Changing Trust Situs

Thomas M. Forrest

President, U.S. Trust Company of Delaware

U.S. TRUST
Bank of America Private Wealth Management

Changing Trust Situs

U.S. TRUST

Choice of law:

- When creating a new trust, a grantor can and should designate the law of the trust state that will govern matters of validity, construction and administration.

- What happens down the road when the grantor may be deceased and the children/grandchildren read about other benefits a trust may receive in another jurisdiction?

- The following presentation will provide the reasons for changing trust situs, the benefits that may be achieved and the challenges and roadblocks that may occur during the process.

(Presentation will focus on Delaware but many of the issues also apply to other states as well)

Reasons for Moving Trusts

U.S. TRUST

- Ability to designate an independent investment advisor to manage the trust assets
- Reduce or eliminate state fiduciary income tax
- Greater assurance that trust assets will be secure from creditor claims
- Dynasty trust provisions
- Better investment flexibility
- Privacy/confidentiality reasons

Reasons for Moving Trusts (Continued)

U.S. TRUST

- Avoidance or minimization of accounting requirements and other administrative costs
- Concentrated positions in trust
- Administrative flexibility
- Allocation of fees and expenses between Income and Principal
- The availability of a total-return unitrust statute
- Modify trust administrative provisions

Why do clients choose Delaware?

U.S. TRUST

Flexible trust structures	Favorable trust laws	Advantageous tax laws	Trust-friendly environment
• Directed Trusts • Use of Investment Advisors • Use of Distribution Advisors • Use of Protectors • Trust Decanting • Equitable Adjustments	• Asset Protection Trusts • Dynasty Trusts • Total Return Trusts • Purpose Trusts	• No Delaware state income tax on trusts* • No intangibles or excise taxes	• High regard for privacy and confidentiality • Well-respected Court of Chancery • Industry-leading and innovative body of trust law

* Provided beneficiaries are not residents of Delaware

Favorable and innovative trust laws

U.S. TRUST

Delaware: a history of pro-trust legislation

1986	1995	1997
Administrative trusts Delaware adopted Modern Portfolio Theory for trust investing and authorized trustees to follow the investment directions of an "investment advisor" named in the trust instrument, without liability for the investment results.	**Dynasty trusts** Delaware repealed the "Rule Against Perpetuities," enabling grantors to establish trusts that span generations and limit transfer tax exposure.	**Domestic asset protection trusts** The Qualified Dispositions in Trust Act authorizes self-settled asset protection trusts designed to protect assets from a client's future creditors' claims — while allowing the grantor to retain certain interests in the trust, such as the ability to receive discretionary distributions. While no court has considered the effectiveness of such a trust, Delaware offers this progressive option for clients seeking domestic asset protection strategies.
2000	**2003**	**2009**
Total return unitrusts Delaware enacted the first total return unitrust statute allowing grantors to establish a unitrust and trustees to convert existing trusts to a unitrust — thus aligning the investment interests of both current beneficiaries and remaindermen.	**Trust decanting** Delaware created a mechanism for a trustee of an irrevocable trust to modify the terms of the trust by creating an entirely new trust and transferring the existing trust's assets to the new trust. This is a powerful tool for a trustee to have when administering long-term trusts to deal with constant legal, tax, investment or beneficiary changes that occur over time.	**Power to adjust** Delaware law permits a trustee to adjust between principal and income to the extent the trustee considers necessary to administer a trust fair, reasonable and impartially among the beneficiaries – both current and remainder.

Moving Trusts to Delaware

U.S. TRUST

There are several methods to change the situs of a trust: For example, let's assume a trust in one jurisdiction wants to change the situs to Delaware for it's directed investment advisor provisions:

1. The trust instrument includes broad language for the removal and appointment of trustees and does not restrict residence of trustees, and includes all other language necessary under the Delaware directed trust statute, and allows the trustees to change situs to select the trust's governing law.

   Trust can me moved with the exercise of the removal and appointment provisions.

2. Same scenario as above, except the trust instrument does not include the Delaware administrative provisions, such as directed trusts with respect to investments. The trust resides in a state which does not have a non-judicial reformation statute, decanting statute, nor provisions for discretionary distributions.

   Removal and appointment clause can be exercised naming a Delaware trustee. A petition to modify the trust will have to be filed with The Delaware Court of Chancery.

3. Same scenario as above, except the trust instrument includes language for trustees discretion to distribute principal.

   Trust can be moved to Delaware and then the trustee can decant the trust into a new trust with all the required directed trust language.

Moving Trusts to Delaware (Continued)

U.S. TRUST

4. Same scenario as above, except the trust instrument includes principal distribution language that qualifies under the home state's decanting statute.

   Trustee can decant into new Delaware directed trust.

5. The trust instrument does not include language for the removal and appointment of trustees and the home state does not have non-judicial settlement or decanting statutes, which might be utilized.

   Beneficiaries will need to petition the home state court for removal of current trustee and appointment of new trustee. Some state courts may include in any reformation granted a change of situs to Delaware and may even include the directed trust language. If not, once the home state court order is received, then the beneficiaries will need to file a trust reformation petition in the Delaware Court of Chancery for inclusion of the Delaware administration provisions.

6. The trust instrument includes language for the removal and appointment of trustees but does not include the Delaware administrative provisions, such as directed trusts with respect to investments. Trust resides in a state which does permit non-judicial settlements.

   Trust can be moved to Delaware with a modified trust agreement prepared by local counsel under the non-judicial settlement statute for that state.

7. Other – Side agreements (not recommended), merger statute, (not recommended)…

Consent Petitions:

Rule 101: Party submitting the consent petition shall file contemporaneously an appendix of exhibits including but not limited to:

1. The current trust instrument;
2. The terms of the proposed modifications of the trust's governing instrument;
3. A black lined version of the proposed modified trust agreement indicating plainly the differences from the current trust instrument;
4. A clean version showing how the proposed modified trust instrument will read if the consent petition is granted;
5. Any orders relating to the trust instrument;
6. A family tree or other document showing the relationship to the trustor of those having a beneficial interest in the trust; and

Consent Petitions (Continued):

7. Consents or statements of non-objection to the relief sought in the petition from all whose interest in the trust is affected by the petition, which may include, but shall not be limited to, consents from:

   i. Trustees and other fiduciaries, unless they have otherwise signified their consent or non-objection to the petition by acting as a petitioner or accepting a fiduciary position;

   ii. Trust beneficiaries, who will generally be those with a present interest in the trust and those whose interest in the trust would vest, without regard to the exercise or non-exercise of a power of appointment, if the present interest in the trust terminated on the date the petition is filed;

   iii. The trustor of the trust, if living; and

   iv. All other persons having an interest in the trust according to the express terms of the trust instrument (such as, but not limited to, holders of powers and persons having other rights, held in a nonfiduciary capacity, relating to trust property).

Decanting § 3528 Title 12 Delaware Code:

(a) Unless the terms of the instrument expressly provide otherwise, a trustee who has authority (whether acting at such trustee's discretion or at the direction or with the consent of an adviser), under the terms of a testamentary instrument or irrevocable inter vivos trust agreement, to invade the principal of a trust (the "first trust") to make distributions to, or for the benefit of, 1 or more proper objects of the exercise of the power, may instead exercise such authority by appointing all or part of the principal subject to the power in favor of a trustee of a trust (the "second trust") under an instrument other than that under which the power to invade is created or under the same instrument, provided, however, that, except as otherwise provided in this subsection (a):

(1) The exercise of such authority is in favor of a second trust having only beneficiaries who are proper objects of the exercise of the power;

(2) In the case of any trust, contributions to which have been treated as gifts qualifying for the exclusion from gift tax described in § 2503(b) (26 U.S.C. § 2503(b)) of the Internal Revenue Code of 1986 (26 U.S.C. § 1 et seq.) (hereinafter referred to in this section as the "I.R.C."), by reason of the application of I.R.C. § 2503(c) (26 U.S.C. § 2503(c)), the governing instrument for the second trust shall provide that the beneficiary's remainder interest shall vest and become distributable no later than the date upon which such interest would have vested and become distributable under the terms of the governing instrument for the first trust;

(3) The exercise of such authority does not reduce any income or unitrust interest of any beneficiary of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523 (26 U.S.C. § 2056 or § 2523) or for state tax purposes under any comparable provision of applicable state law; and

Decanting § 3528 Title 12 Delaware Code:

(4) The exercise of such authority does not apply to trust property subject to a presently exercisable power of withdrawal held by a trust beneficiary who is the only trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions.

(b) The exercise of the power to invade the principal of the trust under subsection (a) of this section shall be by an instrument in writing, signed and acknowledged by the trustee and filed with the records of the trust.

(c) The exercise of the power to invade the principal of the trust under subsection (a) of this section shall be considered the exercise of a power of appointment (other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate) and shall be subject to the provisions of Chapter 5 of Title 25 covering the time at which the permissible period of the rule against perpetuities begins and the law which determines the permissible period of the rule against perpetuities.

(d) The provisions of this section shall not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust which arises under any other section of this chapter or under another statute or under common law.

(e) When exercising the authority granted under subsection (a) of this section, the trustee and any adviser directing or consenting to the trustee's exercise of such authority shall be held to the standard of care and the standard of liability applicable to the trustee and any such adviser when making outright distributions, free from trust, to or for the benefit of 1 or more permissible distributees.

(f) This section shall be available to any trust that is administered in this State.

Moving Trusts

U.S. TRUST

Some Uniform Trust Act States with nonjudicial settlement agreement statutes:

Alabama	*§§19-3B-101*
Arkansas	*§§28-73-101*
Arizona	*Title 28 §§28-73-101*
District of Columbia	*§§19-1301*
Florida	*§§736-0101*
Kansas	*§§ 58a-101*
Illinois	*§§760*
Iowa	*Title 15 §633A.6308*
Maine	*§§18-B, §§111, 411*
Massachusetts	*Chapter 203E, Article 1, § 111*
Michigan	*§§7111 MCL §700.7101*
Minnesota	*Chapter 501B. §154*
Missouri	*§§456-001.111*
Nebraska	*§§30-3801*
New Hampshire	*Chapter 564-B Uniform Trust Code*

Some Uniform Trust Act States with nonjudicial settlement agreement statutes (continued):

New Jersey	*§§3B:31-11*
New Mexico	*§§46A-1-111*
North Carolina	*§§36C-1-101*
North Dakota	*§§59-09-01*
Ohio	*§§5801.01*
Oregon	*§§130.001 §130.045 UTC 111*
Pennsylvania	*20 Pa. Cons. Stat. §§7701-7799.3*
South Carolina	*Title 62 §§62-7-101*
Tennessee	*§§35-15-111*
Utah	*Title 75, Ch. 07: §§75-7-110*
Virginia	*§§55-541.11*
Vermont	*Title 14A §§101 (§§111 & 411)*
Washington	*RWC 11.98.039*
Wisconsin	*With consent of settlor §701.12*
Wyoming	*§§ 4-10-101*

State Fiduciary Income Tax

Delaware does not impose state income taxes on an irrevocable trust's accumulated earnings and capital gains if there are no beneficiaries living in the state. Several other states also do not tax income or capital gains. The income tax treatment varies widely from state to state:

The following factors determine the taxation of trusts for state fiduciary income tax purposes:

1. If the trust was created by the Will of a testator who lived in the state at death;
2. If the trust is administered in the state;
3. If one or more trustees live or do business in the state;
4. If the trustor of an inter vivos trust lived in the state when he or she placed assets in the trust or when the trust became irrevocable; or
5. If one or more noncontingent beneficiaries live in the state.

Moving Trusts

U.S. TRUST

Roadblocks – challenges to moving trusts from the client's perspective:

- Lack of appropriate language in document
- Uncooperative trustees
- Uncooperative beneficiaries
- Court intervention
- State laws
- Cost of moving
- Fee Issues
- Lack of understanding of Delaware or other state benefits
- Application of multiple state laws to trusts

Moving Trusts

U.S. TRUST

Roadblocks – challenges to moving trusts from the trustee's perspective:

- Administrative Situs – Peierls case
- Decanting – Potential Trustee liability
- Court intervention
- State laws
- Cost of moving
- Application of multiple state laws to trusts
- Other – consents, releases etc.

Disclosure

This presentation is designed to introduce you to the products and services available through U.S. Trust, Bank of America Private Wealth Management, is provided for informational purposes only, and is not issued in connection with any proposed offering of securities. This presentation is not used with regard to any 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 presentation or its contents. The information in this presentation was obtained from sources believed to be accurate, but we do not guarantee that it is accurate or complete. The opinions expressed herein are made as of the date of this material and are subject to change without notice. There is no guarantee the views and opinions expressed in this presentation will come to pass. Other affiliates may have opinions that are different from and/or inconsistent with the opinions expressed herein and may have banking, lending and/or other commercial relationships with Bank of America and/or its affiliates. All charts are based on historical data for the time periods indicated and are intended for illustrative purposes only.

Past performance is no guarantee of future results.

IMPORTANT: The material presented is designed to provide general information about ideas and strategies. It is for discussion purposes since the availability and effectiveness of any strategy is dependent upon your individual facts and circumstances. Performance figures should be utilized only in a one-on-one presentation with clients or prospective clients accompanied by the appropriate disclosure statement. Taxable accounts may have varying performance due to each individual account's tax status. 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.

Investment products:

Not FDIC Insured	Not Bank Guaranteed	May Lose Value

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.

Investing in securities involves risks, and there is always the potential of losing money when you invest in securities.

FOR FIDUCIARY USE ONLY.

Delaware Trusts

U.S. TRUST

Bank of America Private Wealth Management

Why do clients choose Delaware?

Flexible trust structures	Favorable trust laws	Advantageous tax laws	Trust-friendly environment
• Directed Trusts • Use of Investment Advisors • Use of Distribution Advisors • Use of Protectors • Trust Decanting • Equitable Adjustments	• Asset Protection Trusts • Dynasty Trusts • Total Return Trusts • Purpose Trusts	• No Delaware state income tax on trusts* • No intangibles or excise taxes	• High regard for privacy and confidentiality • Well-respected Court of Chancery • Industry-leading and innovative body of trust law

* Provided beneficiaries are not residents of Delaware

Favorable and innovative trust laws

Delaware: a history of pro-trust legislation

1986	1995	1997
Administrative trusts Delaware adopted Modern Portfolio Theory for trust investing and authorized trustees to follow the investment directions of an “investment advisor” named in the trust instrument, without liability for the investment results.	**Dynasty trusts** Delaware repealed the “Rule Against Perpetuities,” enabling grantors to establish trusts that span generations and limit transfer tax exposure.	**Domestic asset protection trusts** The Qualified Dispositions in Trust Act authorizes self-settled asset protection trusts designed to protect assets from a client’s future creditors’ claims — while allowing the grantor to retain certain interests in the trust, such as the ability to receive discretionary distributions. While no court has considered the effectiveness of such a trust, Delaware offers this progressive option for clients seeking domestic asset protection strategies.
2000	**2003**	**2009**
Total return unitrusts Delaware enacted the first total return unitrust statute allowing grantors to establish a unitrust and trustees to convert existing trusts to a unitrust — thus aligning the investment interests of both current beneficiaries and remaindermen.	**Trust decanting** Delaware created a mechanism for a trustee of an irrevocable trust to modify the terms of the trust by creating an entirely new trust and transferring the existing trust’s assets to the new trust. This is a powerful tool for a trustee to have when administering long-term trusts to deal with constant legal, tax, investment or beneficiary changes that occur over time.	**Power to adjust** Delaware law permits a trustee to adjust between principal and income to the extent the trustee considers necessary to administer a trust fair, reasonable and impartially among the beneficiaries – both current and remainder.

Flexible trust structures — Administrative/Directed trusts

Flexibility

Clients can divide traditional trust responsibilities among multiple parties

- Administrative/Directed trustee
- Investment Advisor
- Distribution Advisor
- Trust Protector

May be used with:

- Asset Protection Trusts
- Dynasty Trusts
- Total Return Trusts
- Other Trusts

Flexible trust structures — Administrative/Directed trusts

Defining the roles

Administrative Trustee	Investment Advisor	Distribution Advisor	Trust Protector
• May or may not have discretionary distribution authority or investment authority • Fiduciary income taxes, statements, principal and income accounting • If an Investment Advisor is appointed, takes direction from Investment Advisor regarding trust assets • If a Distribution Advisor is appointed, takes direction from Distribution Advisor regarding distributions of trust income and principal	• Directs Trustee regarding investment decisions • Fiduciary capacity, unless stated otherwise in document • Responsible for investment of trust assets • Selects Investment Managers/manages assets	• Directs Trustee with respect to discretionary distributions • May be an individual or committee • May have unique family insights	• Adds flexibility to an irrevocable trust • Powers defined by trust and can be specifically tailored • May be given various powers, such as power to amend, to remove Trustee and/or change situs

Administrative trusts are a bifurcation of duties of the fiduciaries, not a delegation under the Uniform Prudent Investor Act.

Flexible trust structures — The Investment Advisor

Administrative Trustee

- Administers trust
- Legal owner of trust assets
- Custody of trust assets
- Fiduciary tax return preparation
- Principal and Income accounting and reporting
- Implements investment decisions
- Makes trust distribution of Income and Principal as required or authorized by governing trust agreement
- Other administrative duties

Investment Manager

- Works with Investment Advisor (IA)
- Manages trust assets
- IA may hire multiple Investment Managers

Investment Advisor

- Individual or Registered Investment Advisor (RIA)
- Manages assets and/or selects Investment Manager(s)
- Monitors Investment Manager(s)
- Directs Trustee to implement investment decisions

Flexible trust structures —
The Distribution Advisor and Trust Protector

- Trustee will make distributions to beneficiaries as directed by Distribution Advisor
- Trustee will take direction from Trust Protector with respect to powers granted to the Trust Protector in the trust agreement
- Trust may also have an Investment Advisor

Administrative Trustee or Co-Trustee

Trust Protector

- Appointed in document
- Directs Trustee — depending upon authority granted in trust (e.g., transfer trust situs, amend trust agreement)

Distribution Advisor

- Appointed in document
- Directs distributions
- Ordinarily, an individual close to the family who understands family dynamics and needs
- Useful for subjective distribution standards

Flexible trust structures — Case study

Administrative/Directed Trusts: Planning for a family business

Andrew and Eileen, ages 57 and 55, own a profitable business. The business is now valued at $20 million. They anticipate that the value will grow over time – and that their private company may eventually be purchased by a public company. The couple wants to gift interests in the business to their children, but also wants to control decisions related to the business.

Trustee and Client Roles:

- Andrew appoints ABC Trust Company of Delaware as Administrative Trustee and names himself as Investment Advisor. The trust names Eileen as Successor Investment Advisor.

Solution

The clients decide to gift $5.25 million or $10.5 million in closely held stock to a Delaware Administrative Trust, appointing Andrew as the Investment Advisor and Eileen as Successor Investment Advisor. Andrew maintains control over the trust investments during his life, and if Eileen survives him, she will control trust investments for the remainder of her life.

In addition, because they control the business, they control when the earnings of the company are distributed among the shareholders (of which the trust is now one).

ABC Trust Company of Delaware, as Administrative/Directed Trustee is responsible for all other aspects of the administration of the trust, including making mandatory and discretionary distributions of income and/or principal to the couple's children.

This story is intended to illustrate an Administrative/Directed Trust. It may not represent the experience of every client, nor does it indicate future performance or success.

Flexible trust structures — Case study

Administrative/Directed Trusts: Planning for a family business (continued)

How it works:

- $5.25 million or $10.5 million in closely held stock is transferred to trust
- Potential benefit from valuation discounts on the transferred stock
- Gift and GST tax exemptions are applied to the transfer
- All future appreciation is removed from the grantors' estates
- Trust may be perpetual (known as a "Dynasty Trust"), avoiding future transfer taxes
- Can be structured as a grantor trust for income tax purposes, if desirable — meaning that all items of taxable income, gain and loss are attributed to the grantor (leaving more assets in the trust)
- As Investment Advisors, the clients control trust investments, and their continuing control over the business allows them to decide when to distribute business earnings to shareholders
- Can make additional gifts to the trust utilizing annual gift tax exclusions if withdrawal ("Crummey") powers are conferred upon the beneficiaries (but should only be made if additional GST exemption is allocated to the contributions, as appropriate)

Flexible trust structures — Client solutions

Client situation	Solution
Client wants to create an Irrevocable Trust with a concentrated position. Client does not want to diversify	Name ABC Trust Company of Delaware as Administrative/Directed Trustee. Appoint family members as Investment Advisors
Client wants to create a trust to shield assets from future creditors, wants his trusted RIA to manage the trust investments, and wants to retain a right to receive income and/or principal in the discretion of the Trustee	Name ABC Trust Company of Delaware as Administrative/Directed Trustee of a Delaware Asset Protection Trust. Name RIA as Investment Advisor and Trust allows the Trustee to make discretionary distributions of trust income and principal to client
Client wants to create a Dynasty Trust, wants unique interpretation of distribution standard, and is concerned about how changes in tax laws may affect trust	Name ABC Trust Company of Delaware as Administrative/Directed Trustee. Appoint trusted family member as Distribution Advisor and attorney as Trust Protector
Client creates an LLC to hold assets and wants to sell or gift some or all of the LLC interests to his irrevocable Grantor Trust	Name ABC Trust Company of Delaware Administrative/Directed Trustee and appoint client as Investment Advisor. Client directs Administrative Trustee to enter into agreement to purchase some or all of the LLC interests, or to hold the LLC interests if gifted to trust by client

Dynasty Trust — Basics

What it is:

- A multigenerational irrevocable trust
- Also known as a “Perpetual” Trust
- Serves as resource to provide for income and support to children, grandchildren and future generations
- Can be structured to avoid or limit exposure to federal gift, estate and generation-skipping transfer (GST) taxes
- Assets placed in the trust, plus all future appreciation, will not be subject to federal estate tax in the Grantor's estate nor in any future beneficiary’s estate

Dynasty Trust — Background

Old "common law" rule — No Perpetual Trusts

- Rule Against Perpetuities
- Duration of a trust was generally limited to a specified term of years based on measuring lives identified in the governing trust agreement

Introduction of current GST Tax regime in 1986

- A tax incurred upon certain transfers to members of younger generations in addition to estate tax
- GST tax on transfers that "skip" a generation
- GST exemption, $5.25 million in 2013, can be utilized during life or at death

In 1995, Delaware repealed the Rule Against Perpetuities with respect to assets held in trust (other than real estate, which can be held in trust for 110 years).

- Real estate can be placed into an entity such as an LLC to avoid the 110 year limitation

Dynasty Trust — How it works

- Irrevocable trust governed by Delaware law
- Typically funded with gift tax exemption amount (In 2013, $5.25 million for an individual, $10.5 million for a married couple)
- GST tax exemption allocated to trust; additional funds can be added at death to take advantage of any GST exemption remaining at death
- Provides benefits to heirs, but not direct ownership
  - Protects assets from consequences of divorce, creditors and uncontrolled spending
- Additional assets can be added to the trust through the use of annual gift tax exclusion gifts if the trust confers upon beneficiaries withdrawal ("Crummey") powers; but should only be made if additional GST Exemption is allocated to the contributions as appropriate
- Life insurance and Family Limited Partnerships/LLC interests are common assets used to fund Dynasty Trusts because of the leverage that can be obtained as a result of "reduced" or potentially "discounted" values at time of funding (versus value of policy death benefit or value of underlying FLP/LLC assets)

Transfer tax benefits of a Delaware Dynasty Trust[1]

Assuming an initial transfer of $5,250,000[2]	Value of a Delaware Dynasty Trust	Value of an outright gift
End of year 1	$5,512,500	$5,512,500
End of year 20	$13,929,813	$13,929,813
End of year 40 (transfer to next generation)	$36,959,941	$22,175,964 (after transfer tax) [3]
End of year 70 (transfer to next generation)	$159,738,734	$57,505,944 (after transfer tax) [3]
End of year 100	$690,381,604	$149,122,426 (after transfer tax) [3]

[1] These projections are estimates only and are based on constantly changing assumptions. Your actual results may be better or worse. Long-term financial projections cannot be made with any certainty and are never guaranteed. 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. Calculations assume a 5% rate of return after taxes and fees and no distributions.

[2] Assumes 2013 Federal GST Exemption of $5,250,000 and Federal Gift Tax Exemption of $5,250,000, as set forth by the American Taxpayer Relief Act of 2012, are applied to the transferred assets (fully shields the transfer from Federal GST and Gift tax).

[3] Transfer tax rate =40%, as set forth by the American Taxpayer Relief Act of 2012.

Dynasty Trusts and the advantages of Delaware

Income taxes	Flexibility	Privacy and confidentiality
• Delaware does not impose a state income tax as to beneficiaries who do not live in Delaware • Grantor Trust — Grantor pays taxes on items of income and capital gain • Non-Grantor Trust — Trust pays taxes on items of income and capital gain	• Administrative/Directed Trustee • Investment Advisors • Distribution Advisors/Trust Protectors	• Court accountings are not required • Non-disclosure permitted for a period of time

Dynasty Trusts — Flexible trust structures

Dynasty Trust

Administrative/Directed Trustee

- Administers trust
- Appointed in trust
- Prepares and files trust tax returns
- Custody and record-keeping
- Principal and Income accounting
- Follows directions of Investment and Distribution Advisors

Investment Advisor

- Directs investments
- Appointed in trust
- Selects and monitors investment managers
- Open architecture

Distribution Advisor

- Directs distributions
- Appointed in trust
- Useful for subjective distribution standards

Flexible trust structures — Case study

Dynasty Trusts: Keeping wealth in the family

Peter and Joan — both 70 — have a net worth of $25 million. They have three children and five grandchildren and would like to implement an efficient gifting strategy. Their advisor suggests a planning meeting with their attorney and local trust professional. They are also interested in professional fiduciary investment management, but would like a family member to make decisions regarding distributions to beneficiaries. Finally, Peter and Joan are concerned about the impact of wealth on their grandchildren.

Solution
The clients choose to gift $10.5 million to a Delaware Dynasty Trust, leaving a lasting legacy that can grow free of transfer tax for generations.

This story is intended to illustrate a Dynasty Trust. It may not represent the experience of every client, nor does it indicate future performance or success.

Flexible trust structures — Case study

Dynasty Trusts: Keeping wealth in the family (continued)

How it works:

- $10.5 million is transferred to the trust
- Gift tax and GST tax exemptions are applied
- All future appreciation is removed from grantors’ estates
- Trust is perpetual, avoiding future transfer taxes
- Structured as a grantor trust for income tax purposes, if desirable
- Grantors appoint a Distribution Advisor
- Grantors make additional gifts to the trust utilizing annual gift tax exclusions if withdrawal (“Crummey”) powers are conferred upon the beneficiaries (but should only be made if additional GST exemption is allocated to the contributions as appropriate)
- Grantors direct trustee to maintain confidentiality until stated ages of beneficiaries as allowed by Delaware law

Asset Protection Trusts

- Traditionally, an individual could **not** create a domestic trust for his or her own benefit while protecting those same trust assets from creditors
- Offshore trusts have been used for years for asset protection purposes, but may be subject to onerous tax rules and uncertainty in their effectiveness depending upon the foreign jurisdiction selected
- Delaware was one of the first jurisdictions to recognize the ability to create a domestic Asset Protection Trust (APT)
- **A Delaware asset protection trust allows the grantor to have an interest in the trust income and principal, and various power over the trust, without exposing the trust assets to the grantor's creditors**

Asset Protection Trusts — Delaware's Qualified Dispositions in Trust Act

The basics

- Transfer assets to an irrevocable trust that contains a spendthrift clause (an APT)
- Provision that Delaware law governs the trust's validity, construction and administration
- Delaware-resident trustee
- Delaware trustee must "materially participate" in the administration of the trust

* U.S. Trust Company of Delaware is a subsidiary of Bank of America, N.A

Asset Protection Trusts — Delaware's Qualified Dispositions in Trust Act (continued)

An APT grantor may retain:

- The power to direct investments or consent to investments (Administrative/Directed APT)
- The power to veto distributions
- The ability to change trustees or advisors (subject to certain limitations so as to avoid negative tax consequences)
- The right to receive:
  - Current income distributions
  - Income and/or principal, subject to certain standards or in the discretion of the Trustee (or a Distribution Advisor)
  - A percentage or fixed amount of the trust's fair market value that does not exceed 5%

Asset Protection Trusts — Delaware's Qualified Dispositions in Trust Act (continued)

The "Tail Period"

- Pre-transfer claims must be brought within four years of transfer to the trust (or, if later, within one year after the creditor discovered or should have discovered the trust). Creditor must prove transfer to trust was a fraudulent transfer.
- Post-transfer claims will be barred unless the creditor can prove the transfer was made with actual intent to defraud.

Exempt classes of creditors

- Current spouse at the time of the trust's creation, and children
- Personal injury claimants — if the injury arose at or before the transfer to the trust
- Claims related to death and to property damage

Asset Protection Trusts — Tax consequences

Income taxes	Gift taxes	Estate taxes
• Grantor Trust — grantor pays taxes on items of income and capital gain • Non-Grantor Trust — trust pays taxes on items of income and capital gain • APTs are typically structured as grantor trusts for income tax purposes	• Gift tax consequences depend upon grantor's retained powers • Completed gift will be subject to gift taxes rules • No gift tax implications if there is no completed gift	• The trust will be included in grantor's estate if he or she retains certain powers • It is unclear whether the sole right to receive distributions at the discretion of the trustee will cause estate tax inclusion in the grantor's estate, even if the creation of the trust was structured as a completed gift (I.R.C. 2036(a)(1))

U.S. TRUST
Bank of America Private Wealth Management

Asset Protection Trusts — Effectiveness

No court has ruled upon the effectiveness of a Delaware APT

- Potential areas of attack
  - Full Faith and Credit clause of the U.S. Constitution
  - Jurisdiction over a Delaware Trustee
  - Conflicts of Laws
  - Supremacy Clause and the Bankruptcy Code

- **Asset Protection Trusts — The bottom line**
  - Clients should rely upon the advice of an attorney well-versed in this area
  - Clients should only fund Asset Protection Trusts with assets they do not ever expect to need — a “nest egg” approach
  - Distribution requests by the Grantor should be rare and made only when necessary
  - Client should not be insolvent or nearing

Putting it all together — Delaware APT with Investment and Distribution Advisors

Asset Protection Trust Assets

Administrative/Directed Trustee

- Administers trust
- Appointed in trust
- Prepares and files trust tax returns
- Custody and record-keeping
- Principal and Income accounting
- Follows directions of Investment and Distribution Advisors

Investment Advisor

- Directs investments
- Appointed in trust
- Selects and monitors Investment Managers
- Open architecture

Distribution Advisor

- Directs distributions
- Appointed in trust
- Useful for subjective distribution standards

Flexible trust structures — Case study

Delaware Asset Protection Trust: The doctor's choice

Alison, a successful, unmarried doctor, has a strong plastic surgery practice. Her net worth is $25 million. To date, no lawsuit has ever been filed against her, but she is concerned about the rise in lawsuits against many of her colleagues. She meets with her attorney, advisor and trust professional to discuss her concerns.

Solution
Her attorney suggests a Delaware Asset Protection Trust (APT)[1] to protect a portion of her assets from future creditors. She selects ABC Trust Company of Delaware as Administrative Trustee of her APT and a local Investment Advisor to manage and oversee trust investments. .

[1] U.S. Trust Company of Delaware is a subsidiary of Bank of America, N.A. This story is intended to illustrate an Asset Protection Trust. It may not represent the experience of every client, nor does it indicate future performance or success.

Flexible trust structures — Case study

Delaware Asset Protection Trust: The doctor's choice (continued)

How it works:

- $5.25 million in assets is transferred to an irrevocable trust governed by Delaware law
- Client/Grantor retains the right to receive income and principal at the trustee's discretion
- An Investment Advisor is appointed in the agreement creating and governing the Trust
- The Trust may serve as an alternative to a prenuptial agreement, should client marry in the future
- ABC Trust Company of Delaware serves as Administrative Trustee and carries out the investment directions of the Investment Advisor

The case study presented is hypothetical and does not reflect specific strategies we may have developed for actual clients. It is for illustrative purposes only and intended to demonstrate the capabilities of U.S. Trust, Bank of America Private Wealth Management and/or Bank of America. It is not intended to serve as investment advice since the availability and effectiveness of any strategy is dependent upon your individual facts and circumstances. Results will vary, and no suggestion is made about how any specific solution or strategy performed in reality.

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.

This story is intended to illustrate an Asset Protection Trust. It may not represent the experience of every client, nor does it indicate future performance or success.

Total Return Unitrusts

Delaware Law

- Delaware became the first state to adopt unitrust (TRU) legislation in 2001
- A Trustee can convert an existing net income trust into a total return unitrust
- A Trustee may elect a unitrust payout rate ranging from 3% to 5% of the value of the trust, depending on a number of factors
- A TRU's value must be determined at least annually, but the value may be based on a single valuation date or a rolling average of multiple dates
- A trustee may exclude difficult-to-value asset or use a "reasonable and appropriate" valuation method

Total Return Unitrusts

Conversion Process

- A Trustee may convert a Delaware net income trust into a TRU by sending notice to current income beneficiaries and prospective remaindermen. If no one objects within 30 days, the trust is effectively converted
- The notice procedure also applies to changes in the unitrust rate, changes in the valuation method, and even conversions back to a net income trust

Advantageous Tax Laws

Taxes can frustrate the optimal growth of irrevocable trust assets

- Delaware does not impose an income tax on accumulated trust income or capital gains
  - This rule does not apply to trust beneficiaries who reside in Delaware
- The trust should be structured to avoid a "nexus" to another state which may impose an income tax
  - Some states tax trusts based on the residence of the grantor, co-trustee or beneficiary

Delaware's Decanting Statute

Delaware law authorizes a trustee to invade principal (with authority under the governing instrument) for the benefit of one or more of the beneficiaries by appointing all or a portion of the principal subject to the power of invasion in favor of a trustee of a trust created pursuant to a separate trust instrument. (12 Del. C. § 3528)

- The trust instrument must not prohibit the trustee from distributing assets in further trust for a beneficiary
- The trustee must have the ability to invade principal for the benefit of one or more of the beneficiaries of the trust
- The beneficiaries of the second trust must also be beneficiaries of the first trust
- The second trust must have the same standards that limits the trustee's authority to make distributions from the first trust
- Delaware law must govern the administration of the first trust
- A written decanting instrument must be signed and acknowledged by the trustee and filed with the trust records.

Confidentiality

- Delaware places a premium on privacy for trusts and their beneficiaries
- Trust accountings are not required to be filed with the court
- If there is a family dispute, you can ask the Court of Chancery to seal the record so there is no public information and they may comply

Other

- Freedom of disposition: Can stipulate when a beneficiary can be notified of his or her interest in a trust
- Administrative flexibility with respect to allocating receipts and disbursements, fees and other trustee administrative decisions
- Life Insurance Trust statute where trustee does not have to monitor Insurance companies or policies

Trust-friendly environment

- Established body of industry-leading and innovative trust law professionals
- High regard for privacy and confidentiality
  - No public filings required
  - No required accountings, or accountings can be easily waived
  - Flexible rules on notifying beneficiaries about the existence of the trust
- Well-respected Court of Chancery, well-versed in complicated trust matters

Disclosure

This presentation is designed to introduce you to the products and services available through U.S. Trust, Bank of America Private Wealth Management, is provided for informational purposes only, and is not issued in connection with any proposed offering of securities. This presentation is not used with regard to any 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 presentation or its contents. The information in this presentation was obtained from sources believed to be accurate, but we do not guarantee that it is accurate or complete. The opinions expressed herein are made as of the date of this material and are subject to change without notice. There is no guarantee the views and opinions expressed in this presentation will come to pass. Other affiliates may have opinions that are different from and/or inconsistent with the opinions expressed herein and may have banking, lending and/or other commercial relationships with Bank of America and/or its affiliates. All charts are based on historical data for the time periods indicated and are intended for illustrative purpo ses only.

Past performance is no guarantee of future results.

IMPORTANT: The material presented is designed to provide general information about ideas and strategies. It is for discussion purposes since the availability and effectiveness of any strategy is dependent upon your individual facts and circumstances. Performance figures should be utilized only in a one-on-one presentation with clients or prospective clients accompanied by the appropriate disclosure statement. Taxable accounts may have varying performance due to each individual account's tax status. 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.

Investment products:

Not FDIC Insured	Not Bank Guaranteed	May Lose Value

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.

Investing in securities involves risks, and there is always the potential of losing money when you invest in securities.

FOR FIDUCIARY USE ONLY.

U.S. TRUST

Bank of America Private Wealth Management