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# Trust UPDATE

Stillman BANK

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## How to be your own trustee (*and why you may not want to*)

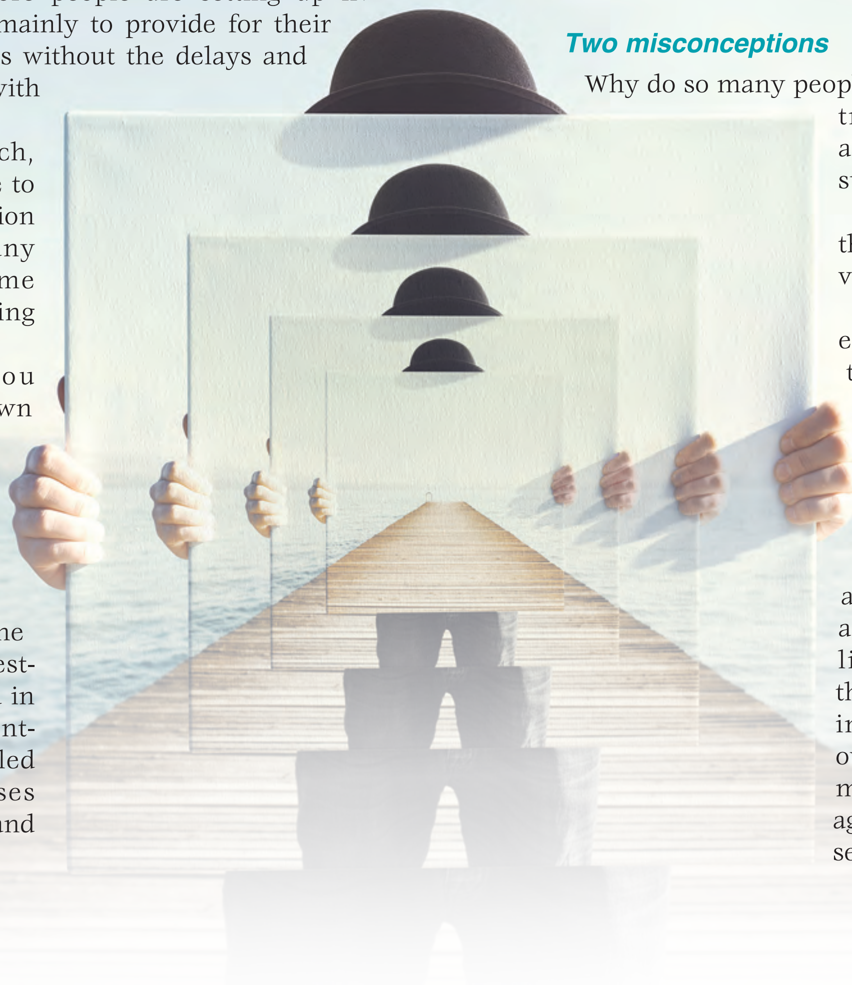
*"A [self-trusteed] revocable living trust is not unlike a mirror maze in a funhouse where you see yourself in every glass. When you set up the trust, you give some or all of your property to yourself as trustee. You no longer own it; your trustee, who happens to be you, does. (I told you this was done with mirrors.)"*

—Jane Bryant Quinn
*Making the Most of Your Money*

More and more people are setting up living trusts, mainly to provide for their beneficiaries without the delays and publicity associated with probate.

The best approach, we suggest, would be to name a trust institution as trustee, and many people do. But some want to try out being their own trustee.

What would you have to do as your own trustee? The specifics depend on the directions you give yourself—the terms of the trust agreement. In general, a trustee receives the investments or investable assets to be held in trust, invests prudently, and keeps detailed records of purchases and sales, receipts, and disbursements.



Presumably, a few superorganized individuals do a good job of self-trusteeship. But tales of misfortune abound. Many "do-it-with-mirrors" trusts have proved useless. Empty. Apparently, the grantors (as people who create living trusts are called) forgot to retitle their assets.

Some grantor-trustees make a brave start, then get distracted by other business. After four or five years of unrecorded investment changes, additions, and withdrawals, even a team of all-star accountants may not be able to find what's left of the trust.

### *Two misconceptions*

Why do so many people try to act as their own trustee? Two reasons, according to our informal surveys.

First, people are afraid they can't afford our services as trustee.

Second, they fear that employing a trust institution as trustee would require them to give up control of their assets, which they're unwilling to do.

We're happy to report that both fears are groundless. Our annual fees as trustee are likely to be less than the expenses they would incur if they did their own investing through a major Wall Street brokerage firm. What's more, our services as trustee actually

## Five reasons to take advantage of our living trust service

Planning to set up a living trust? Already have a trust of the self-trusteed variety? Here are good reasons to place your trust in our care.

**1. Reliability.** We understand the special responsibilities of a trustee. All trust funds in our care are safeguarded by both internal and external audits.

**2. Experience.** Trusteeship is our business.

**3. Responsiveness.** Financially successful individuals and their families expect personal attention and responsive service. We deliver.

**4. Objective investment guidance.** Unlike investment advisors who are compensated mainly by sales commissions, we earn our reasonable trustee's fee by providing our trust clients with unbiased, personalized guidance.

**5. Convenience.** From bill-paying to retirement planning, we can provide or obtain just about any convenience or special service that our trust clients desire.

give our clients *better* control of their financial destinies.

As a result, more and more people who might otherwise settle for "do-it-with-mirrors" trusts are taking advantage of our services instead.

***Trust service is a bargain.*** Our annual fees as trustee are competitive with those of other investment managers and counseling firms: around 1% or less of market value annually, depending on account size. Transaction costs add little to our client's expenses, thanks to the low institutional rates available to us as a corporate trustee.

By comparison, a do-it-yourself trustee who invested in stocks and bonds through a major brokerage firm is likely to spend more than 2% of account value annually, according to some estimates. Especially active accounts may incur substantially higher annual costs. Similarly, investors with wrap accounts or mutual fund accounts at full-service brokerage firms can expect annual costs of 2% to 3% annually.

Our trust service is not merely affordable, it is, we believe, an exceptionally good value.

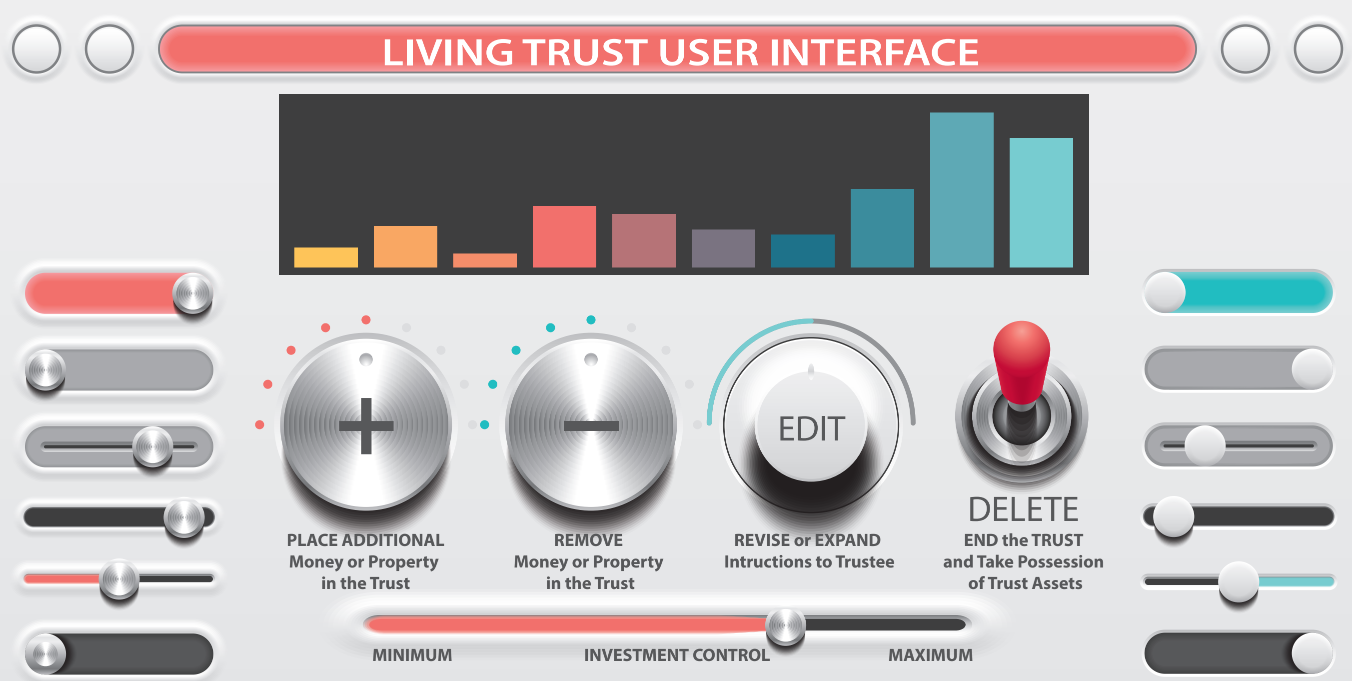
***Keeping control.*** When a new client establishes a revocable living trust and designates us as trustee, our job is to do what the client wants done, as spelled out in the trust agreement. The client is free to change the trust agreement or to revoke the trust altogether. Nothing's "tied up."

As trustee, we provide clients with an objective investment viewpoint and regular progress reports. They know where they stand and where they're headed, financially speaking. They can be as involved or uninvolved in specific investment decisions as they wish. And, of course, they're always free to replace us as trustee if our work doesn't meet their standards.

***Testing, testing . . . .*** Do-it-yourself trust kits often suggest that a trust institution be named as successor trustee, to take over when needed—that is, when the creator of the trust becomes incapacitated or dies. According to a number of our trust clients, there's a better approach. They have put us to work as trustee from the start, retaining as much control as they wished.

The advantage of this approach is that our clients and their families have the opportunity to test and evaluate our services as trustee. Also, family members get to know us and see how we go about our work. Likewise, we have a chance to get to know them.

***Discover the difference.*** If you're considering a living trust, come talk with us. Like many other men and women, you'll probably discover that our services as trustee are a most practical alternative to doing it yourself. ☐




# Notes on tax reform

The Tax Cuts and Jobs Act enacted in December sparked an unusual amount of controversy for a bill trying to give something to everyone. The primary goal was bringing U.S. taxation of corporations into line with what the rest of the world does in this regard. The largest change is the reduction of the corporate tax rate from 35% to 21%. When this rule is combined with the new system of territorial taxation (profits will be taxed where they are earned), the incentives for big companies to relocate their headquarters abroad will be reduced greatly. Also, the economy should get a boost from the 100% write-offs for investments in new equipment this year.

There are major benefits for individual taxpayers as well, notably the doubling of the standard deduction and lifting the child tax credit to $2,000. The benefit is blunted somewhat by the loss of the personal exemption and curtailment of deductions.

Most taxpayers will find themselves in a lower marginal tax bracket next year, and the IRS has promised new withholding tables by February to reflect that fact.

### *Homeowners*

Somehow, tax changes need to be "paid for"; they cannot be justified on their own merits. Some homeowners may find their tax benefits diminished in 2018. Interest on new home mortgages will be deductible only to the extent of $750,000 worth of debt—existing mortgages are grandfathered, however, and are unaffected. Interest on home equity loans will no longer be deductible.

In high-tax states, the more important change may be the cap of $10,000 on the deduction for state and local taxes. In the flurry of year-end tax planning articles, some advised pre-paying 2018 taxes in 2017 to preserve the unlimited deduction. The final legislation makes clear that the strategy won't work for income taxes, but it may work for real estate taxes.

Those who relied upon these deductions in the past to reduce their federal tax burden should double check their withholding so as to avoid not sending enough to the IRS in 2018. The reckoning comes in April 2019.

### *Investors*

Current law gives investors great flexibility in managing the sales of their investments. Let's say that an investor owns three lots of a particular stock, purchased five years ago, three years ago, and six months ago. It is never obvious which lot should be sold first—tax basis, holding periods, and the investor's other tax circumstances will come into play. Selling for a short-term gain of $1,000 may be preferable to a long-term gain of $5,000, even though a higher tax rate will apply.

The Senate bill would have taken that flexibility away, and demanded first-in/first-out accounting for asset sales. The move was projected to raise billions of dollars as it eliminated investor choice. However, there were unresolved questions about how the rule might apply to multiple accounts, as well as considerable pushback from the investor community, and the idea was dropped in the final version of the tax legislation.

Although investors may breathe a sigh of relief, the incident points up the importance of taking basis into account when managing asset sales. Now that the idea is out there, it may come up again in a future tax reform effort.

### *Divorced couples*

The current tax rule is that payment of alimony is deductible and the receipt of alimony is taxable income. That rule tends to lower the couple's overall tax bill, as the higher-earning spouse is generally the payor. The new tax law eliminates that deduction (and the income tax for the payee), which is scored as a revenue raiser for the government. However, the rule was delayed for a year in the final bill, and so begins to take effect for divorce and separation agreements beginning in 2019.

### *Heirs*

As of 2018, the amount exempt from federal estate tax has doubled, to $10 million plus inflation adjustments, bringing it to $11.2 million. That's per decedent, so a married couple has $22.4 million of protection from the federal estate and gift tax. Although that lets a great many estates off the tax hook, most of the federal estate tax revenue comes from the estates of $50 million and up, so most of the revenue has been preserved.

To meet budgetary restraints, this change expires at the end of 2025, as do all of the individual tax changes. A future Congress may decide to make the changes permanent—or it may not.

The temporary nature of the changes makes estate planning a bit more complicated, but no less important. Estate planners should be looking forward to a busy year ahead. ☐

## Living trust successfully defended

This is a true story about the successful use of a trust to manage inheritance distribution in accordance with the wishes of the property owner.

The details in the court decision about the tensions in the Briggs family are sketchy, but we do know that Elizabeth Briggs used a revocable living trust to manage her finances. Judith, her daughter, was a trustee. In 2009 Elizabeth amended her trust to disinherit her son, Thomas. That meant that when the trust terminated at Elizabeth's death, all the trust assets would pass to Judith. The amendment stated that Thomas knew the reasons for his disinheritance, but the court decision does not go into them.

After Elizabeth died in 2013, an attorney for the estate and trust advised Thomas that he had received no property from his mother's estate. The notice also advised Thomas that he had 60 days to commence any judicial proceeding against the trust.

Acting as his own lawyer, and within the 60 days, Thomas e-mailed the county clerk and the attorney a "Notice of Objection to the Trust Instrument of Elizabeth A. Briggs." However, the reasons for the objection were not identified. No remedy was proposed. Accordingly, no court file was opened.

Some 611 days after Thomas received his 60-day notice, he commenced a judicial proceeding to contest the amendments to the trust and his disinheritance. He also alleged that Judith had exercised undue influence over Elizabeth, as well as that she had breached her fiduciary duties to the trust. The nature of the breach was not explained.

In 2010 the relevant state law (South Dakota) had been amended to create the 60-day window for lodging an objection to the validity of a trust or a trust amendment. That specific time period trumped the more general state statute of limitations governing undue influence claims, the lower court held, and the South Dakota Supreme Court now agrees. Thomas' filing of an objection to the trust did not "stop the clock" on the time limit. He had 60 days to begin his action; he did not, and so his lawsuit is untimely. The trust amendment is preserved, and Thomas is disinherited.

As to the alleged breach of fiduciary duty, Judith was not named as a defendant to the lawsuit. The trust is not liable for any of Judith's actions as her mother's caretaker, even assuming that she exercised undue influence. Accordingly, that claim was dismissed as well.

In this particular case, the attack on the trust failed because of the serial failures of Thomas acting as his own lawyer. But estate planners agree that attacks on a trust generally are harder to maintain by disappointed heirs than are attacks on a will. The trust has been actively in operation with the approval of the property owner, in contrast to the dormancy of a will. ☐