



NORTHERN
TRUST

MODERN TRUST PROVISIONS

GRANTOR INTENT • THE MODERN FAMILY • FLEXIBILITY
MODERN INVESTING AND SPECIAL ASSETS • TRUSTEE POWERS

MODERN TRUST PROVISIONS



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INTRODUCTION

IT IS WELL UNDERSTOOD AND COMMONLY DISCUSSED THAT SOCIETY, LAWS, MORES AND FAMILY STRUCTURES HAVE CHANGED OVER THE LAST SEVERAL DECADES.

THE EXTENT OF THESE CHANGES CAN BE MORE FULLY APPRECIATED WHEN WE REFLECT ON MODERN FAMILIES AND VIEWPOINTS. FOR EXAMPLE, CONSIDER THE FOLLOWING:

Percentage of young adults ages 18-34 who were married¹



1 in 3

U.S. adults say they have used fertility treatments or know someone who has.²



THERE IS NOW MORE THAN

\$12 Trillion

or one in four dollars of total assets under management in the U.S. – invested in socially responsible ways.³

Favoring same sex marriage⁴



Millennials



Boomers

Nearly 2% of infants born in the U.S. were conceived with the use of assisted reproductive technology.²

Percentage of children who lived with two parents in their first marriage⁵



¹ Gurrentz, B. (2018, November 15). Living with an Unmarried Partner Now Common for Young Adults. United States Census Bureau. Retrieved from <https://www.census.gov/library/stories/2018/11/cohabitation-is-up-marriage-is-down-for-young-adults.html>.

² Livingston, G. (2018, July 17). A third of U.S. adults say they have used fertility treatments or know someone who has. Pew Research Center Think Tank. Retrieved from <https://www.pewresearch.org/fact-tank/2018/07/17/a-third-of-u-s-adults-say-they-have-used-fertility-treatments-or-know-someone-who-has/>. Centers for Disease Control and Prevention. Assisted Reproductive Technology (ART) State-Specific ART Surveillance. Retrieved from <https://www.cdc.gov/art/state-specific-surveillance/index.html>.

³ US|SIF Foundation (2018). Report on Sustainable, Responsible and Impact Investing Trends. Retrieved from <https://www.ussif.org/files/Trends/Trends%202018%20executive%20summary%20FINAL.pdf>. US|SIF Foundation (2018). Report on Sustainable, Responsible and Impact Investing Trends. Retrieved from <https://www.ussif.org/files/Trends/Trends%202018%20executive%20summary%20FINAL.pdf>.

⁴ Pew Research Center (2019, May 14). Attitudes on Same-Sex Marriage. Retrieved from <https://www.pewforum.org/fact-sheet/changing-attitudes-on-gay-marriage/>.

⁵ Pew Research Center (2015, December 17). Parenting in America. Retrieved from <https://www.pewsocialtrends.org/2015/12/17/1-the-american-family-today/>.

GRANTOR INTENT

IN PRIOR GENERATIONS, GRANTOR INTENT WAS LARGELY LEFT FOR INTERPRETATION AND DISCLOSURE BY A FAMILY'S COUNSEL AND THE DESIGNATED FIDUCIARIES THROUGH STANDARD TRUST PROVISIONS AFTER THE GRANTOR'S DEATH.

Increasingly, this model is being challenged as grantors and beneficiaries alike seek a more impactful wealth transfer approach – one that helps bridge grantor intent with the changing goals, lifestyles and priorities of beneficiaries.

The following provisions are intended to build this bridge. The Statement of Intent or Material Purpose provision, in particular, provides the opportunity to communicate the fundamental basis of wealth transfer intent, which can be clarified and supported, as appropriate, by the following three provisions. It is our hope – and experience – that this type of articulation provides a new focus for estate planning that can lead to greater wealth transfer success for families and the professionals who serve them.

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STATEMENT OF INTENT OR MATERIAL PURPOSE

A Statement of Intent can serve as documentation of a “material purpose” that may be considered in the context of a proposed termination or modification of a trust, depending upon statutory or case law in a particular state, and that may prevent a proposed termination or modification of a trust that would be contrary to the grantor’s intent. It can be intentionally designed to give the beneficiary, fiduciaries and courts guidance on the purpose for wealth transfer.

In addition, a Statement of Intent is often included to provide insight into the grantor’s overarching philosophy of wealth transfer. The Statement of Intent should be goal based.

Reasons To Consider A Statement Of Intent:

- 1** It can have a more conversational tone than the overall trust agreement.
- 2** It can give beneficiaries context for the overall wealth plan.
- 3** It can provide an opportunity to share family history and how it has impacted the grantor’s wealth transfer decisions.
- 4** It can communicate the grantor’s values (e.g., philanthropy, financial independence, retention of family business, higher education).
- 5** It can help avoid misunderstandings.

THE MODERN FAMILY

THIRTY YEARS AGO, A TRADITIONAL FAMILY WAS CONSIDERED BY MANY TO BE A HUSBAND AND WIFE WHO MARRIED AT AN EARLY AGE, BOUGHT A HOME, HAD CHILDREN AND WORKED TOWARD FINANCIAL SECURITY.

Today, with the rise of blended families, same-sex marriage, artificial reproductive technology, cohabiting couples and other household trends, that “traditional family” represents only one-third of American households.⁶

The other two-thirds of families – as well as certain members of traditional families – have unique needs that present challenges under conventional trust provisions. From carefully considering the definition of children and grandchildren, to ensuring beneficiaries receive their inheritances regardless of gender identity, trusts need to reflect new types of family diversity. The following provisions are intended to address this diversity.

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Definition of Spouse – Including Civil Unions... **24**

Gender Change Included in Specific Gender References... **25**

¹ Gurrentz, B. (2018, November 15). Living with an Unmarried Partner Now Common for Young Adults. United States Census Bureau. Retrieved from <https://www.census.gov/library/stories/2018/11/cohabitation-is-up-marriage-is-down-for-young-adults.html>.

² Livingston, G. (2018, July 17). A third of U.S. adults say they have used fertility treatments or know someone who has. Pew Research Center Think Tank. Retrieved from <https://www.pewresearch.org/fact-tank/2018/07/17/a-third-of-u-s-adults-say-they-have-used-fertility-treatments-or-know-someone-who-has/>. Centers for Disease Control and Prevention. Assisted Reproductive Technology (ART) State-Specific ART Surveillance. Retrieved from <https://www.cdc.gov/art/state-specific-surveillance/index.html>.

FLEXIBILITY

AT NORTHERN TRUST, WE OFTEN ENCOUNTER INFLEXIBLE IRREVOCABLE TRUSTS THAT LEAVE TRUSTEES AND BENEFICIARIES UNABLE TO ADDRESS CHANGING FAMILY CIRCUMSTANCES, UNIQUE INVESTMENT ISSUES, OUTDATED TRUST GOVERNANCE PROCEDURES OR CHANGES IN TAX LAW.

AS JUST A FEW EXAMPLES:

1. Beneficiaries who are capable of and interested in exercising investment control over closely held family business assets but are precluded from doing so under the terms of a trust that grants the trustee full investment discretion.
2. A grantor who wants to allow a third party to address changes in the beneficiaries' circumstances, especially those which cannot be foreseen, through a power of amendment.
3. A grantor who is concerned that her descendants may not have the maturity until they are further along in young adulthood to handle the family wealth either financially or emotionally.

Fortunately, trust laws have been evolving to allow for greater flexibility in many types of situations, including through decanting, modification of trusts, changing trust situs and granting trustees the ability to confer or eliminate powers of appointment. We have written the following provisions to provide trusts with the types of flexibility which, based on our experience, are most commonly needed by clients and their trustees.

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MODERN INVESTING AND SPECIAL ASSETS

GRANTORS AND BENEFICIARIES HAVE BECOME INCREASINGLY INTERESTED IN INCORPORATING ENVIRONMENTAL, SOCIAL AND GOVERNANCE (ESG) CONSIDERATIONS INTO THEIR INVESTMENT PORTFOLIOS.

At the same time, access to and interest in alternative investments has been rising as investors seek different sources of return. These types of investments, however, can sometimes be at odds with fiduciary duties, including those imposed on trustees by the Prudent Investor Rule, which requires trustees to diversify among assets, focus on performance and control risk.

The following trust provisions are intended to guide clients, trustees and advisors as they navigate the potential conflict between applicable laws and families' desire to take advantage of new investment philosophies, including ESG investments. In many instances, the traditional portfolio approach and performance metrics are becoming incongruent with grantor intent and the ever-changing investment landscape. We have also included several provisions related to the retention and acquisition of special assets, residences and concentrations.

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