



WHAT FACTOR SHOULD TRIGGER A DISCUSSION ABOUT A DYNASTY TRUST?

A wealthy family will ordinarily begin to consider a Dynasty Trust when they have reached the point at which they believe that their assets are likely to last beyond the lives of their children. The dynastic aspect of a Dynasty Trust ordinarily takes advantage of two concepts: (i) the statutes of one of the more than two dozen states (among the more popular jurisdictions are Connecticut, Alaska, Delaware, Florida, Nevada and South Dakota) that allow trusts to last for 360 years or more, and (ii) the application of exemption from the generation-skipping transfer tax to property held in the Dynasty Trust. By appointing a Trustee in one of the favorable jurisdictions in order for the Dynasty Trust to have a nexus in that jurisdiction, and then allocating exemption from the generation-skipping transfer tax to trust property, trust assets can be made available to multiple generations without being exposed to the estate tax or generation-skipping transfer tax.

A Dynasty Trust can be funded at the donor's death by the donor's Will and Revocable Trust. However, if the donor's circumstances allow, a powerful planning opportunity is to fund the Dynasty Trust during the donor's life, thereby allowing the gifted property to appreciate in value outside of the donor's taxable estate. Moreover, the Dynasty Trust can be structured as a "grantor trust" for income tax purposes, so that the donor can continue to bear the income tax burden for the Dynasty Trust property during the donor's life. Finally, funding the Dynasty Trust during the donor's life enables the donor to leverage the use of the donor's exemption from the generation-skipping transfer tax. The donor can fund the Dynasty Trust with assets that have unusual potential to appreciate or have subjective value (for example, an interest in real estate, art or a business) that a formal written appraisal might not capture. In fact, the best candidate for a Dynasty Trust is the donor who not only can afford to give valuable assets to a Dynasty Trust, but one who is holding an asset with substantial potential to appreciate.