Trust-Fund Kids Get Assertive In Down Market

Pritzker Family Feud Highlights Growing Number of Disputes; New Ways to Keep the Peace

CHICAGO'S PRITZKER CLAN, which is fighting over how to divvy the spoils of its $15 billion empire, is hardly the only family dealing with disputes over trust funds.

During the booming '80s and '90s, the use of trusts spread widely, not only among the super-wealthy but among families looking to save money for tuition payments or aging grandparents. One key motivation: Families building stock-

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market wealth saw trusts as a way to keep some control while saving money on taxes by giving it early to their kids.

Now, the market downturn—as well as the rise in second and third marriages and the tendency of families to be more spread out—is causing tensions. In the most extreme case, that has lead to interfamily lawsuits like that of the Pritzkers. Last month, 18-year-old Liesel Pritzker sued her elders to gain a bigger slice of her family's business interests, which include hotel chain Hyatt Corp., and various real-estate and manufacturing ventures.

Law firms around the country report a surge in trust and estate litigation. Joshua Rubenstein, a lawyer in Manhattan, says the trust and estates group at his firm now spends "fully one-third" of its time on litigation, up from just 10% five years ago. "I have seen a direct correlation between the bad economy over the last three years and an increase in estate contests and trust contests," he says.

Plus

Five ways to bulletproof your family's trust funds.

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Many of the disputes, especially in families who have fewer zeros after their names than the Pritzkers, are creating headaches short of litigation. The issue of who controls a trust—often a relative, family lawyer or bank official—has become especially sensitive as beneficiaries bicker over whether declining assets were wisely invested.

Alan Rothschild Jr., an estate-planning attorney in Columbus, Ga., says one client recently had to cut back her withdrawals from a trust because of lower returns. Until this year, the trust was able to support not only the benefactor's daughter (who is also the client), but her children as well. Now, for the first time, the trust will stop making distributions to the benefactor's grandchildren because of insufficient income. "With the drop in the market for three straight years and a tremendous reduction in interest rates, the family had to reassess access to the trust," says Mr. Rothschild.

One piece of good news for beneficiaries: States are now giving trustees greater flexibility in managing the estate's assets. More than 30 states have passed laws in the past 18 months that allow trust managers to pay beneficiaries from capital gains as well as dividends—to encourage more balanced investing as well as bigger payouts.

More people than you might think depend on money from trusts. Trusts are generally set up by a written agreement that specifies who should benefit, when money should be distributed, and the trustee who will oversee all that.

Some families are struggling right now with

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whether maintaining a trust is worth the cost. At a certain point the administrative costs outweigh what the trust is earning or paying out in dividends.

The smaller trusts are particularly vulnerable to the market's fluctuations, says Martin Shenkman, an estate lawyer in New York. One of his clients put $30,000 into a trust for his grandchildren a few years ago, expecting it to grow at least 15% a year and provide them with $150,000 by the time they started college. But when the trust's value fell to $15,000, the grandfather decided to shut it down and sock the money into a 529 college savings plan instead, he says.

With trust litigation on the rise, some families and lawyers are starting to rethink how they set up trusts. One increasingly common tactic: no-contest clauses, which disinherit anyone who files an unsuccessful legal challenge to an estate. These no-contest clauses aren't perfect, however. How well they're enforced varies from state to state. They may also unfairly handcuff members of a later generation who may, for instance, have good reason to challenge how a trust is paying out funds.

Another issue: conflict of interest. Sometimes, the banks that manage the trusts try to steer the assets to their own mutual funds, angering beneficiaries.

So, how can your family prevent good fortune from causing bad blood? Here are some ways that heirs are tinkering with their trusts in hopes of smoothing over ruffled feathers:

TOTAL RETURN TRUSTS: Traditionally, trust beneficiaries are paid from a trust's income every year—that means dividend payments from stocks and bonds, rather than the principal itself.

That structure has triggered tug of wars between widows and their children, with the widows pushing for the trust to be invested in dividend-yielding, low-risk securities, the children pushing for high-growth stocks, and the trustee getting stuck in the middle.

To solve that problem, more than 30 states have passed laws that give trust managers more flexibility. Some give trustees the power "to adjust" investments as income so they can pay the beneficiary a higher amount. Others allow conversions to what are called "unitrusts" in which the beneficiary gets paid a fixed percentage of the trust's total value each year, typically 4%. At least nine states provide both options.

SPLIT IT UP: Another way families are mending relationships is by dividing trusts into smaller pots over which each beneficiary has more say—you can do so anytime, as long as the trustee agrees, or you can win court approval.

DUMP THE BANK: If your fights are with the trustee, rather than with your siblings, over the way it's managing the money, it may be time to end the relationship. Horror stories abound of banks that make beneficiaries practically beg for their own money, trust officers who won't return phone calls, beneficiaries stuck with toll-free numbers to nowhere, and assets being steered to financial institutions' poorly performing proprietary mutual funds.

The simplest escape hatch? "Make yourself such a colossal nuisance that they say, 'We don't want to work with you anymore,'" says Lawrence Rosenwald, a Philadelphia attorney.

MAKE BETTER PLANS NOW: Lawrence Cohen, a Boston estate-planning attorney, still thinks most families' best bet is to appoint a professional trustee—but with removal power. Others like Mr. Shenkman, the New York lawyer, suggest limiting the beneficiaries' right to fire the trustee to once every two or three years "so they don't go crazy with it," and to name a co-trustee from the family. "It lets you create checks and balances," he says.

How to Bulletproof Your Trust

With trusts on the rise in recent years, but assets often shrinking, here are some strategies for diffusing family feuds.

- **Divide the pie fairly:** If only one of a few children works in the family business, leave a life-insurance trust worth the same amount to the others.
- **Pick the trustee carefully:** Make sure you have the power to remove the trustee, perhaps every two to three years (more often than that is an invitation to meddle). Also consider appointing a co-trustee.
- **Get rid of the bank:** Sometimes complaining will work. If you make yourself a nuisance, an institutional trustee may agree to part ways.
- **Adjust the payout:** Typically, trusts pay income from dividends and hang onto the principal for the next generation, triggering a tug-of-war between widows and children. Many states have recently passed laws letting trustees pay the widow from the principal.
- **Split the trust:** Some beneficiaries may want to invest in fixed-income securities, others in growth stocks. If the trustee or a judge agrees, you can divide up a trust so that each person has more say over how their share gets invested.

Here are some Web sites that provide general information about trust–everything from how they works to where to find help if the beneficiaries are locked in a dispute.

- **www.heirs.net:** Heir Inc. provides information for self-described "unhappy" beneficiaries about ways to deal with bank trustees and contact other beneficiaries for advice, and a newsletter.
- **www.actec.org:** The American College of Trust and Estate Counsel has a lawyer locator service, accounting information, and links to basic information about how trusts work.
- **www.estateplanforyou.com:** The American Academy of Estate Planning Attorneys has basic information about trusts.

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