FAMILY
WEALTHREPORT

INTERVIEW: New Book Explores The US Family Wealth Trustscape

Joe Reilly, April 19, 2016

Family office consultant Joe Reilly recently interviewed Hartley Goldstone, an associate of Wise Counsel Research, about his new book called Family Trusts: A Guide for Beneficiaries, Trustees, Trust Protectors and Trust Creators, which he co-authored with Jay Hughes and Keith Whitaker.

Family Wealth Report doesn't necessarily share the views shared in this article, but is delighted to publish them and, as ever, welcomes reader feedback.

Joe Reilly: How have you seen the trust business change since the 1980s?

Hartley Goldstone: On the institutional side, the consolidation of banks has put pressure on trust departments to gather assets under management - which means less emphasis on personalized fiduciary services. This mega-bank stress on AUM has opened up opportunities for regional banks to provide higher touch services. And, all along - no matter the decade - some trust companies have done a sound job regardless of market dynamics.

In the high net worth sector, we've seen a proliferation of family offices, along with more interest in creating private trust companies. What gets me excited is the concern shared by an increasing number of families about the impact their legal structures - family offices, trusts, and family foundations – have on the welfare of their families and on the welfare of the larger community.

Joe Reilly: Do you think wealth management firms should have a full-time family dynamics person? How large does a firm have to be before this becomes necessary?

Hartley Goldstone: Firms should consider carefully before taking that step. It's very hard to find competent professionals for such a role who are willing to work within the confines of a large financial institution. Also, many clients feel more comfortable working on family dynamics with professionals who are objective and not required to share confidential information within the firm. Limiting them to an internal resource can actually backfire.

I think that the ideal is similar to a firm's relations with top-quality estate planning attorneys: when a firm is truly attentive to issues of family dynamics, trains its financial advisors to be aware of them, and has cultivated deep relationships with independent professionals. The result is that clients are served well while also maintaining the objectivity, independence, and confidentiality of the advice they receive on the family side. If a firm is serious about the development of a “family resources center” staffed with one or more human dynamics experts, my advice is to allocate a budget commensurate with the importance of this work.

Joe Reilly: Your first book *Trustworthy* collected stories from families about their trust experience. Why did you take this approach?

Hartley Goldstone: I started collecting stories in response to clients asking “What do other families do?” when faced with this or that situation. An inventory of “teaching stories” would be useful to illustrate best practices in action. I deliberately stayed away from disaster stories. Far more interesting to me was what trustees and beneficiaries can accomplish when - including during dire situations - they are at their best. As it turns out, readers love having a counterbalance to all the “trust baby” stories out there. What’s more, these stories spark positive insights and often lead to thought-provoking conversations.

Joe Reilly: In *Family Trusts*, it is mentioned that most beneficiaries, an overwhelming majority in fact, believe their trusts are a burden. Why do you think that is?

Hartley Goldstone: It comes from being wedded to a predominantly negative view of trusts. Let me explain. Much of my work is helping trustees and beneficiaries develop productive relationships. If early on I simply ask: "What’s a trust?" The most common responses are - in so many words - that a trust is primarily a receptacle to hold assets, or a tax strategy, or a legal document. That view amounts to a trust being experienced as a transaction, rather than as a gift having “spirit.”

We stress in *Family Trusts* that first and foremost trusts are human relationships. And that the highest purpose of a trust is to enhance the lives of the beneficiaries. In this context, "enhance" means that a trust is seen as a relationship between beneficiary and trustee that supports the beneficiary’s maturity and independence. Contrast that with lifestyle “subsidies,” which can have the opposite effect. Agreement on the “human relationship” and “enhancement” principles is an important step toward re-framing a trust from being seen as a burden, to being seen as the gift of an amazing resource.

Joe Reilly: How do you deal with resistance from benefactors who would like a more heavy hand?

Hartley Goldstone: That’s a tough one. It’s not uncommon for a strong-willed benefactor to choose a trustee who will be little more than a stand-in. And there may be a hundred reasons why that person doesn’t feel like they can refuse the benefactor’s dictates – or would even want to. Here’s where coaching can help. Beneficiaries can be encouraged to persist in explaining to their trustee who they are, and what their dreams are.

Joe Reilly: A lawyer’s time does not come cheap. How do you motivate a discussion that doesn’t jump right to quick solutions?

Hartley Goldstone: By quick solutions, I’m guessing you mean trust agreements that focus on tax savings and the protection of trust assets from creditors, without any sort of personal message from trust creators to their heirs. Years ago, I asked an attorney whether he would be open to including such a statement by the trust creator. The attorney was blunt: “The courts have construed every word in my document. Why should I risk changing anything?” And yet, after speaking with beneficiaries over the years, it’s clear that most do better when they have some idea what their benefactor intended when naming them beneficiaries.

Today, a few attorneys draft what they call “purposeful” trust agreements. That’s still pretty rare. In *Family Trusts*, we suggest two small but powerful changes that can better orient the family. First, title the trust something other than the name of a tax strategy. Surely a trust creator can come up with a name more personal than the John Smith GRAT dated December 31, 2015. Second, begin each trust agreement with two simple sentences, as co-author Jay Hughes did for many years before retiring from the practice of law: “This trust is a gift of love. This trust is meant to enhance the lives of its beneficiaries.”

Joe Reilly: What role do you see for the trustee?

Hartley Goldstone: A trustee has three responsibilities: administration, investment, and distribution. Administration is made up of back-office jobs like preparing statements, tax returns, cash flow analysis. If a trustee wants to, the whole package can be outsourced. Trustees also know a lot about prudent investing and regularly seek the advice of outside managers.

That leaves the largely underdeveloped distribution responsibility. We urge families to think carefully about this function. Distributions are where the action is – where beneficiaries' lives are impacted, for better or worse. Unlike administration and investing, families can't outsource the distribution responsibility. And, ironically enough, they hardly ever seek outside advisors like they do in the case of investing. So here's a pointer or two for family offices. Shake up the status quo – make the distribution function proactive. Elevate the family's expectation to something more than business as usual, where their trustee passively waits for a beneficiary's request to land on his desk before moving into action.

We aren't naïve. We know that trustees don't always have the time or the skills – or even the interest – to be proactive in a consistent manner. One way to get there is through the use of a distribution committee, which in some cases may be made up of a single person. The distribution committee has a responsibility to stay aware of what's going on in the beneficiaries' lives. By doing so, they're able to help beneficiaries think through distribution requests early on. This could be an opportunity for mentoring, if appropriate. When the request is presented to the trustee, the committee is in good position to advise the trustee, much as input from an investment committee informs investment decisions. Incidentally, distribution committee members are paid by the trust.

Joe Reilly: How does a family find a good trustee? What qualities do you look for?

Hartley Goldstone: In choosing a trustee, we suggest that a trust creator keep in mind the trustee's purpose, responsibilities, duties, principles, and forms. Here's a very brief description of each of these terms.

The overarching purpose of a trustee is to keep alive the "spirit" of the patron's gift. The trustee's responsibilities (administration, investment, and distribution) were described in question nine above. Among the important legal duties are the duty to account, the duty of care, and the duty of impartiality. In his introduction to *Family Trusts*, Keith Whitaker explains five principles that underlie good trusteeship. They are: (1) "First do no harm", (2) Fidelity to the trust, (3) Regency (help the beneficiary grow toward maturity and independence), (4) Discernment, and (5) Courage. And finally, the form of the trustee might be an individual, an institution, or a combination of the two. In *Family Trusts*, we include an extensive table comparing the pros and cons of each form.

It's important to note that sometimes an individual candidate that a trust creator would most like to be trustee is not in a position to accept. Perhaps there's a conflict, or the person does not wish to take on the time commitment or the potential liability. That person might be better suited to serve on a distribution committee or as trust protector. Under those circumstances, a good choice for trustee might very well be an institutional trustee, appointed in conjunction with a distribution committee and a trust protector.