

The New York Times

MARCH 18, 2008

Breaking Up Is Hard to Do

By FRAN HAWTHORNE

AS a family trust moves into its second and third generations, it is almost inevitable that someone will be unhappy with a trustee.

The current beneficiaries may want a more daring investment strategy than the trust bank's usual allocation of 60 percent stocks plus 40 percent bonds. The original trust officers have probably retired, and the beneficiaries may not like their replacements. If some of the beneficiaries have moved, they may prefer a bank with more convenient headquarters. Then there's the 20-year-old grandson who thinks the trustees are being stingy because they won't give him the money to buy a Ferrari.

But acting on that resentment and actually firing a trustee means a hassle at best and a bitter court fight at worst, especially if the trust is more than 20 years old.

Martin M. Shenkman, a trust lawyer in Teaneck, N.J., said that courts generally respected the desires of whoever established the trust. "If you set up a trust for your kids and grandkids, and you set up someone to be a trustee, those are your wishes," he said. "It's your money."

The good news, Mr. Shenkman and other trust lawyers and financial advisers say, is that trusts created in the last 10 to 20 years usually include a mechanism for replacing a trustee. Still, many experts urge beneficiaries to try to work things out with the trustee before taking drastic steps. Even in amiable situations, it can take as much as a year and cost 1 percent of the assets to do a detailed accounting and transfer the records to a new trustee.

Dissatisfaction with trustees—particularly corporate trustees rather than individuals—has been growing over the last five years, those experts say. Most complaints center on investment performance, mostly because beneficiaries have become more financially sophisticated and more types of investments are now available.

Poor service—including high turnover

among trust officials and phone calls that are not returned—is another common complaint. "The longer a trust lasts, the more you're going to have a change in trustee personnel," said Richard Kahn, a partner in the law firm Day Pitney in Florham Park, N.J., who specializes in trusts and estate planning.

Ideally, said Joanne Johnson, who oversees the United States trust business of JPMorgan Chase & Company's private banking department, a trustee should call the client at least once a month, send a monthly statement and arrange a formal meeting twice a year.

For Mr. Shenkman, the trust lawyer, trustee issues "probably come up every week or two," compared with twice a year five years ago. Paul Dinzeo, a principal at Accredited Investors, a wealth management firm in Edina, Minn., said that half of his clients who used a corporate trustee complained about service.

As a first step, beneficiaries can meet with the head of the trust department to talk about problems. "You try to have a dialogue so that you don't have the trauma that takes place when you change trustees," Mr. Kahn recommended.

But Ms. Johnson said that this tactic worked only about one-fourth of the time. "Usually," she said, "when people are pushing to leave, they have their mind made up."

The trust company might solve the problem by resigning, especially with a trust under \$1 million. "Few large banks want to be in an adversarial situation," said Christopher Dardaman, chief executive of Brightworth, a financial advisory firm in Atlanta.

Newer trusts often spell out procedures for firing a trustee. A growing trend is to designate a so-called trust protector—typically, an accountant, a lawyer or a relative—with the power to fire a trustee or change the investment manager. But Melvyn H. Bergstein, a partner at the

law firm Walder, Hayden & Brogan in Roseland, N.J., said that even if there were provisions for firing, "friction or hostility between a beneficiary and the trustee alone is not enough to warrant removal. It takes essentially misconduct."

If all else fails, unhappy beneficiaries will have to go to court.

Experts disagree on how difficult it is to win a trustee-dumping case. Mr. Dardaman said that evidence like a log showing a long spate of unreturned phone calls or proof of poor investment returns could convince a judge. But Mr. Kahn said such complaints were not enough. "You have to do something egregious before the court will fire you as a trustee," he said, like putting trust assets into an investment where the trustee has a personal interest. "The court may simply say you owe some money back to the trust."

The situation gets very sticky if the beneficiaries disagree among themselves. Trust documents usually require majority or unanimous consent among the beneficiaries to fire a trustee.

Mr. Dinzeo of Accredited Investors has been working for the last five years with a family where the younger generation is unhappy with the big international bank that has been handling its trust, worth more than \$100 million. Trust officers were rotating every 12 to 18 months, these beneficiaries complained. "They wanted to switch down to a smaller trust company, a local player that would have less of an institutional feel," Mr. Dinzeo said.

"The other side of the family agreed that the service level wasn't par," he added, but they wanted to stay with the big bank. "They felt that this large institution would be there. There would be continuity from generation to generation."

The result? The beneficiaries talk periodically with bank officials, and conditions improve for a while, but then matters slide again, Mr. Dinzeo said. "It's a constant recurring discussion that just sucks out the family's resources and time."