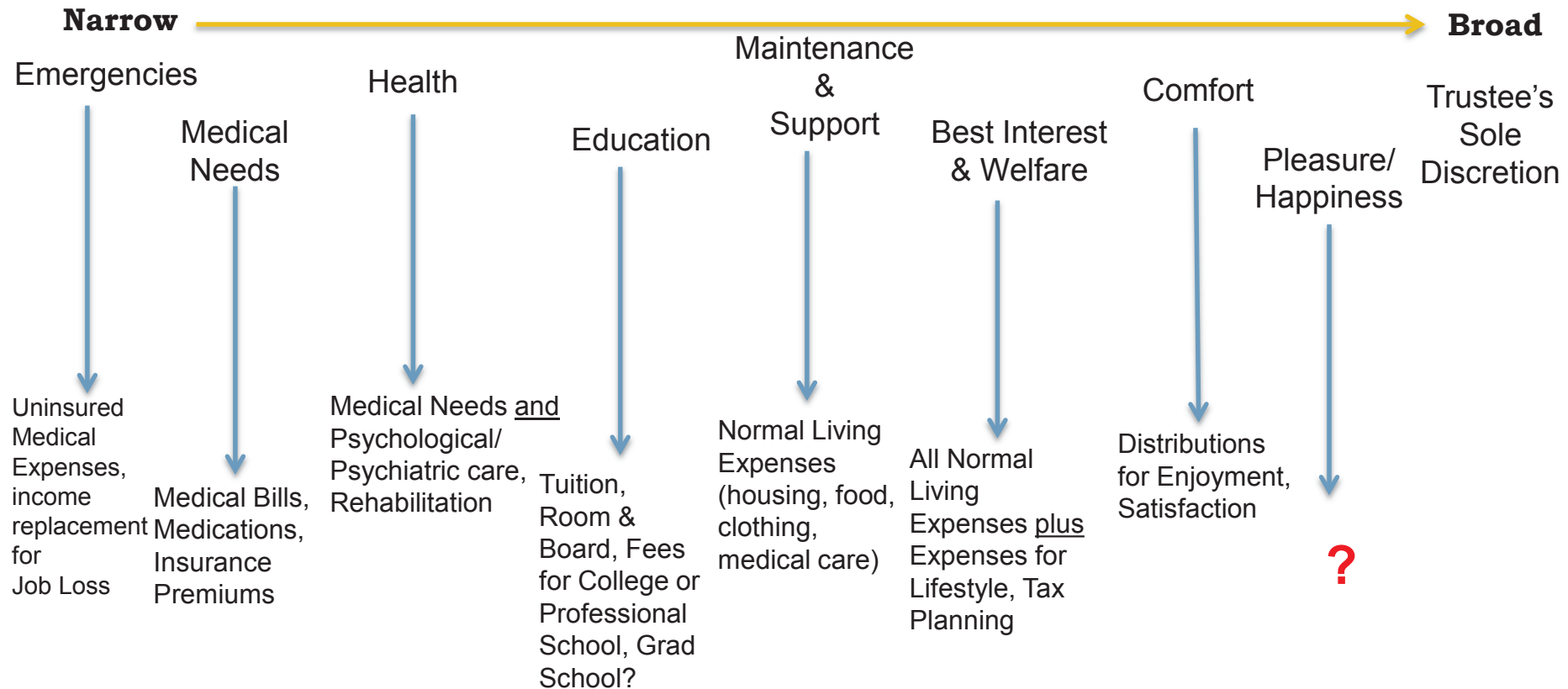
- ◆ Wills and Trusts are a Form of Personal Communication
- ◆ Ethical Wills
 - ▶ Memorialize and “transfer” family values
- ◆ Family Mission Statements
 - ▶ Formalize family vision and values
- ◆ Statements of Intent
 - ▶ Provide context for financial capital held in trust
 - ▶ Articulate goals for family wealth and beneficiaries’ well being
 - ▶ Inform future generations about family values and vision
- ◆ Estate Planning and Statements of Intent
 - ▶ Introduce the concept
 - ▶ Suggest resources
 - ▶ Facilitate thorough creative inquiry, storytelling, discussion
 - ▶ Client authorship



Trust Design: Beneficial Interests

- ◆ Income
- ◆ Discretionary Principal
- ◆ Unitrust or Annuity Interests
- ◆ Withdrawal Rights
 - Staged
 - 5 x 5 Powers
- ◆ Mandatory Distributions
- ◆ Use of Trust Assets
- ◆ Powers of Appointment
 - Inter-Vivos
 - Testamentary
 - Limited
 - General

Discretionary Distribution Standards





Trust Design: Beneficial Interests & Statements of Intent

◆ Sample Statement of Intent Governing Discretion

In determining whether to distribute or accumulate such income and principal, the Trustee shall take into consideration (a) the income and principal (known to the Trustee) which such child may then have available from all other sources, (b) the tax laws then in effect or about to become in effect, (c) the economics of maintaining the trust created for such child and **(d) what in the opinion of the Trustee will make such child a useful and productive member of society, will encourage such child to realize such child's full potential and will not be detrimental to such child's own sense of self-reliance.**

- ◆ Liquidity Issues
- ◆ Special Purpose Trusts
- ◆ Asset Concentrations

- Trust Assets Presenting Liquidity/Cash Flow Issues
 - ◆ Real Estate
 - ◆ Venture Capital, Private Equity
 - ◆ Operating Mineral Interests
 - ◆ Non Marketable Entities
 - ◆ Tangible Personalty and Collections
 - ◆ Intellectual Property
- Consider Endowing “Income Consuming” Assets to Facilitate Administration and Management
- Contributions to GST Exempt Trusts to Discharge Expenses of Non-Income Producing Assets Present a Risk of Tainting



Unique Assets: Special Purpose Trusts

■ Non-Charitable Purpose Trusts

- 12 Del. C. §3556
- Uniform Trust Code §404: Trust Purposes*
- Uniform Trust Code §409: Non-charitable Trusts Without Ascertainable Beneficiary**

■ Examples of Special Purposes

- Maintaining a Vacation Property
- Perpetual Care for Family Cemetery
- Maintaining Control Over a Family Enterprise
- Maintaining a Collection

*UTC §404 Trust Purposes “A trust and its terms must be for the benefit of its beneficiaries”

**UTC §409 Non-charitable Trust without Ascertainable Beneficiary

(1) A trust may be created for a non-charitable purpose without a definite or definitely ascertainable beneficiary or for a non-charitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than [21] years.



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Asset Concentrations And The Duty to Diversify



Northern Trust

- Uniform Prudent Investor Act, Section 3. Diversification

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

- Restatement Third, Trusts §91F

Whether and to what extent a specific investment authorization may affect the normal duty to diversify the trust portfolio (see §90, Comment g) can be a difficult question of interpretation. **Because permissive provisions do not abrogate the trustee's duty to act prudently and because diversification is fundamental to prudent risk management, trust provisions are strictly construed against dispensing with that requirement altogether.** Nevertheless, a relaxation in the degree of diversification may be justified under such an authorization by special opportunities for the trust or by special objectives of the settlor.

- Wood v. U. S. Bank, N.A. 160 Ohio App 3d 831, 2005

A trustee's duty to diversify may be expanded, restricted, eliminated, or otherwise altered by the terms of the trust. But this statement is true only if the instrument creating the trust clearly indicates an intention to abrogate the common law, now statutory, duty to diversity.



Concerns About Diversification

- Adverse Income Tax Consequences
- Unfamiliarity with Other Asset Classes
- Loss of Control
- Performance Expectations
- Impact on Portfolio Yield
- Legacy Holdings
- Fees



Reasons for Non-Diversification

- Purpose of Trust
- Legacy Holdings
- Termination Date of Trust
 - ◆ Interests of Beneficiaries
 - ◆ Step-Up in Basis
- Illiquidity
- Loss of Controlling Interest
- Related Trusts
- Beneficiaries' Assets
- Adverse Income Tax Consequences



Grantor Intent – Trust Terms on Retention

- Silent Document
- Retention of Assets Acquired from Grantor is Permissible
- Retention of a Particular Asset is Permissible
- Retention of a Particular Asset is Preferred
- Retention of a Particular Asset is Mandatory



Retention Language

- Identify the Asset
- Explicitly Waive the Duty to Diversify
- Articulate the Reasons for Retention – Linked to Beneficiaries' Best Interests
- Address Asset “Conversion” Issues
 - ◆ Equities: Mergers, Acquisitions, Spin-offs
 - ◆ Real Estate: Sale, Reinvestment
- Carefully Consider the Fiduciary's Standard of Care
 - ◆ Conventional Trusts
 - ◆ Directed Trusts
- Endow Operating/Holding Costs for Non-Income Producing Assets
- Provide a Means for Dispute Resolution
- Protect the Fiduciary



Asset Concentrations: Risk Management Process

I. **Policy**

Follow trust terms or state Prudent Investor Rule

II. **Process**

The trustee must have a process for identifying and evaluating concentrations

III. **Review**

Determine grantor intent and fiduciary responsibility

IV. **Evaluation**

Evaluate retention and diversification strategies

V. **Consultation**

Consult with beneficiaries, their counsel, and trustee's counsel

VI. **Implementation**

Implement appropriate strategies

VII. **Documentation**

Memorialize the process



Unique Trust Assets - Examples

Bolivian Tin Mine
Bombay Cement Factory
Sewage Plant
Bingo Parlor
Las Vegas Casino

Emu Farm
Llama Farm
Race Horse
½ Race Horse
Animal Reproductive Material
Animal Hospital
Pet Cemetery

Hemp Factory
Methadone Clinic

Nudist Colony
Indonesian Brothel
Motel with Hourly Rates
Las Vegas Wedding Chapel



Trust Management: Selection of Fiduciaries & Advisors



Select Your Advisors and Your Fiduciary With Care

Duty to make
Assets
productive

Duty to
Enforce
claims

Duty to
Collect and
Keep control of
the assets

Duty to
Administer trust
according to
Its terms

Duty to
keep
property
separate

Duty of Loyalty

Duty to
exercise
reasonable
care and skill

Duty to
preserve trust
property

Duty to keep
trust property
separate

Duty to deal
Impartially
with the
beneficiaries

Duty
regarding
delegation

Duty to
furnish
information

Duty to
keep
accounts

Duty to
defend
actions

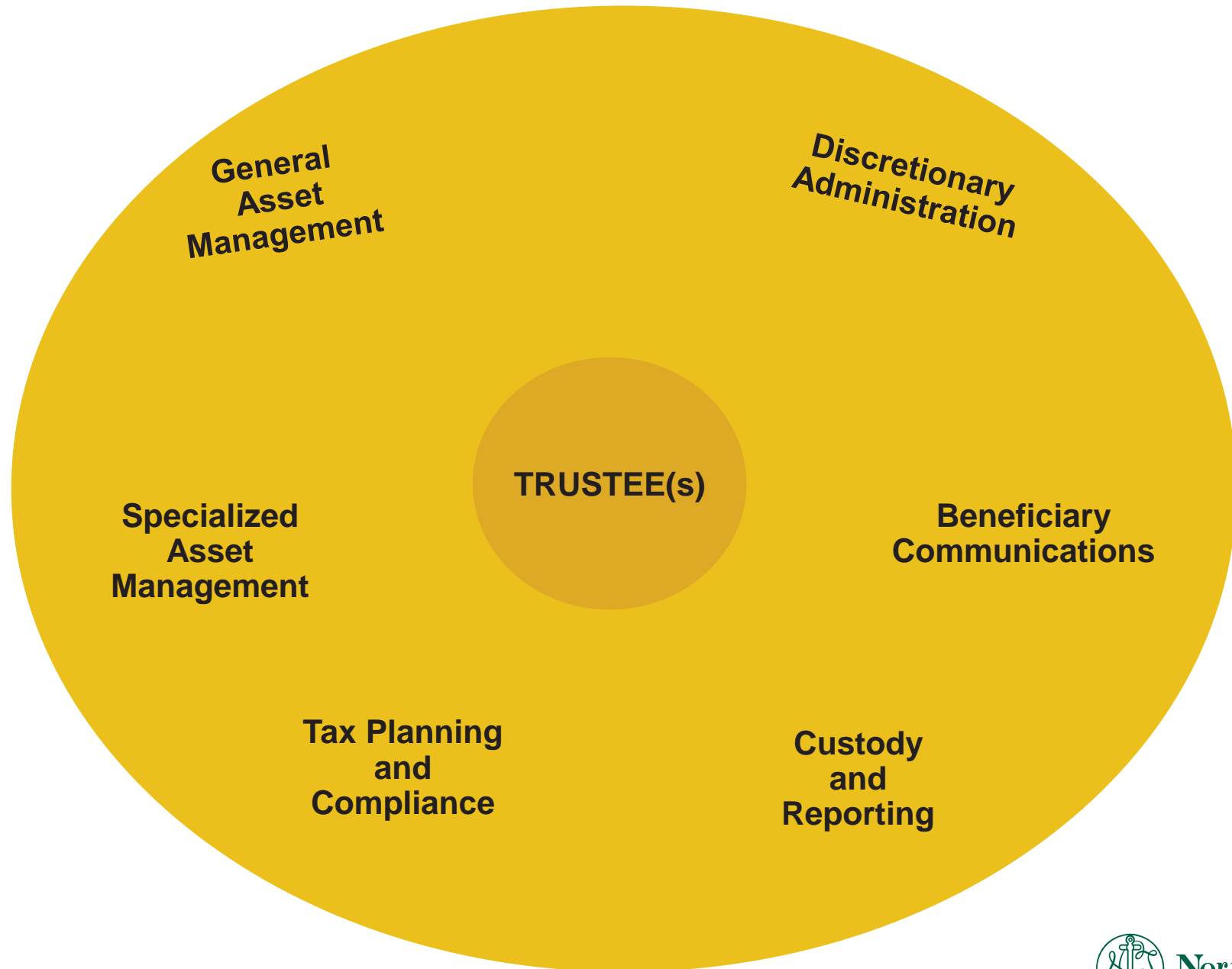


Northern Trust

- Conventional Trusts v. Directed (Administrative) Trusts

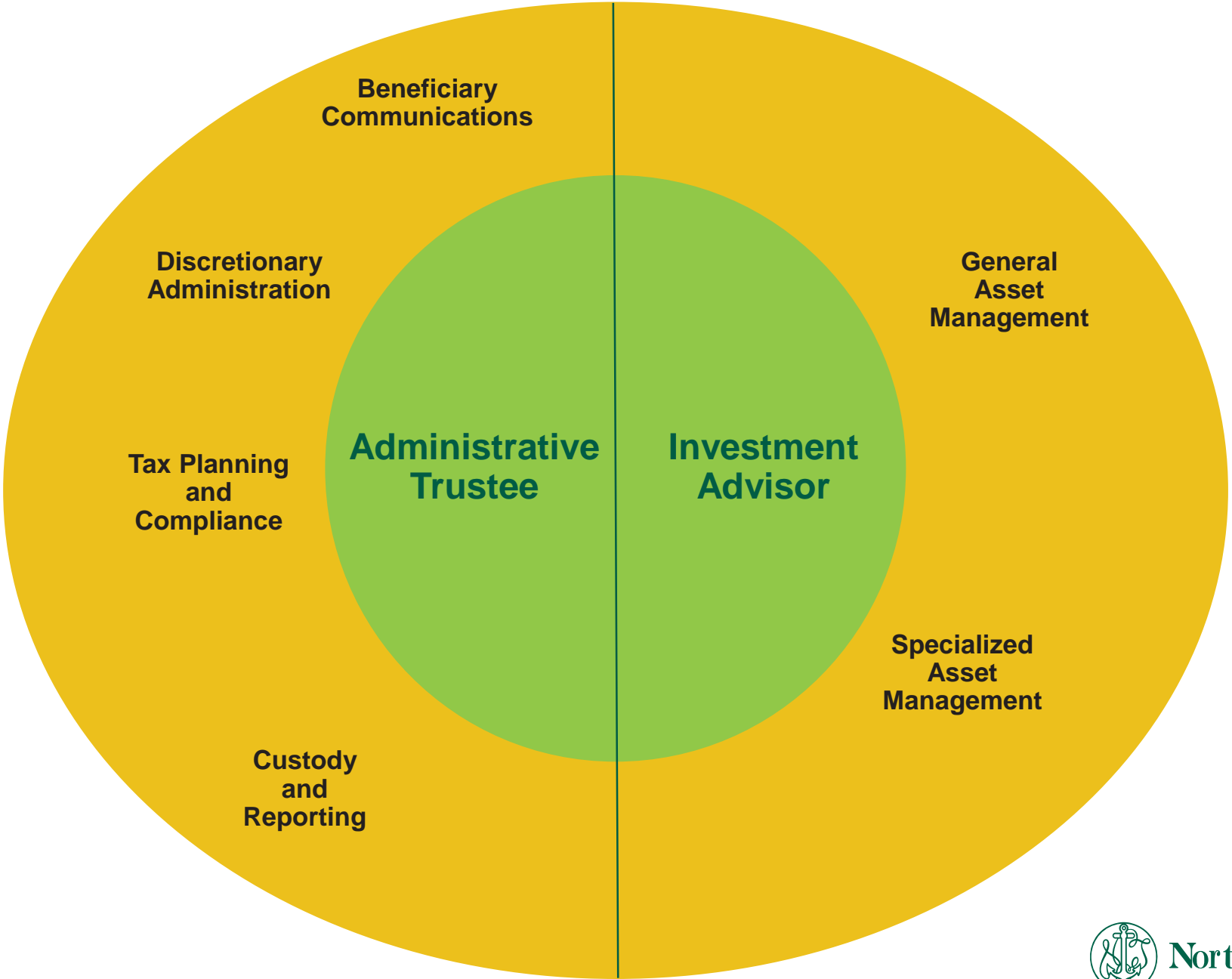


Changes In Trust Design - Conventional Trust



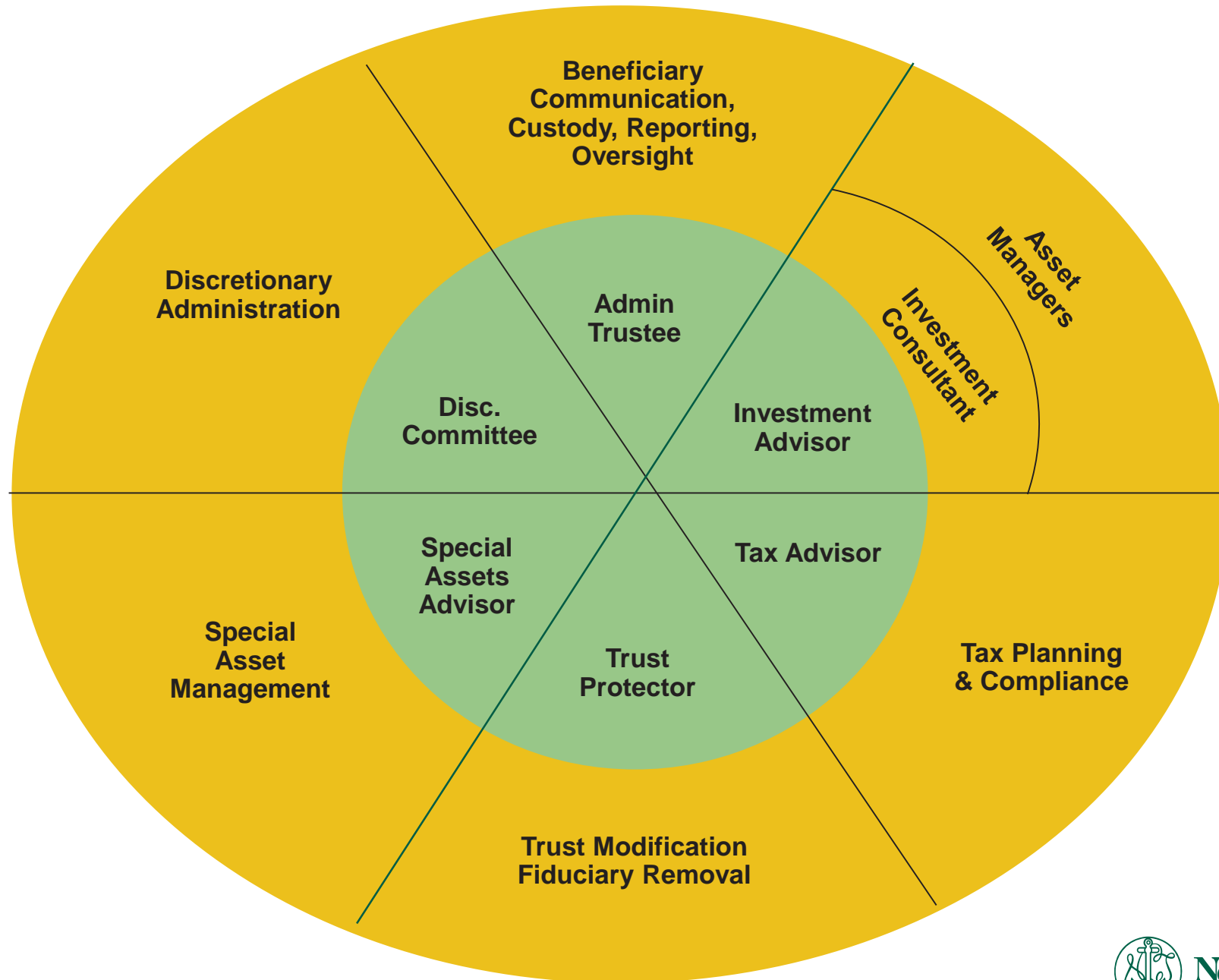


Fiduciary Responsibility Directed Trust



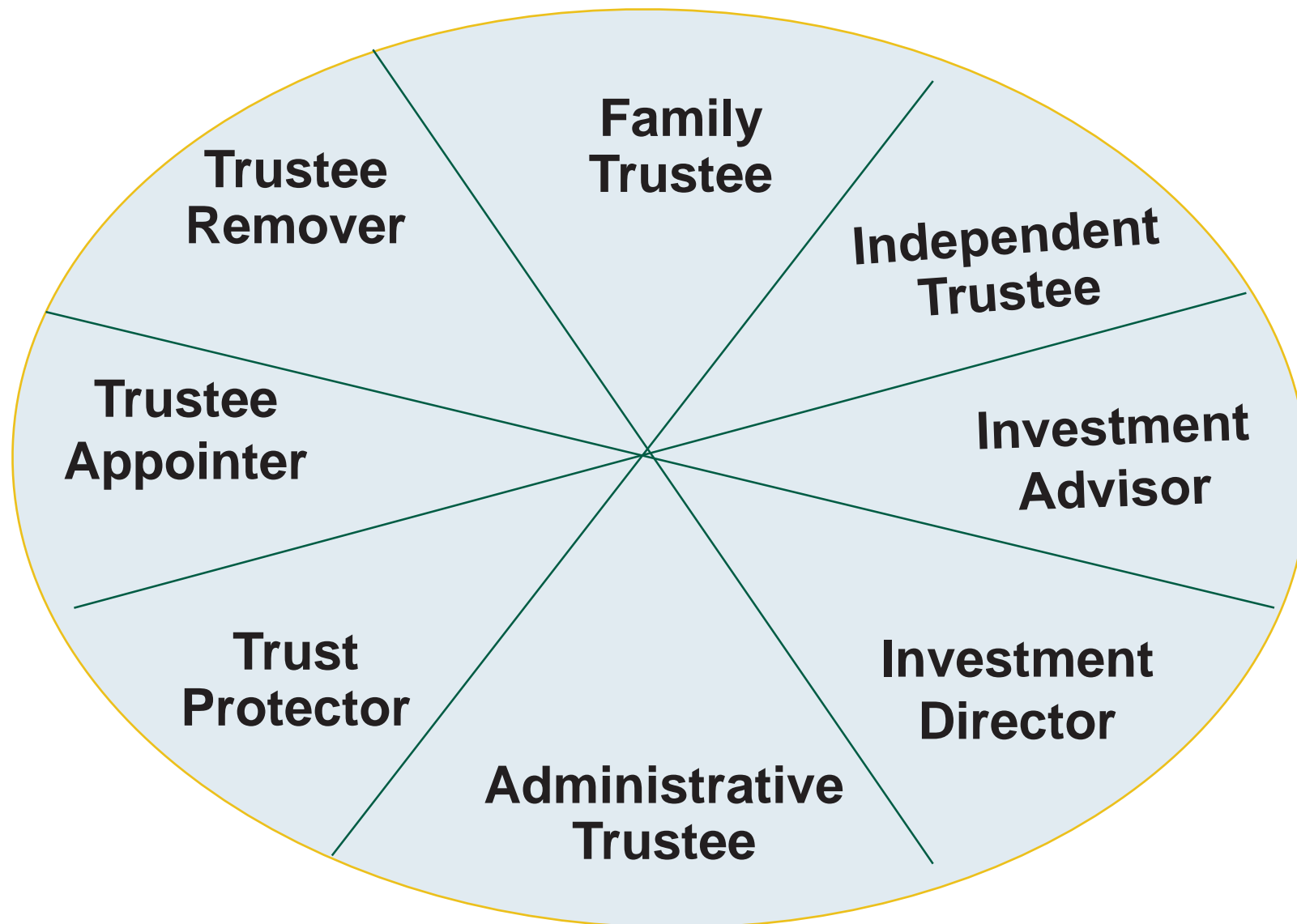


Fiduciary Responsibility – Enterprise Trust



Northern Trust

Fiduciary Responsibility – The Fractionalized Fiduciary





- Delaware Administrative Trust (12 Del. C. § 3313(b) & (e))
 - ◆ The directed trustee under a Delaware administrative trust has no duty to:
 - ▶ Monitor the advisor's conduct;
 - ▶ Provide advice to or consult with the advisor;
 - ▶ Warn or apprise beneficiaries about the advisor's directions
 - ◆ The directed trustee, under the Delaware statute, following an advisor's direction is liable for losses only for the trustee's own "willful misconduct."





■ Directed Trusts Under the Uniform Trust Code

- ◆ Settlers may allocate trust functions among the primary trustee and advisors as they provide in the trust document (UTC §808)
- ◆ The primary trustee's standard for review of the advisor's actions will depend on local law or the trust terms
 - ▶ Uniform Trust Code: the trustee must act as directed unless the advisor's action is:
 - Manifestly contrary to trust terms
 - A serious breach of fiduciary duty

■ Directed Trusts Under the Restatement (Second) of Trusts §185

- ◆ If under the terms of the trust a person has power to control the action of the trustee in certain respects, the trustee is under a duty to act in accordance with the exercise of such power, unless the attempted exercise of the power
 - Violates the terms of the trust
 - Is a violation of a fiduciary duty to which such person is subject in the exercise of the power





Practical Issues with Dispersion of Fiduciary Responsibility

I. What standard of conduct applies to advisors?

- ◆ Few states provide a default
- ◆ For important advisory roles, the trust document should clarify that they are fiduciaries

II. What degree of oversight should the primary trustee exercise over advisors' actions (or inactions)?

- ◆ Consider the grantor's intent and the feasibility of trustee oversight and draft accordingly
- ◆ Absent guidance in the trust document, only a few states provide standards for trustee intervention:
 - ▶ Delaware: Trustee's willful misconduct
 - ▶ Uniform Trust: Advisor's actions are manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of fiduciary duty that the person holding the power owes to the beneficiaries of the trust.
 - ▶ Restatement (2d) If under the terms of a trust a person has power to control the action of the trustees in certain respects, the trustee is under a duty to act in accordance with the exercise of such power, unless the attempted exercise of the power violates the terms of the trust or is a violation of a fiduciary duty to which such person is subject in the exercise of the power.



Fiduciary Responsibility

■ Drafting to Allocate Responsibility to an Advisor*

- ◆ Define the scope and terms of the advisor's responsibility
- ◆ Determine the degree of oversight the primary trustee is to have over the advisor's actions
- ◆ Specify whether the advisor's power is fiduciary or personal in nature (if allowed under state law)
- ◆ Specify the standard of care to which the advisor's actions will be subject
- ◆ Specify governing law
- ◆ Address vacancies and succession, mode of decision making for shared powers, compensation for advisors
- ◆ Establish standards for acceptance, declination, resignation and removal

■ Case Law

- ◆ Rollins v. Branch Banking & Trust Co. of VA (56 VA. Cir 174, 2001)
- ◆ Duemlar v. Wilmington Trust Company (2004 Del. Ch Lexis 2006)
- ◆ Robert T. McLean Irrevocable Trust v Patrick Davis, P.C., (283 S. W. 3d 786 Mo. App. S.D. 2009)
- ◆ Shelton v. Tamposi, 62 A.3d 741 (N.H. 2013)

* "The term "adviser" should be used in a trust instrument for the person to whom one or more powers are given to direct the trustee in carrying out the trustee's traditional trustee duties, and the term "trust protector" should be used in the trust instrument for the person to whom one or more powers have been given that relate to one or more specific trust matters but do not involve or infringe on the trustee's performance of traditional trustee duties. In Protectors We Trust: The Nature and Effective Use of "Trust Protectors" as Third Party Decision Makers, Kathleen R. Sherby. 2015 Heckerling Institute on Estate Planning.



Northern Trust



Directed Trust Statutes

STATE

Alabama	Ala. Code §19-3B-808
Alaska	Alaska §13.36.375
Arizona	Ariz. Rev. Stat. Title 14, Art. 8-10808.B
Arkansas	Ark. Code §28-73-808(b)
California	N.A.
Colorado	Colo. Rev. Stat. §15-1-307
Connecticut	N.A.
Delaware	Title 12 Del. Laws C.33, §3313
Florida	Fla. Stat. §736. 0808
Georgia	O. C. G. A. §53-12-303 (c)
Hawaii	N.A.
Idaho	Id. Stat. §15-7-501
Illinois	760 ILCS 5/16.3
Indiana	In. Code §30-4-3-9 (b)
Iowa	Iowa Trust Code §633A. 4207
Kansas	Kansas Stat. Ann. §58a-808
Kentucky	Ky. Rev. Stat. Ch. 386B 8-080
Louisiana	N.A.
Maine	Maine Rev. Stat. §18-B-808
Maryland	Maryland Trust Act §14.5-808 (effective 1/1/15)
Massachusetts	Mass. Gen. Laws Ch. 203E, Art. 8-808
Michigan	Mich. Comp. Laws §700.7809
Minnesota	Minn. Stat. Ch. 501C.0808 (effective 1/1/16)

As of May, 2015



Northern Trust



Directed Trust Statutes *(continued)*

STATE

Mississippi	Miss. Code §91-8-808
Missouri	Missouri Rev. Stat. §456.8-808
Montana	Mont. Code Ann. §72-38-808
Nebraska	Neb. Rev. Stat. §163-533
New Hampshire	New Hamp. Rev. Stat. §564-B: 8-808
New Jersey	N.A.
New Mexico	New Mex. Stat. §46A-808
New York	N.A.
North Carolina	N. Car. Gen. Stat. §36C-7-703 (e1) [co-trustees], §36C-8A-4[Power holders]
North Dakota	N. D. Cent. Code §59-16-08
Ohio	Ohio Rev. Code §5808.08
Oklahoma	Okla. Code §60-175.19
Oregon	Or. Rev. Stat. §130.685
Pennsylvania	Penn. Con. Stat. Title 20 §7778
Rhode Island	N.A.
South Carolina	S.C. Code §62-7-808
South Dakota	S.D. Cod. Laws §55-1B
Tennessee	Tenn. Code §35-15-808
Texas	Tex. Prob. Code Ann. §114.003
Utah	Utah Code §75-7-906
Vermont	Ver. Stat. Ann Title 14A §808
Virginia	Va. Code §64.2-770
Washington	N.A.

As of May, 2015



Northern Trust



Directed Trust Statutes *(continued)*

STATE

Washington, D.C.	D. C. Code §19-1308.08
West Virginia	W. Va. Trust Code §44D-8-808
Wisconsin	Wis. Stats. §701.0808
Wyoming	Wyom. Stat. §4-10-808, §4-10-715





- ◆ Non-Judicial Settlement
- ◆ Court Modification – Equitable Deviation
- ◆ Decanting
- ◆ Role of Protectors





Non-Judicial Settlement Agreements

■ Uniform Trust Code §111:

- Permits interested persons to enter into a binding Non-Judicial Settlement Agreement (“NJSA”) with respect to any matter involving a trust
- Agreement is valid to the extent
 - It does not violate a **material purpose** of the trust
 - It includes terms and conditions that could that could be properly approved by a court
- Matters that may be the object of a NJSA:
 - Interpretation or construction
 - Approval of accountings
 - Directions regarding trustee powers
 - Trustee resignation or appointment
 - Change of trust’s principal place of administration
 - Trustee liability



Northern Trust



Modification or Termination by Consent

■ Uniform Trust Code §411:

- (a) “A non-charitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if...inconsistent with a material purpose of the trust.”
- (b) A non-charitable irrevocable trust may be terminated upon consent of all the beneficiaries if the court concludes that the continuance of the trust is not necessary to achieve any material purpose of the trust.
- (c) A spendthrift provision...is not presumed to constitute a material purpose of the trust.





Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively

■ Uniform Trust Code §412

- (a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust.
- (b) The court may modify the administrative terms of a trust if continuation of the trust ...would be impracticable or wasteful or impair the trust's administration.



Northern Trust



- 1992 New York Adopts First Decanting Statute
- 2014 The Following Statutes have Adopted Decanting Statutes:

Alaska, Arizona, Delaware, Florida, Illinois, Indiana, Kentucky, Michigan, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin, Wyoming

Statutes in effect as of 8/22/2014. See [Summaries of State Decanting Statutes](#), Susan T. Bart, Sidley Austin LLP. 2014





Non-Statutory Decanting

■ Common Law:

- Restatement (Second) of Property: Donative Transfers §11.1
- Restatement (Third) of Property: Wills and Other Donative Transfers §74 (2), Comment g.
- Case Law
 - Phipps v. Palm Beach Trust Co. 196 So. 299 (Fla. 1940)
 - In re Estate of Spencer 232 N.W. 2d 491 (Iowa 1975)
 - Wiedenmayer v. Johnson 254 A. 2d 534 (N.J. Super. Ct. App. Div. 1969)

■ Express Authority in Trust Agreement



Northern Trust



■ Uniform Trust Code §808 (b) – Powers to Direct

- §808 Comment: “subsections (b)-(d) ratify the use of trust protectors and advisors.”

■ Case Law

- Robert T. McClean Irrevocable Trust v. Davis 283 S. W. 3d 786 (Missouri App. 2009)

■ Potential Powers

- Trustee Supervision or Advice
- Modification of Trust Terms
- Discretionary Oversight
- Dispute Resolution

■ Protectors: Fiduciary Duties, Standard of Conduct





Thank You



Northern Trust