Total Return Unitrust Promotes Smooth Sailing

Imagine sailing a beautiful sailboat without a rudder. The captain may end up sailing in a circle, or worse, sailing directly into a storm. When it comes to drafting trusts, it is essential that your Trustee (Manager) has clear instructions (i.e., a rudder) on how to manage investments and make distributions from the trust. We suggest that you consider using a Total Return Trust with Unitrust provisions as part of your Trust document. This will result in predictable distributions from the perspective of the Trustee and the beneficiaries and provide for the long-term preservation of assets. This article provides a brief overview of the benefits of the Total Return Unitrust from the following parties' perspectives: you, as the Grantor (who set up the trust); the Trustee (the manager of the Trust); and your intended beneficiaries.

The traditional discretionary trust provides for distributions for the beneficiary's ascertainable needs (in English that means that distributions are made when the beneficiary needs money for HEMS – Health, Education, Maintenance, or Support). The Trustee's job is to produce income for the current beneficiaries and to preserve assets for the remainder beneficiaries. There is nothing wrong with this approach and we still commonly use it. However, there is an inherent conflict between the current income beneficiaries and remainder beneficiaries in that the remainder beneficiaries want the trust assets to grow in value (and are less concerned about current income distributions). The Trustee must also consider the remainder beneficiaries when making investment decisions and when making discretionary distributions to the current beneficiaries. To alleviate this tension between the income beneficiaries and the remainder beneficiaries we use the Total Return Unitrust.

The Total Return Unitrust provides for a fixed percentage payout each year based on the value of the Trust assets on a particular day. For example, if you use a 4% unitrust and the Trust balance is $1,000,000 on valuation day, then the payout would be $40,000 (or $10,000 per quarter). The Trustee invests for the total return (i.e., both income and appreciation, thereby satisfying both current and remainder beneficiaries). You, the Grantor (who set up the trust), the Trustee (the manager of the Trust) and the current and remainder beneficiaries are all in alignment. The unitrust provisions may be the sole solution or you may combine the traditional discretionary trust approach with the unitrust approach to create a hybrid.

Advantages of Drafting with the Unitrust Provisions – Three Unique Perspectives:

<u>The Settlor or Grantor of the Trust (the Author of the Trust):</u>

The Total Return Unitrust will provide ease of administration, less bickering between the Trustee and the beneficiaries over how the Trust assets should be invested, and provide a rudder or a benchmark for the Trustee and the Beneficiaries. This approach will also result in more predictable cash flow and trust distributions.

The Trustee (the Manager of the Trust):

The Total Return Unitrust allows the Trustee to invest for the long term with knowledge of the benchmark that they must hit to satisfy everyone's demands on the Trust. The trustee will potentially receive fewer calls from beneficiaries which will allow the trustee to focus on their job at hand: to invest wisely and effectively and efficiently administer the Trust.

The Beneficiaries (the Children, Grandchildren or Other Heirs):

The Total Return Unitrust provides the current income beneficiaries with a predictable flow of money that they can count on. This will allow beneficiaries to feel less stressed about going to the Trustee to request funds. It may also allow them to better plan for their financial future.

We suggest a collaborative team approach with your financial advisor, accountant and estate planning attorney to evaluate your family's circumstances to determine which trust drafting approach best suits your needs and objectives.