Live Long and Prosper
Creating Trusts with Heart and Soul

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In “Star Trek,” a greeting or farewell of the Vulcan people, “Live Long and Prosper,” expresses the wish or desire for another to have a long and prosperous life. The Filipino greeting, “Mabuhay,” can also be roughly translated as “live long and prosper.” (It literally means “live,” but the expression is meant to convey a wish for a long and prosperous life.) In Shakespeare’s Romeo and Juliet, Romeo says to Balthasar, “Live, and be prosperous: and farewell, good fellow.”

These good wishes are implicit in many trust documents. Most trust grantors desire that the beneficiaries of the trusts they create will have long, healthy, prosperous and happy lives. Most trusts are established to give beneficiaries a hand up and as a tool to enhance their lives without taking away a beneficiary’s individual ambition for personal achievement.

Unfortunately, since the establishment of a trust is quite often driven by tax strategy, reading a trust document can be confusing. Language used often parrots tax code provisions in order to obtain the desired tax result. Trust documents are often filled with legalese and “boilerplate” language. Often the trust creator’s name is found only on the front page and signature pages. Beneficiary names may not even be specified. Many trust documents are sterile and impersonal. Rarely do trust documents demonstrate the hopes and dreams of the grantor. Perhaps we should consider creating trusts that have “heart and soul.”

There is a new style of trust emerging in the U.S. which clearly articulates a grantor’s vision and purpose. In some circles, such a trust is being called a “Purposeful Trust.” In this paper, we’ll refer to it as a trust with “heart and soul.” Whatever you call it, such a trust focuses on a client’s stated objectives and not objectives that have been assumed on behalf of the client.

A trust that focuses only on financial and tax matters can be myopic and can cause a grantor to lose sight of the power of his or her gift to influence, guide and direct beneficiaries to a long and prosperous life. All too often, “people view estate planning as a process they endure rather than enjoy. They see it as a responsibility rather than an opportunity.”¹ The reality is that it is both a responsibility and an opportunity. Creating a trust with heart and soul will focus on the opportunities created and may make the estate planning process enjoyable.

¹ Values-Based Estate Planning, Scott C. Fithian, page 48, Copyright 2000.
A trust with heart and soul should read as if the grantor is talking to the beneficiaries. It should be personal, share the grantor’s deepest desires, goals and values, and explain what’s behind specific terms and provisions. It should clearly communicate the grantor’s desire to help the trust beneficiaries have a long and prosperous life.

Help beneficiaries understand your intent

“With no clear statement of intent, the trust becomes a ship with a compass but no location of true North.”

Beneficiaries of a trust that has heart and soul will not wonder why the grantor included specific trust terms, as they should be explained. They will not be guessing as to the overall purpose of the trust, as it should be clearly stated. By creating a trust with heart and soul you may avoid some of the types of circumstances I ran into when I was serving as a Trust Officer. As an example, one trust I served was set up to assist the trustor’s grandchildren in gaining an education. The trustor provided in the trust that after age 32, a beneficiary could no longer request distributions from the trust for “educational purposes.”

The grandson of the trustor asked me, “Why do you think grandpa put that provision in the trust?” While you and I could guess at the reasoning behind such a provision, the bottom line was that there was no way I could know for sure why that provision was there. Imagine how much easier it would have been if the trust had clearly stated the rationale behind cutting off funds for education at age 32.

Beneficiaries of a trust with heart and soul may be less likely to be confused by the trust legalese, as the meaning can be written in plain English and examples may be provided for clarity. A trust with heart and soul becomes an opportunity for grantors to tell beneficiaries how much they love them and are proud of them, and to impart wisdom and counsel. Such a trust can be of great benefit to both the trustees and beneficiaries when it comes to making decisions around distributions from the trust.

Communication matters


In this story, as Don grows up he is very close to his grandfather. His grandfather is always there for ball games, high school graduation and college graduation. When Don found the girl he wanted to marry he took her by to meet his grandfather and felt he received his approval.

Life drew Don away from his home town and visits home never seemed long enough. After many years Don decided to quit his successful business career and move back home to be closer to his parents and grandparents and to start his own business. Shortly thereafter, his grandmother passed away and his parents decided to buy a house in Arizona and winter there. For the next five or six years, every winter Don was given the responsibility to keep a close eye on his grandfather.

One day when Don was out of town, his grandfather passed away. Don was surprised to find out he was appointed as executor. Don had Doris (his secretary) box up his grandfather’s personal belongings to later be distributed among the family. After she had completed this task she said to Don, “By the way, I don’t think I ever told you that I found a letter addressed to you, in a sealed envelope, in your grandfather’s writing. Would you like to see it?”

Don’s heart leapt with excitement. There had been no chance for a final good-bye. No moment to stand by his death bed and squeeze his hand and listen for a final expression of love or an affirmation that he was proud of how Don had turned out. Don couldn’t wait to read this letter. His mind was racing with possible themes he might have addressed in this final written message. Don came back to earth and realized his secretary was still standing in his office.

“Doris,” he exclaimed, “bring that letter to me right away.” Doris didn’t move. She just sat there staring at his obvious excitement. She then said, “I’m sorry Don, but there was no letter. I just needed to make a point. But how about you, Boss? Have you written a letter to your children? Will your future grandchildren receive a letter from you?”

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2 The Use and Abuse of Incentive Trusts Improvements and Alternatives, Jon J. Gallo, Eileen Gallo, Ph.D., James Grubman, Ph.D., page 26 Presented at the 2011 Heckerling Institute for Estate Planning.

3 The Purposeful Trust Handbook, John A. Warnick & The Purposeful Planning Institute, Copyright Mid 2013.
Out of genuine friendship, Doris had intentionally misled Don to try to get him to feel firsthand the power of such a letter. Don was very disappointed and was overwhelmed by the ache for the letter that wasn’t there, but ultimately understood Doris’ point. Who wouldn’t love to receive such a letter? A letter that perhaps told of special times that had been shared together and lessons observed. A letter that perhaps noted all the things the departed admired in the survivor, and talents observed. A letter that maybe expressed the gratitude felt for having had the opportunity to share this journey together.

How many people write letters to those they leave behind passing on ethical values and ideals and letting them know how proud of them they are? If you ask someone who has received such a letter, “What is the most meaningful possession you received from someone close to you?” that person most likely would say, “The letter I found addressed to me in my father’s safe deposit box,” or “The letter my grandmother handed me a few years before she died.” In a trust with heart and soul you can incorporate this valuable gift into the trust language.

A trust with heart and soul is an opportunity to leave a final communication with beneficiaries in a way it will be remembered and cherished for their lifetimes. It is an opportunity for the grantor to give final advice and impart wisdom gained throughout their lifetime. While a trust with a heart and soul can also accomplish great tax savings, it should be clear to the beneficiaries that tax savings were not the only goal of the trust. It should also be clear that the trust was not an attempt to control the beneficiary from the grave. Instead, it was the generosity and love of the grantor and their desire to create a vehicle that would enhance the beneficiary’s life that was the driving force behind the creation of the trust.

**SAMPLE: Statement of Intent**

John, Mary and Sam, because we love you so much, we have created these trusts to encourage you and your descendants to be productive and responsible, and to encourage you to conduct yourselves with moral integrity. Therefore, we intend that the trust assets be used to assist you in making a constructive contribution to and assume a positive role in society. We intend that the trusts we are creating here will likely be perpetual trusts and that the trust estate will not be inordinately depleted. The trusts are not intended to benefit you all equally. Some of you may receive assistance early in life to overcome a disability or hardship while others of you may not receive trust distributions until later in life. It’s quite possible that you will be happy, healthy, well adjusted, self-supporting and productive, and not receive any distributions from any trust created hereunder.

We feel it is important for you to realize that all choices have consequences, both good and bad. Because of that, we instruct the trustees to allow you to experience the consequences of your decisions and not always be there to “bail you out” when those consequences are challenging. If, however, the trustees determine that you fully understand and will not repeat the poor decision that has landed you in the challenging circumstance, the trustees may exercise their discretion to assist you and help, if possible, to alleviate those consequences. Since actions speak louder than words, it will become clear to the trustees, if you repeatedly make choices that result in unfavorable consequences, that you have not learned from those experiences. In such cases the trustees will be less likely to lend a helping hand and let you learn from experience.

We intend the trusts to be there to give you a hand up in life, to help you start a business, buy a home or just provide a little extra when bills seem to be higher than expected or normal. We don’t expect the trusts to be a crutch that you lean on. We want you to rely on yourself and loved ones and turn to the trust only when really needed.

We hope these trusts will bless our posterity for generations to come. However, our trustees have full discretion to deplete the trust assets in pursuit of fulfilling the overall trust purposes and our goals as outlined further in this agreement.
Inclusion of a list of desired behaviors

A trust with heart and soul may include a list of the desired behaviors the trustors would like beneficiaries to exhibit. We are not talking about creating an “incentive trust” here by the inclusion of this list, as it is becoming more apparent that “incentive trusts are more likely to thwart development of motivation than support it.” However, a list of desired behaviors can be helpful in a trust with heart and soul which relies on the judgment of the trustee. Such a list can help the trustee and the beneficiary clearly understand what is important to the trustors and provide light on the constraints and guidelines outlined by the trust creator.

SAMPLE: Encouragement of desired behaviors

We intend that distributions be made in a manner that encourages the recipient to exhibit or accomplish one or more of the following desired behaviors:

a. Pursue training and education at least through an undergraduate college degree or equivalent or in a viable trade or the arts;

b. Pursue gainful employment with a view toward being financially self-sufficient;

c. Be a law-abiding member of society;

d. Be a productive member of family, community and society by making meaningful and positive contributions to your family, community and society in general;

e. Achieve financial literacy, handle money in an intelligent and practical manner and avoid wasteful spending;

f. Act with empathy, thoughtfulness, kindness and consideration towards others;

g. Develop healthy and meaningful relationships; and

h. Make contributions to charity.

We understand that a recipient’s age, health, ability and other circumstances will affect whether he or she can accomplish one or more of the desired behaviors, and such should be considered in construing and applying the foregoing. We consider full-time parents to be productive members of society and gainfully employed, and don’t intend you or your children to be discouraged from choosing to raise a family as your sole occupation.

We don’t expect you or your children to necessarily exhibit or accomplish all of the desired behaviors, and recognize that some desired behaviors may even conflict with others. We hope and intend that the trust property will be used to reward and enhance your quality of life as you accomplish or are working toward accomplishing one or more of the desired behaviors, and that it will encourage and assist you to exhibit and accomplish these behaviors.

On the other hand, we also hope and intend that the trust property will not be distributed to you or your children if you are engaging in actions and behaviors unbecoming of an “upstanding citizen.” Some such behaviors unbecoming of an upstanding citizen are:

I. Illegal or dangerous substance abuse;

II. Violent or harmful acts or threats to commit violent or harmful acts;

III. Addiction or dependency on any substance not under a doctor’s supervision, or addiction to gambling; and

IV. Incarceration for any crime.

We hope to avoid the use of the trust property in a manner that might impair the desire of any of you, our beloved descendants, to be an upstanding citizen and to act as such. Therefore, we don’t intend that any of you will have an expectancy of any kind from the trust that could contribute to, allow or accommodate behavior unbecoming of an upstanding citizen. And we desire that the provisions of this agreement will encourage, and not inhibit, the desire of all of you to become morally upright members of society.

NOTE: U.S. Bank and it’s representatives do not provide tax or legal advice. Each individual’s tax and financial situation is unique. Individuals should consult their tax and/or legal advisor for advice and information concerning their particular situation.

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4 The Use and Abuse of Incentive Trust: Improvements and Alternatives, Jon J. Gallo, Eileen Gallo, Ph.D., James Grubman, Ph.D., Page 11-5, Presented at the 2011 Heckerling Institute for Estate Planning.
What's in a name?

There is a powerful symbolic opportunity in naming your trust. One of the keys of a trust with heart and soul is the name chosen for the trust. John A. Warnick, pioneer of the Purposeful Trust concept, suggests that during the lifetime of a trust beneficiary there are 300 or more opportunities to connect and remind them of the purpose and intent of the trust. Each time the beneficiaries receive a statement, the trust’s name will be there to remind them of the primary purpose behind its creation. So, instead of naming a trust based on the tax strategy being employed (such as, Jones's SIDGT, or Smith’s GRAT#1 or GST Exempt Trust, or Reverse Marital QTIP), consider the long term purpose of the trust and consider naming it accordingly (such as, The John McCormick Educational and Lifetime Enhancement Trust, or The Elton Family Unification Trust). Be creative, and consider the primary purpose of the trust and how to express that purpose in the trust title. If you want to have a subtitle to assist administrators and advisors, then add, “Marital Trust” or “Bypass Trust,” as examples.

Encouraging gratitude

Presumably, one would be hard pressed to find a grantor that wants to inure in his/her beneficiaries a sense of entitlement. In fact, how to prevent this is one of the most common questions financial advisors, attorneys and CPA’s will get from someone anticipating making a substantial gift. If a beneficiary has a deep sense of gratitude, it can go a long way towards keeping him or her out of the entitlement trap. This is because “true gratitude stems from the willingness to recognize what is unearned or undeserved.” The grateful beneficiary acknowledges that he has received a gift, given out of the loving generosity of the benefactor, and to which he holds no right of claim. The grateful beneficiary recognizes that being born into the “right” family does not give her a “right” to that which she did not earn.

When a grantor creates a trust with heart and soul and truly gives of himself in the language and expressions used in the trust document, when he pours his own life essence into the trust, he attempts to create emotional energy that can act as the catalyst in engendering a deep sense of gratitude in a beneficiary. This gratitude may help to keep the beneficiaries out of the entitlement trap and guide them on their way to fulfilling the grantor’s farewell wish to live long and prosper.

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