

# **My Client Died with a Revocable Trust ..... So What Happens Next?**

**A Review for Professional Advisors  
With BOK Financial's Advisor Trust Education Program**

**Presented by**

**Jerry D. Bell**



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# Agenda

What Really Happens? ..... The Trust  
Administration Process

Key Considerations

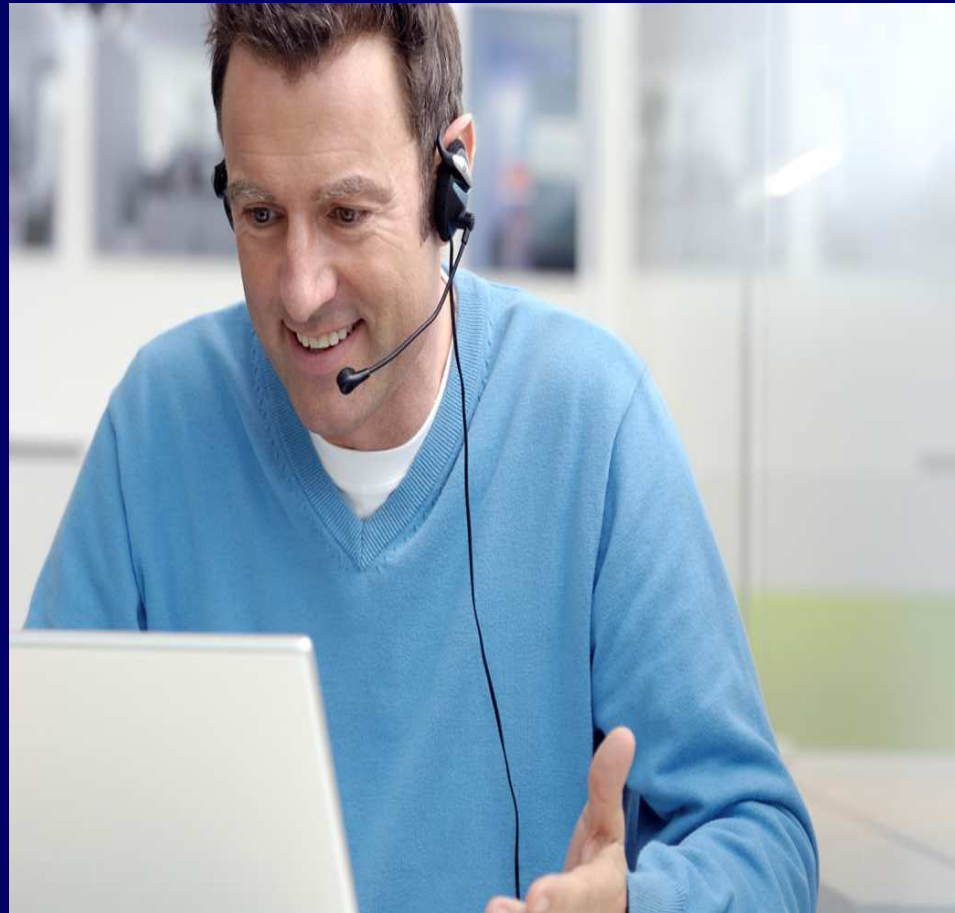
Probate – When is it Required?

Trust Protectors for a Trust

Corporate Trustee or Not

Lessons Learned

# So They Named YOU the Trustee



# Trust Administration – General

Good News – should not involve  
the Court

Bad News – limited guidance and  
you can be personally liable

LOTS of Work & Time Involved

The Buck DOES stop there!!



# Trust Administration – General Duties

Duty to Administer the Trust

Duty of Loyalty to Beneficiaries

Duty to Keep and Manage Accounts

Duty to Inform and Report

Duty to Preserve, Defend & Distribute



# Trust Admin – Uniform Trust Code (UTC)

General State Law for Trust Admin  
(GET A COPY!!!)

*As Example:*

*Missouri– Chapter 456*

*Kansas – Section 58a*

UTC is Helpful, but not crystal clear



A Judge would expect Trustee to adhere  
to the Uniform Trust Code and  
previous interpretation of the UTC via court cases

# Trust Administration Process - Death

Immediate Items (security, memorial, Cert of Trust)

What does the trust say? What does it mean?

What does the trust own? Asset Inventory?

What about IRAs/401-ks?

Tax ID # creation?

Letting the World know – Publish

Creditor's Rights

What about those beneficiaries and loyalty?

Is a probate needed? How does it relate to the Trust?

What about paying taxes .... which taxes?

Who pays the bills?

I want my money now !!



# Trust Administration Process - Disability

Immediate Items (security, care)

What does the trust say?

What does the trust own? Inventory?

Does trust control IRAs / 401-ks?

Prognosis of trustmaker? Who is PoA?

Is a guardianship needed?

Who is paying the bills?

What distributions have priority? Gifting allowed?

How much are the care costs for the future?

Should we file for Medicaid or other benefits?

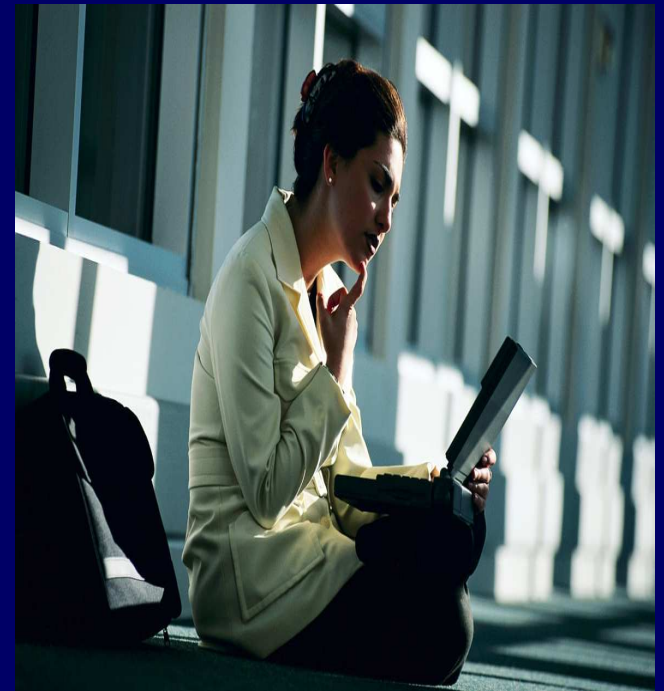
Preserve assets vs. pay for extended care?





# Trust Admin – Common Rough Spots

Interpretation of the Trust  
Non-Trust Assets (i.e. IRA)  
Paying Taxes / Dealing with IRS  
Personal Property and Emotions  
Funding of Post-Mortem trusts  
Family Bad Apples  
Duty to (all) Beneficiaries  
Oh No ..... Probate!!  
Estate Tax Portability – what do I do?  
Keeping all the numbers straight



# Trust Admin – Do NOT Go Here

Mixing Personal Funds with  
Decedent/Trust Funds

Sticky Fingers

Personal Property

Other Assets

NOT Getting Advice

Favoring Beneficiaries

Not Keeping Receipts

Forgetting About Taxes / Personal Liability

Too Many Early Distributions



# Trust Assets – What Really Matters?

Who is the Asset Owner?

- Investment/Bank Accts
- Real Estate
- Personal Property



Who are the Beneficiaries?

- IRAs/401-ks
- Life Insurance

What if the Decedent is the Owner and

There are No Beneficiaries → Probate

What about debt / mortgage holders?

# Trustee Duties – What is Important

KNOW the Uniform Trust Code!!

What is your duty to beneficiaries?

Do you have a duty to contingent beneficiaries? When?

What is your duty to IRS?

What is your duty to other creditors?

How can you protect yourself as Trustee? Is bond required?

Where does personal liability start?

What is your duty to inform others?



# Co-Trustees or Multiple Trustees

What was the original intent?

Does that original intent really matter?

What does the trust say?

Independent decisions vs. Majority  
decisions vs. Unanimous?

Who is the tie breaker if a stalemate?

Co-Trustee with Corporate Trustees

- Who has authority?
- What is Corporate Trustee policy?

Recommend Multiple Trustees? → Generally No  
and try to minimize this or control it.





# Probate vs. Trust Administration



# When Will Probate Be Required?

Assets owned by the Decedent with  
No Named Beneficiary

Common Assets Ending up in Probate

- Car / Vehicle
- Simple bank accounts
- Business and/or Biz Assets
- Home / Real Estate



Probate – slow, clunky, can be costly,  
public info, opportunity for drama → **Avoid!!**

# Trust Protectors





# Trust Protectors – General

What are they?

When did this start?

Common Applications

- Changes in the Law
- Admin clauses or Investment Powers
- Clean up Ambiguities
- Powers of Appointment

Can Create Real Advantages for the Client



# Trust Protectors – Limits

Trust Protector can Become Too Powerful → Know what it says!

Who Can Fire the Trust Protector?

Greed Can Be Dangerous

Too Complicated?



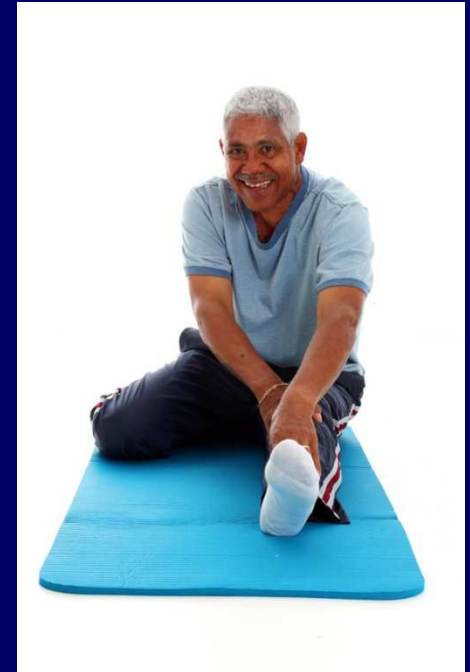
# Trust Protectors – Benefits

Creates Flexibility for the Trust

Does not replace updating Trust

Protects beneficiaries

Creates a “safety net” for beneficiaries



# Trust Admin – Distribution Plans

Trust Distribution Plans create  
Value for the Trust and  
Create Asset Protection!!

The Core Trust vs. Subtrusts or  
Beneficiary Trusts



When does the Core Trust end?

When does my job as Trustee end?

Can a Distribution Plan be Tooouoooo Complex?

# Corporate Trustee or Not?

Corporate Trustee = Objective

Corporate Trustee = No Family

Member is Burdened

Corporate Trustee = Usually Means

Trust Admin is Done Right

Corporate Trustee = Fee for Service

Corporate Trustee = Asset Protection

for Beneficiaries w/ Deferred Distributions

Complexity of Distribution and Family?

How much \$\$\$ involved vs. Minimum Fee?

Leverage of Beneficiaries over Trustee?



# Trust Litigation – Can it Happen?

Ultimately may happen ... \$\$\$\$

A Growing Area of Litigation

Is Trust Mediation an option?

Does the Trust require Arbitration?

“No Contest” Trust Clauses

Attorney Fees ..... who pays?

Family Harmony?



## Trust Admin – Value of Updated Plans

# Clients with updated trusts require less help with trust administration

# Do clients keep their trusts updated?

## Keys to Updated Trust Plans

- Trust is updated for their life events
- Assets are funded to the Trust
- Trust is updated for changes in laws
- Client keeps planning on their “radar”
- Planning is a process not a one-time event





## Lessons Learned

# Simplicity of Trust Admin can Have Value for a Family

# Balance Simplicity with Asset Protection and Trust Distribution Plans

# Carefully Choice Successor Trustees

# Corporate Trustee Can Have Value ... Evaluate

# Trust Funding of Assets is Critical !!!!

# Money **WILL** create Greed in a Family





# Recommend a Team Approach

Team usually includes @ least an accountant, financial planner and attorney

The mutual client is the personal representative (if a will) or the trustee (if a trust)



Highly recommend you have a team on the sidelines ready to play .... who is on your team?

# Thank You for Attending



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