Distribution Solutions: Getting the Bequest to the Beneficiary

By Gary B. Garland

Gary Garland discusses distribution strategies in the estate plan and introduces a concept he has named the Maturity Trust, double complex trusts, the goal of which is to preserve asset protection while providing increasing flexibility and control for maturing beneficiaries.

As estate planners, much time and energy is spent attempting to predict the future of the estate tax since the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) P.L. 107-16, changes in tax structure that may be proposed and enacted by Congress and the President, latest cutting edge techniques; yet, at the heart of every estate plan is the distributions to the beneficiaries.

The axiom that a quick review of existing documents allows the practitioner to discern the level of competency in the field of estate planning held by the scrivener is probably true. Readers of this journal are probably not likely to crank out three-page wills, unlike our brethren who are general practitioners or, almost as likely as not, the client's "real estate" attorney. So, what separates the "estate planner" from the real estate attorney or the family law attorney"? It is the counseling and drafting of the estate plan. If most tax planning by estate planning specialists is common planning, what distinguishes us in the services we bring to our clients. It is the nontax aspects of the planning including the distribution planning. This primer will discuss multiple distribution techniques, and ask the following questions:

- How complete is your counseling to your client regarding distributions?
- Do you offer appropriate choices, or simply those easier to draft from your software or form bank?
- What will the ultimate result of your distribution scheme do for the beneficiary of the plan?

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Let us begin with an example of an estate with a value of two million dollars per beneficiary. The parents of the family, Fred and Wilma have one child, Donald, age 1, a home, life insurance and assets in the amount of $2 million. An important consideration is the age of the beneficiary at the time a bequest vests and, perhaps more importantly, the age of the beneficiary at the time the client is meeting with the planner. When planning with minor beneficiaries, the parent will not know how that one-year-old will handle money in the future so it is important to exercise caution in order to protect the beneficiary while providing for his comfort. Another crucial consideration is the amount of the bequest to the child.

The Basics: Outright Distribution and Apportionment

In the course of planning, the testator may decide to leave certain items of personal property to someone. This type of giving is an outright distribution. The question is whether there is a tax attributable to this kind of bequest and who is responsible for this tax. These taxes, are borne either by the residual estate or the recipient of the item (apportionment). Most wills that I have reviewed indicate that the taxes on these items will be borne by the residuary estate. This may have unintended consequences. It may be a better solution to consider equitable apportionment, *i.e.,* the beneficiary of a taxable bequest bears the taxes due on the value of that item. An extreme example may be in a yard sale where the client gives away a piece of art thinking it has little value. If it is later discovered to be a painted-over Rembrandt, upon audit, the IRS may claim a gift in excess of the $1 million lifetime gift tax exemption amount, which would indicate that there is gift tax due. Under residual apportionment, the residuary beneficiary (again, typically the surviving spouse, followed by the “primary” beneficiaries) will owe taxes for the far-fetched gift versus equitable apportionment, where the IRS looks to the recipient of the gift for the taxes that are due.

If we look at the Jones sample family, we might leave the entire estate to Donald Jones upon attainment of the age of majority, 18 or 21, depending upon the state of residence. Receiving an outright distribution at this young age, in the event of the parent’s death, may not be the most well advised plan. Donald may not be in the best position to inherit these funds due to problems that may have developed or debts that my have accumulated. Donald may not be prepared to inherit this kind of wealth and he may turn out to be a poor manager or worse. In addition, this kind of inheritance may deprive Donald of his incentive to find his most productive employment opportunities. A better alternative to outright distribution would be to place the bequest in a more protective trust vehicle.

Basic Trust Overview

It appears trusts were first used in Medieval England. Today, our trusts resemble these early forms, with a settlor, trustee and beneficiary. The modern trust holds property, which is acted upon by the trustee, for the benefit of the beneficiary. One of the main purposes of a trust, although not the only purpose, is the asset protection benefits offered by the trust. A trust beneficiary can have the use of property in the trust without having legal title to the property and this offers protection against creditors of the beneficiary. A creditor can be a judgment creditor, such as for a bad business debt, or from a tort, or, based on a national statistic of 50 percent, a creditor can be the beneficiary’s soon to be ex-spouse. Accordingly, one can see the power and benefit of a trust that would allow a beneficiary to enjoy the trust contents (corpus) while keeping creditors at bay.

Other advantages of keeping property in trust versus in the estate include avoidance of multiple generations of estate tax if the trust is drafted correctly. It will be necessary to pay the estate tax on the first generation when the assets are transferred to the trust. Going forward, income taxes will be paid on the growth of the property in the trust. Additionally a trust may protect the assets from a spendthrift heir. It is sometimes noted that outright distributions are typically squandered within 18 months of receipt. With proper planning and drafting, the trust can provide regular income to the beneficiary while preserving the assets and protecting the assets from creditors.

Chart 1. 20-Year Distribution, 4% Net Interest After Taxes

Trust Corpus	Year	Distribution	Trust Remainder	Next Year’s Interest	Total Distributions
$4,000,000	1	$200,000	3,800,000	$152,000	$200,000
$3,952,000	2	$208,000	3,744,000	$149,760	$408,000
$3,893,760	3	$216,320	3,677,440	$147,098	$624,320
$3,824,538	4	$224,973	3,599,565	$143,983	$849,293
$3,743,547	5	$233,972	3,509,576	$140,383	$1,083,265
$3,649,959	6	$243,331	3,406,628	$136,265	$1,326,595
$3,542,893	7	$253,064	3,289,829	$131,593	$1,579,659
$3,421,423	8	$263,186	3,158,236	$126,329	$1,842,845
$3,284,566	9	$273,714	3,010,852	$120,434	$2,116,559
$3,131,286	10	$284,662	2,846,624	$113,865	$2,401,221
$2,960,489	11	$296,049	2,664,440	$106,578	$2,697,270
$2,771,017	12	$307,891	2,463,126	$98,525	$3,005,161
$2,561,652	13	$320,206	2,241,445	$89,658	$3,325,368
$2,331,103	14	$333,015	1,998,088	$79,924	$3,658,382
$2,078,012	15	$346,335	1,731,676	$69,267	$4,004,718
$1,800,944	16	$360,189	1,440,755	$57,630	$4,364,906
$1,498,385	17	$374,596	1,123,789	$44,952	$4,739,502
$1,168,740	18	$389,580	779,160	$31,166	$5,129,083
$810,327	19	$405,163	405,163	$16,207	$5,534,246
$421,370	20	$421,370	0	$0	$5,955,616

Distribution Methods

Let us review various distribution methods that may be considered to accomplish our client's goals. The first step is to determine which beneficiaries receive what assets. Clients will frequently say that they would like their assets divided equally among their children. Yet even that simple statement is more complex than it appears. For example, did one beneficiary receive a life time gift from the grantors that should be offset in the testamentary bequests? Even if the testator decides conclusively that everything should be divided equally among the children, it is still possible to distribute the shares differently in a manner appropriate for a particular beneficiary. Clients are not savvy regarding how their beneficiaries should receive distributions.

The Staggered Trust

The one-third method of distribution, referred to as the staggered trust, has multiple distribution points, typically three or so. This is one of the more common distribution schemes suggested by many form books. For most families this is not ideal; for some families it may meet their needs. Beneficiaries' ages may be 21, 25 and 30, or 25, 30, 35 and 40, or something similar. The concept is the same; the beneficiary receives large percentages of their bequest at stated intervals, and all distributions are completed at the last interval. It must be noted that if one-third of the bequest is received at a certain age, then statistically it will be exhausted within 18 months. This can happen twice more, and then the bequest is gone. Some questions to consider:

- What is the asset protection (if any) of the amount received?
- Is the amount received part of the beneficiary's estate?
- Is the amount received subject to attack during divorce?

The answers to the above questions are unfortunately no asset protection (typically) and exposure to estate taxes and divorce distributions, especially if co-mingled with the joint marital funds. Later we will explore asset protection strategies to protect the staggered distributions. A variant of staggered distributions, which can apply to virtually any distribution, is granting the trustee "sprinkling" powers, or the discretion to give amounts at intervals of the trustee's choosing. Another variant of staggered distributions allows the beneficiary to receive income between principal distributions. Assume, in our example, that Donald Jones inherited $2 million. If he inherited the money when he was an infant, there may well have been growth (interest) throughout the years, hopefully in excess of the costs of raising him. If we assume a six percent growth on the trust assets, that should

Chart 2. 20-Year Distribution, 4% Net Growth After Taxes

Trust Corpus	Year	Distribution	Trust Remainder	Next Year's Interest	Total Distributions
$1,000,000	1	$50,000	950,000	$38,000	$50,000
$988,000	2	$52,000	936,000	$37,440	$102,000
$973,440	3	$54,080	919,360	$36,774	$156,080
$956,134	4	$56,243	899,891	$35,996	$212,323
$935,887	5	$58,493	877,394	$35,096	$270,816
$912,490	6	$60,833	851,657	$34,066	$331,649
$885,723	7	$63,266	822,457	$32,898	$394,915
$855,356	8	$65,797	789,559	$31,582	$460,711
$821,141	9	$68,428	752,713	$30,109	$529,140
$782,821	10	$71,166	711,656	$28,466	$600,305
$740,122	11	$74,012	666,110	$26,644	$674,318
$692,754	12	$76,973	615,782	$24,631	$751,290
$640,413	13	$80,052	560,361	$22,414	$831,342
$582,776	14	$83,254	499,522	$19,981	$914,596
$519,503	15	$86,584	432,919	$17,317	$1,001,179
$450,236	16	$90,047	360,189	$14,408	$1,091,227
$374,596	17	$93,649	280,947	$11,238	$1,184,876
$292,185	18	$97,395	194,790	$7,792	$1,282,271
$202,582	19	$101,291	101,291	$4,052	$1,383,561
$105,342	20	$105,342	0	$0	$1,488,904

net a roughly four-percent return. On $2 million, that is approximately $80,000 per year. If we make an assumption that his costs per year are $40,000 (probably a high assumption), then his trust will still continue to grow at $40,000 per year. Using the "Rule of 72,"[1] stating that the time it takes money to double is equal to 72 divided by the interest rate, we see that six percent will cause a doubling every 12 years, though if we use four percent for net growth, we are looking at closer to 18 years. Conservatively, using our above assumptions and that it will take money 18 years to double, Donald Jones' trust should be worth a little over $4 million when he reaches the age of 21. Using the staggered distribution model, assuming a distribution scheme of one-third at 21, one-half at 25 and the remainder at 30, we have Donald receiving approximately $1.3 million per distribution, although after the first distribution there would be five years of interest compounded on the remaining $2.7 million, and for the remaining five years there would be interest compounded on the remaining approximately $1.3 million. Let us consider if the client is really well-advised to leave one-third of the estate to a 21-year-old (or 25-year-old)? What is the fiscal maturity level of a 21-year-old? If the final distribution is at age, say, 35, how much is left at age 45 or age 50? What moral values has the easy access to these kinds of numbers brought to the beneficiary? How are the distributions held? In our example, each distribution is outright, part of the beneficiary's estate and subject to the beneficiary's creditors.

If we consider the income aspects, four-percent net on $4 million would be approximately $160,000. Is it prudent to leave this to a 21-year-old beneficiary outright? Decisions regarding an appropriate distribution scheme depend of many variables including the size of the estate and the beneficiary's background, age and financial experience. If a beneficiary is accustomed to large wealth, $160,000 per year may not be enough to support his present lifestyle; but for many practitioners, the majority of their clients have estates under $10 million, and often have "depression era" mentality; those clients would not be comfortable with the knowledge that their children will be receiving $160,000 per year in the early distribution stages.

It is important to realize that in most cases, the staggered distribution method of estate distribution does not make sense for most clients. For clients who have worked hard all of their lives to accumulate these savings, the thought that these sums of money could be lost through mismanagement or misappropriation is unacceptable. Even a young family with only a very small estate, will express concern that if their young children inherit the small insurance policies that are being held for them, they will somehow become spoiled or insufficiently devoted to hard work. An "extended" variation

Chart 3. 20-Year Distribution, 6% Net Growth After Taxes

Trust Corpus	Year	Distribution	Trust Remainder	Next Year's Interest	Total Distributions
$4,000,000	1	$200,000	3,800,000	$228,000	$200,000
$4,028,000	2	$212,000	3,816,000	$228,960	$412,000
$4,044,960	3	$224,720	3,820,240	$229,214	$636,720
$4,049,454	4	$238,203	3,811,251	$228,675	$874,923
$4,039,926	5	$252,495	3,787,431	$227,246	$1,127,419
$4,014,677	6	$267,645	3,747,032	$224,822	$1,395,064
$3,971,854	7	$283,704	3,688,150	$221,289	$1,678,768
$3,909,439	8	$300,726	3,608,713	$216,523	$1,979,494
$3,825,235	9	$318,770	3,506,466	$210,388	$2,298,263
$3,716,854	10	$337,896	3,378,958	$202,737	$2,636,159
$3,581,695	11	$358,170	3,223,526	$193,412	$2,994,329
$3,416,937	12	$379,660	3,037,278	$182,237	$3,373,988
$3,219,514	13	$402,439	2,817,075	$169,025	$3,776,428
$2,986,100	14	$426,586	2,559,514	$153,571	$4,203,013
$2,713,085	15	$452,181	2,260,904	$135,654	$4,655,194
$2,396,558	16	$479,312	1,917,247	$115,035	$5,134,506
$2,032,281	17	$508,070	1,524,211	$91,453	$5,642,576
$1,615,664	18	$538,555	1,077,109	$64,627	$6,181,131
$1,141,736	19	$570,868	570,868	$34,252	$6,751,998
$605,120	20	$605,120	0	$0	$7,357,118

of the staggered trust[2] involves distributions over a longer period of time, with smaller amounts per distribution. Consider disbursing the trust over 15 or 20 years, with distributions each year. This has the double advantage of ensuring the beneficiary will have solvency through a later age (perhaps terminating at age 50, or perhaps terminating 20 years after the trust commences), and keeps the beneficiary from getting "too much too soon." The peaks and valleys of distributions are far smaller than in the one-third distribution scheme above.

Turning to our example, if Donald Jones receives 20 distributions commencing at age 21, we know that he will continue to receive distributions until age 40. Using the $4 million example earlier ($2 million that grew to $4 million), we have the first distribution equal to 1/20 of the corpus, or $200,000 per year, which is still a lot of money. The next year, the trust should contain $3.8 million plus four-percent net interest, totaling $3,952,000; 1/19 of $3,952,000 yields $208,000. In year 3, the corpus is $3,744,000 plus four percent totaling 3,893,760, and 1/18 is $216,320. As is apparent, the distributions teeter around the $200,000 mark (slightly more, actually due to interest). These are just simplistic mathematical assumptions for purposes of this example.

The accompanying spreadsheet (Chart 1) demonstrates an actual increasing amount to the beneficiary over the course of 20 years by distributing the remaining *pro rata* portion of the trust corpus and the prior year's interest. The assumptions are as follows: a four-percent net return (so approximate a six-percent gross return). We see this route delivers a total of $5,955,616 over the payout span to the beneficiary (including four-percent net interest on each year's distribution. This is, of course, assuming the beneficiary does not spend any of the distribution, which is unlikely.)

Chart 3 demonstrates the effects of a six-percent net return. Note the beneficiary receives triple the distribution at the last payment as the first. Note again that the distributions slightly back end to the beneficiary, which is not an undesirable result.

Chart 5 demonstrates the effect of a $1 million trust at four-percent net, and Chart 6 demonstrates a $1 million trust at six-percent net. We can again see the linear multiples of the values so these examples can be easily scaled for a particular client's assets.

The accompanying spreadsheet (Chart 6) demonstrates a front-loaded distribution pattern. In this (perhaps) exaggerated example, the beneficiary receives one-third initially, then nothing for the next four years, then one-half of the remainder, and the final amount four years later. Admittedly, the numbers are lower because we are dealing with a shorter amount of time (one-half to be precise, so we have lost 10 years of interest in the calculations). However, when we set up the distribution scheme as one-third at 25, one-half at 30 and the balance at 35, we have a situation as shown in Chart 6. If we distribute the

Chart 4. 20-Year Distribution, 6% Net Growth After Taxes

Trust Corpus	Year	Distribution	Trust Remainder	Next Year's Interest	Total Distributions
$1,000,000	1	$50,000	950,000	$57,000	$50,000
$1,007,000	2	$53,000	954,000	$57,240	$103,000
$1,011,240	3	$56,180	955,060	$57,304	$159,180
$1,012,364	4	$59,551	952,813	$57,169	$218,731
$1,009,982	5	$63,124	946,858	$56,811	$281,855
$1,003,669	6	$66,911	936,758	$56,205	$348,766
$992,963	7	$70,926	922,037	$55,322	$419,692
$977,360	8	$75,182	902,178	$54,131	$494,873
$956,309	9	$79,692	876,616	$52,597	$574,566
$929,213	10	$84,474	844,739	$50,684	$659,040
$895,424	11	$89,542	805,881	$48,353	$748,582
$854,234	12	$94,915	759,319	$45,559	$843,497
$804,879	13	$100,610	704,269	$42,256	$944,107
$746,525	14	$106,646	639,878	$38,393	$1,050,753
$678,271	15	$113,045	565,226	$33,914	$1,163,798
$599,140	16	$119,828	479,312	$28,759	$1,283,626
$508,070	17	$127,018	381,053	$22,863	$1,410,644
$403,916	18	$134,639	269,277	$16,157	$1,545,283
$285,434	19	$142,717	142,717	$8,563	$1,688,000
$151,280	20	$151,280	0	$0	$1,839,280

income as many practitioners do, then we may be looking at something similar to Chart 6, where the principal is only reduced three times, but in very large quantities.[3] A question arises, whether the beneficiary would "lock" the larger distributions from Chart 2 into income producing accounts or investments, or would those assets be used for non–income producing purchases?

The Unitrust

The unitrust (for this section, not a charitable remainder unitrust, but simply a unitrust) allows us to distribute based on a pure percentage of the trust assets instead of distributing a fixed portion of the trust per year, such as 1/20, 1/19, 1/18. For example, a six-percent unitrust will distribute six percent of the trust's contents per year. If the trust income is less than six percent, there will be trust depletion; if more than six percent, the trust will grow. Many states have enacted unitrust legislation such that a trustee may opt to distribute a statutory unitrust amount to the beneficiary, roughly between three and five percent, versus distributing trust income. If we decide to distribute all income to a beneficiary, the corpus will neither grow nor shrink unless it is invaded. If we distribute a unitrust amount, there is a real possibility of depleting the trust (which may, in fact, be the testator's intent).

A grantor choosing an eight-percent distribution percentage, may be counting on a roughly six-percent rate of return, with the intention that the trust will deplete over the course of 20 or so years for the beneficiary. There does not seem to be a very compelling reason to use a unitrust, other than for purposes outlined in the use of a charitable unitrust; however, the option is available.

Discretionary/Sprinkling Trust

In these trusts, the trustee can manage the trust including investments and distributions, and sprinkle distributions to the beneficiaries at his discretion. The trustee has complete discretion to decide how often to distribute to the beneficiary, if at all. This provides creditor protection because the beneficiary cannot compel distributions. When a disinterested trustee is serving, a beneficiary has increased creditor protection. When such trustee is also the distribution trustee, however, the beneficiary must rely on the standards required of a fiduciary, and this trustee may not be sensitive to a time of increased need of the beneficiary. In any event, the beneficiary is not learning how to handle the large sums within the trust because he is completely subject to the discretion of the trustee regarding distribution. If there are funds within the trust, and the beneficiary finds himself or herself in a financial quandary, there is a risk that the discretionary trustee will not pay the debt, school loan, mortgage, wedding,

Chart 5. 20-Year Distribution, 4% Net Growth After Taxes

Trust Corpus	Year	Distribution	Trust Remainder	Next Year's Interest	Total Distributions
$1,000,000	1	$50,000	950,000	$38,000	$50,000
$988,000	2	$52,000	936,000	$37,440	$102,000
$973,440	3	$54,080	919,360	$36,774	$156,080
$956,134	4	$56,243	899,891	$35,996	$212,323
$935,887	5	$58,493	877,394	$35,096	$270,816
$912,490	6	$60,833	851,657	$34,066	$331,649
$885,723	7	$63,266	822,457	$32,898	$394,915
$855,356	8	$65,797	789,559	$31,582	$460,711
$821,141	9	$68,428	752,713	$30,109	$529,140
$782,821	10	$71,166	711,656	$28,466	$600,305
$740,122	11	$74,012	666,110	$26,644	$674,318
$692,754	12	$76,973	615,782	$24,631	$751,290
$640,413	13	$80,052	560,361	$22,414	$831,342
$582,776	14	$83,254	499,522	$19,981	$914,596
$519,503	15	$86,584	432,919	$17,317	$1,001,179
$450,236	16	$90,047	360,189	$14,408	$1,091,227
$374,596	17	$93,649	280,947	$11,238	$1,184,876
$292,185	18	$97,395	194,790	$7,792	$1,282,271
$202,582	19	$101,291	101,291	$4,052	$1,383,561
$105,342	20	$105,342	0	$0	$1,488,904

purchase price of the car, *etc*. A situation that may be almost as bad is the discretionary trustee acting like the superior power in bailing the beneficiary out sometimes and refusing to provide assistance at other times. This discourages responsibility in the beneficiary and interferes with relationships. In addition, the discretionary trustee may treat equal beneficiaries unequally.

Even in a situation where separate shares of the trust are established, the discretionary trustee may distribute unequally and still be well within the limits of his fiduciary obligations; thus, we can have inequities, and without gross malfeasance, there may be no remedies available without (or even with) judicial intervention.

If the beneficiary of the trust is acting as trustee under a limited power of attorney, with an ascertainable standard for distributions, there is a decrease in the asset protection value of the trust.[4] In such instances, the beneficiary-controlled discretionary trust will serve as more of a shield to protect the beneficiary against creditors, though not as iron-clad as a third party controlled trust.[5] In the instance where the beneficiary is serving as the discretionary trustee, they can essentially, at will, enjoy the contents of the trust, and though the trusts' language limits distribution to ascertainable standards,[6] there is no check on the beneficiary's actions. In the instances where the grantor seeks control over their trustees, when the trustee is the beneficiary, the grantor will lose control, as there is no accountable third party minding the store.[7]

Maturity Trust[SM]

Over the course of my practice, I have developed an approach to trust distribution issues that I think addresses many of the concerns I have been discussing. The Maturity Trust[SM] is based on the following concepts:

Assume there is a substantial trust corpus and a potentially immature beneficiary. This discussion may take place with parents with a young minor child protecting against an accident, going on a trip, *etc.,* or parents with a teenager (or older) who are concerned about the child's fiscal responsibility.

The Master Trust consists of the bulk of the trust, and it is outside of the reach of the beneficiary. It is a general needs trust and a discretionary trust. The trustee may distribute as appropriate to the beneficiary. But that is not the exciting part.

1. Beginning at a predetermined age or event, such as attaining a certain age or graduation from college, the beneficiary receives annual distributions.
   a. If those distributions are less than the interest generated by the Master Trust, the Master Trust continues to grow.
   b. ALL distributions to the beneficiary are in a separate beneficiary-controlled general needs trust. The beneficiary has functionally complete access to the distributions, yet those distributions are creditor protected and, while in trust, outside of the beneficiary's estate. This is the best of all worlds![8]
   c. As the beneficiary ages, the distributions from the Master Trust to the beneficiary-controlled general needs trust increases until ultimately, at some predetermined age, the beneficiary may manage the funds himself. The Master Trust is eventually absorbed by the beneficiary-controlled general needs trust.
   d. The beneficiary-controlled general needs trust has a limited power of appointment and the assets in this trust will be bequeathed to the

Chart 6. Staggered Distribution

Trust Corpus	Year	Distribution	Trust Remainder	Next Year's Interest	Total Distributions
$4,000,000	1	$1,333,333	2,666,667	$106,667	$1,440,000
$2,666,667	2	$106,667	2,666,667	$106,667	$1,546,667
$2,666,667	3	$106,667	2,666,667	$106,667	$1,653,333
$2,666,667	4	$106,667	2,666,667	$106,667	$1,760,000
$2,666,667	5	$106,667	2,666,667	$106,667	$1,866,667
$2,666,667	6	$1,333,333	1,333,333	$53,333	$1,920,000
$1,333,333	7	$53,333	1,333,333	$53,333	$1,973,333
$1,333,333	8	$53,333	1,333,333	$53,333	$2,026,667
$1,333,333	9	$53,333	1,333,333	$53,333	$2,080,000
$1,333,333	10	$53,333	1,333,333	$53,333	$2,133,333
$1,333,333	11	$1,333,333	0	$0	$4,640,000
$0	12	$0	0	$0	$4,640,000

beneficiary's decedents' (if any) otherwise to the grantor's choice of beneficiaries as predetermined. This can provide an opportunity for a long-lasting trust to protect the family over several generations.

When the concept was presented to scores of estate planners a question that arose was whether the grantor could not simply grant a beneficiary increasing withdrawal rights from the Master Trust? The response is that while it would technically allow a beneficiary to access an increasing portion of the Master Trust, it is not the same as having complete dominion over the general needs trust that the beneficiary completely controls. If the beneficiary exhausts the distributions from a year, then the trust will refill; however, the beneficiary learns how quickly the money (and fair-weather friends) can disappear.

The largest downside to using a double-trust concept, where both trusts are complex trusts, involves accounting fees, which may be a small price to pay to ensure the beneficiary's control of the assets in the manner the grantor would prefer.

A benefit of the Maturity Trust over a purely discretionary trust exists when considering the "floor" of what the beneficiary will receive. During the formative years, the trust is purely discretionary; the minor beneficiary is relying upon the guardian for protection, and the trustee for financial stability. Upon attainment of majority, a purely discretionary trust where the beneficiary is not the trustee may allow a beneficiary to be "personally" insolvent while there may be millions of dollars in trust being withheld by the trustee. The Maturity Trust, or double trust allows the trustee to distribute more if appropriate; however, the mandatory general needs

Chart 7. Maturity Trust vs. Unitrust

Maturity Trust(SM)	Year	GNT	Remaining	Unitrust	Uni distributions'	Distributions	Remaining
$975,000	1	$25,000	$8,667	960,000	40,000.00	$40,000.00	$13,867
$989,000	2	$50,000	$17,333	956,800	41,600.00	$81,600.00	$28,288
$1,003,560	3	$75,000	$26,000	951,808	43,264.00	$124,864.00	$43,286
$1,018,702	4	$100,000	$34,667	944,886	44,994.56	$169,858.56	$58,884
$1,034,450	5	$125,000	$43,333	935,887	46,794.34	$216,652.90	$75,106
$1,050,829	6	$150,000	$52,000	924,656	48,666.12	$265,319.02	$91,977
$1,067,862	7	$175,000	$60,667	911,030	50,612.76	$315,931.78	$109,523
$1,085,576	8	$200,000	$69,333	894,834	52,637.27	$368,569.05	$127,771
$1,103,999	9	$225,000	$78,000	875,884	54,742.76	$423,311.81	$146,748
$1,123,159	10	$250,000	$86,667	853,987	56,932.47	$480,244.29	$166,485
$1,143,085	11	$275,000	$95,333	828,937	59,209.77	$539,454.06	$187,011
$1,163,809	12	$300,000	$104,000	800,516	61,578.16	$601,032.22	$208,358
$1,185,361	13	$325,000	$112,667	768,495	64,041.29	$665,073.51	$230,559
$1,207,776	14	$350,000	$121,333	732,632	66,602.94	$731,676.45	$253,648
$1,231,087	15	$375,000	$130,000	692,671	69,267.06	$800,943.51	$277,660
$1,255,330	16	$400,000	$138,667	648,340	72,037.74	$872,981.25	$302,633
$1,280,543	17	$425,000	$147,333	599,354	74,919.25	$947,900.50	$328,606
$1,306,765	18	$450,000	$156,000	545,412	77,916.02	$1,025,816.52	$355,616
$1,334,036	19	$475,000	$164,667	486,196	81,032.66	$1,106,849.18	$383,708
$1,362,397	20	$500,000	$173,333	421,370	84,273.97	$1,191,123.14	$412,923
$1,391,893	21	$525,000	$182,000	350,580	87,644.93	$1,278,768.07	$443,306
$1,422,569	22	$550,000	$190,667	273,452	91,150.72	$1,369,918.79	$474,905
$1,454,472	23	$575,000	$199,333	189,594	94,796.75	$1,464,715.54	$507,768
$1,487,650	24	$600,000	$208,000	98,589	98,588.62	$1,563,304.16	$541,945
$1,522,156	25	$625,000	$216,667	0	102,532.17	$1,665,836.33	$577,490

trusts aspects require the trustee to distribute at least minimums to the beneficiary, avoiding anecdotes that many of us have heard about the beneficiary with millions who is homeless because his trustee/sibling will not distribute.[9]

Viewing Chart 7, using $1 million and a 25-year payout, we can compare the concept of the Maturity Trust℠ to that of a staggered distribution trust, which I called a unitrust in the example, with the assumption that the beneficiary will spend two-thirds of each distribution, the remaining one-third will grow at four-percent net, and the amounts not distributed will also grow at four-percent net. At no point are we assuming the trustee over the major portion of the trust can invest more intelligently than the beneficiary, though that may be a factor. The chart shows distribution at year 1 of $25,000 into the beneficiary-controlled general needs trust (note, the author does not recommend leaving the distribution amount at $25,000, but rather increasing the GNT distributions periodically; however, the chart illustrates several points). With four-percent net growth, the Maturity Trust℠ continues to grow and can maintain an annual distribution of $25,000 in perpetuity. In the Unitrust example, we are distributing 1/25, then 1/24, *etc.*, each year (including interest), so the trust will exhaust itself.

In our example, the beneficiary would have received $625,000 total in the general needs trust. The example does not compute interest on the GNT, but rather assumes two-thirds was spent, leaving one-third to grow at four-percent net. At the end of 25 years, with these admittedly flawed and unrealistic assumptions the beneficiary would have retained $216,667 in the general needs trust, while the Maturity Trust℠ remains at level some 50 percent higher than it began (approximately).

Chart 8. Trust Distribution on a Double Trust

Master Trust	Year	GNT	Remaining	Unitrust	Uni distributions'	Distributions	Remaining
975,000.00	1	$25,000.00	8,667	$960,000.00	40,000.00	$40,000.00	$13,867
989,000.00	2	$50,000.00	17,333	956,800.00	41,600.00	$81,600.00	$28,288
1,003,560.00	3	$75,000.00	26,000	951,808.00	43,264.00	$124,864.00	$43,286
1,018,702.40	4	$100,000.00	34,667	944,885.76	44,994.56	$169,858.56	$58,884
1,034,450.50	5	$125,000.00	43,333	935,886.85	46,794.34	$216,652.90	$75,106
1,050,828.52	6	$150,000.00	52,000	924,656.21	48,666.12	$265,319.02	$91,977
1,067,861.66	7	$175,000.00	60,667	911,029.69	50,612.76	$315,931.78	$109,523
1,085,576.12	8	$200,000.00	69,333	894,833.61	52,637.27	$368,569.05	$127,771
1,103,999.17	9	$225,000.00	78,000	875,884.19	54,742.76	$423,311.81	$146,748
1,123,159.13	10	$250,000.00	86,667	853,987.09	56,932.47	$480,244.29	$166,485
1,143,085.50	11	$275,000.00	95,333	828,936.80	59,209.77	$539,454.06	$187,011
1,163,808.92	12	$300,000.00	104,000	800,516.11	61,578.16	$601,032.22	$208,358
1,185,361.28	13	$325,000.00	112,667	768,495.47	64,041.29	$665,073.51	$230,559
1,207,775.73	14	$350,000.00	121,333	732,632.34	66,602.94	$731,676.45	$253,648
1,231,086.76	15	$375,000.00	130,000	692,670.58	69,267.06	$800,943.51	$277,660
1,255,330.23	16	$400,000.00	138,667	648,339.66	72,037.74	$872,981.25	$302,633
1,280,543.44	17	$425,000.00	147,333	599,354.00	74,919.25	$947,900.50	$328,606
1,306,765.17	18	$450,000.00	156,000	545,412.14	77,916.02	$1,025,816.52	$355,616
1,334,035.78	19	$475,000.00	164,667	486,195.96	81,032.66	$1,106,849.18	$383,708
1,362,397.21	20	$500,000.00	173,333	421,369.84	84,273.97	$1,191,123.14	$412,923
1,391,893.10	21	$525,000.00	182,000	350,579.70	87,644.93	$1,278,768.07	$443,306
1,422,568.82	22	$550,000.00	190,667	273,452.17	91,150.72	$1,369,918.79	$474,905
1,454,471.58	23	$575,000.00	199,333	189,593.50	94,796.75	$1,464,715.54	$507,768
1,487,650.44	24	$600,000.00	208,000	98,588.62	98,588.62	$1,563,304.16	$541,945
1,522,156.46	25	$625,000.00	216,667	0.00	102,532.17	$1,665,836.33	$577,490

Alternatively, paying out the Unitrust to the beneficiary, and assuming only one-third remains and that one-third earns four-percent net, shows a net remaining to the beneficiary of $577,490 versus the $1,522,156 left available to the beneficiary in the Maturity Trust[SM] example.

Conclusion

In counseling a family regarding distribution strategies for their estate plans, it may be beneficial to take the time and ask them to consider how their beneficiary will receive their bequest. If you provide some numbers for them to consider they may be more likely to understand the consequences of their distribution plan and ask you to draft something more reasonable that will actually fulfill their goals for their estate and for their beneficiaries. When making distributions to the beneficiary, instead of outright, consider the utility and benefit of making those distributions into a beneficiary controlled general needs trust, allowing the beneficiary the advantages of an outright distribution without the risks.

Endnotes

1 For a great treatment on the Rule of 72, please *see http://en.wikipedia.org/wiki/Rule_of_72.*

2 Note: Black's Law Dictionary (5th ed.), at 1356, describes a sprinkling trust as "[a] trust which calls for distribution of income to various beneficiaries at different times, though provision may also be made for accumulation."

3 Admittedly, the first chart indicates an extra 10 years of distributions (and thus interest), increasing the amount received by the beneficiary.

4 Reg. §20.2041-1(c)(2) states, "Powers limited by an ascertainable standard. A power to consume, invade, or appropriate income or corpus, or both, for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education support, or maintenance of the decedent is, by reason of section 2041(b)(a)(A), not a general power of appointment."

5 For greater asset protection, consider a third-party trustee (distribution trustee); this may be perfect for an ultra-wealthy beneficiary; however, for trusts of "only" several million dollars, consider at what point (if ever) the beneficiary should be in charge of the trust.

6 New York's and New Jersey's codes default that an interested beneficiary, by default, is disqualified unless distributions are limited to ascertainable standards—NY EPTL 10-10.1 , N.J.S.A. 3b:11-4.1.

7 Yes, the beneficiary's descendants may have a cause of action if the trust is squandered, although more than likely the immature beneficiary will run amok.

8 Note—this technique is available for virtually any distribution to a beneficiary, though your author has seldom seen it used elsewhere as such.

9 While your author is lacking documentation on such an anecdote, your author is also lacking documentation on the Boogie Man though stories abound regarding that nefarious character as well.