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Upcoming Monthly Virtual Seminars from 12:00 p.m. until 1:00 p.m.:

July, August, and September Virtual Seminars will be pre-taped and air at 12pm on the following dates. July 11th, August 8th, and September 19th.

What Is a Trust?

By: Samantha K. Wolfe, Esquire, LL.M. in Taxation

Like so many things in life, trusts get a bad name because they are misunderstood. Is a trust a nebulous concept which can be difficult to understand? Sure. Does the creation of a trust take thought and planning? Sure. Are some people confused about how to properly draft a trust? Sure. Talking about a trust is like talking about a car. There are many different types of trusts so saying that you have a trust is like saying that you have a car. It really doesn't tell a person much.

I grew up on a farm, and when I decided to go off to the big city for college, my dad decided I needed to buy a reliable car. Dad and I went car shopping together. Honestly, I didn't know much about cars but there were certain features I thought I needed in my new vehicle, and as

I'm sure you guessed, the things I thought I needed were not the things my dad thought I needed. For example, I always thought a sunroof would be really cool, so I wanted a sunroof in my new car. On the other hand, my dad couldn't have cared less about the sunroof. He thought I needed something really practical like a 4-wheel drive. I thought I needed a good stereo system. My dad thought I needed power locks with a feature that triggered the car doors to lock when I started the car. I thought I needed a pretty color for my new car. My dad thought I needed a car that sat high enough off the ground that when driving in heavy traffic I could hold my own against the big tractor trailers. I despise sitting on cold car seats, so I thought I needed heated leather seats. My dad thought I needed airbags. Needless to say, I have a 4-wheel drive SUV with power locks . . . although I did get heated seats. What I have learned since my car shopping experience with my dad is that, like buying a car, establishing a trust is specific to a person's goals. Once you decide what you want to accomplish in buying the vehicle or establishing the trust, the process becomes much easier. When I meet with clients, there are some common goals that clients mention: (1) protecting assets from creditors, (2) planning for long-term care, (3) creating a lasting legacy, (4) minimizing federal estate and income taxes, (5) planning for retirement, and/or (6) providing for a person who has special needs. Sometimes multiple trusts are used to achieve the client's goals, or one trust is used to achieve all of the goals. A trust, if properly drafted, should achieve all of your objectives and offer you the most flexibility possible. Despite what people think, trusts can offer simplicity, flexibility, and predictability.

As I mentioned, I ultimately bought a vehicle that included all of the features my dad thought I needed, and I couldn't have been happier with my investment. I know nothing about cars; however, my dad does. He is comfortable around cars. He routinely fixes cars and is constantly tinkering with vehicles of all shapes and sizes. That is the key . . . If you don't know much about something, then find someone who does and ask that person's advice. If you want to protect your assets from creditors and long-term care costs, create a

lasting legacy, minimize taxes, and/or provide for a person who has special needs, a trust may be your best option so talk with an attorney that is comfortable with and knowledgeable about trusts. You will be less confused and more satisfied. If you asked me today if the color of my car is important, I would tell you that it is not. What is important about my car is that it gets me where I need to go; after all, that's why I bought the car. When winter comes and I need to go somewhere, the color of my car isn't what gets me there. My dad was right; I need the 4-wheel drive to get me where I want and need to be.



Partnering with the Pros: Matthew W. Berger, VP, Regional Wealth Manager with F&M Trust

Matt's responsibilities include regional management of F&M Trust's Franklin & Fulton County wealth management staff, administration of personal trusts (including power of attorney and charitable trust work), asset management, and estate planning. Matt has 15 years of experience in the financial industry, including equities, trading, and mutual fund analysis. Matt is also a current member of the Investment Committee at F&M Trust, which is responsible for the investment process. Matt's education background includes being a graduate of Pennsylvania State University, with a Bachelor of Science in Finance from The Smeal College of Business. He holds the Certified Trust and Financial Analyst (CTFA) designation signifying expertise in financial considerations affecting trust and estate work, in addition to his Series 7 and 66 licenses.

Sam – I am here this afternoon for our next installment of Partnering with the Pros. I have Matt Berger with us today and Matt is a Regional Wealth Manager with F&M Trust, and I am excited that Matt is here. I recently had lunch with Matt and I was expressing that so often we have clients that do not have family members who they can involve in their estate planning process, or they might want to incorporate trusts into their estate planning, but they don't know who to name as the trustee. This led to a discussion about the services that F&M offers. Matt, what role can F&M have in a client's estate plan?

Matt – We get involved a lot of times with a client relationship early on when they are attempting to save money, getting started and just managing investments. Through that process, a lot of times with our onboarding and original interview that we do with clients, we are digging in and asking about those legal documents. We want to be sure you have done an up-to-date will, or, if has been a while, we ask if you had had an attorney review it recently. We want to ensure your power of attorney documents are in place, as well as your medical directive. A part of our normal onboarding is to get involved and ask estate planning questions.

Sam – Why does F&M care if you have estate planning documents?

Matt – As a wealth management shop (and we were a Trust Company before we had lending power, so for over 115 years), we have been offering trust services. The basis of that is acting in the best interests of our customers. So, we view any recommendation we make has to tie in all the different aspects of your life, not just your financial goals. We want to make sure that we are not only doing the right thing for your investments, but we want to ask whether you have all those other elements of your financial world in order as we start building that plan out for you. I forget the exact statistic is, but I think it is something like 40% of trusts that are drawn up never get funded. Many times, those are just mistakes where your investment manager or investment professional and your attorney are not on the same page. If you don't update beneficiary designations the whole plan falls through the cracks, then.

Sam – I see clients with a trust that is not funded. It is just sitting there empty. An unfunded trust really isn't doing much for our clients. You might use a trust to avoid probate or you might use a trust for long-term care planning, but unless you actually transfer the assets into the trust you are getting no benefit from that legal document.

Matt – I will say one of the biggest advantages of our shop, like I said we started as a trust company and that is the fundamental backbone of our department. I send all of our new Wealth Advisors to the American Bankers Association to get a Certified Trust Financial Advisor Designation. The estate planning piece is the fundamental piece of how we deliver our advice, as opposed to say maybe an investment broker or someone in the insurance world where they are looking to place those products and maybe the estate planning is on the back burner.

Sam – When you say F&M started as a Trust Company, what does that mean?

Matt – A Trust Company means we are a corporate fiduciary. That means is we are able to act in a number of fiduciary roles, whether that is being Trustee of a Trust, Guardianship of a minor child, acting as an agent under a Financial Power of Attorney, or serving as the executor for someone's estate through the probate process. There are two services that we continue to offer that a lot of our competitors have backed away from. First, we will still be Financial Power of Attorney for a customer. So, if your family isn't local or you don't have someone who can be your advocate in your situation, we can. One of the big things that we see now in the banking industry are elderly folks in our community being taken advantage of either by family members or friends or other people that live near them so we are able to get in there, and again we have that fiduciary responsibility, so we can act in the best interests of those customers. Second, we will also act as a trustee for a special needs trust, which is another area that is fraught with legal obstacles.

Sam – What does it mean when you say fiduciary responsibility?

Matt – The word fiduciary means that you truly have to act in the best interests of another person. If I get the history right, you are really going back to the Dark Ages which is where trusts came from. At that time, if I am going to fight in Middle East and I am going to leave someone in charge of my kingdom, I want that person had to act in my best interest and not for their own interests. It is something we take very seriously. We have to put ourselves in the shoes of the person we are managing the Trust for, or the beneficiary, or whoever we are acting on their behalf to ensure that we are making decisions that benefit them, not benefiting F&M Trust or ourselves individually.

Sam – That is wonderful because I am working with a lot of families where they might have a child that could serve in that position whether it be trustee or agent, but the concern the parent has is there are financial concerns that the child has or maybe there is a situation that the child is in which we aren't sure the child is acting in the best interest of their mom or dad. When you appoint an institution like F&M, it makes it so you really are just acting in the best interests of the client.

Matt – I will even give you a personal example, so I view another reason not to do that as not burdening those family members with some of those responsibilities. My wife and I have a young son who is going to be turning four years old in about a month. In our Wills, if something were to happen to both of us, we have talked to my sister and her husband and they would raise my son but then we have all the insurance money and the retirement funds, our house would be sold, so I have all that going into a trust because I view that as a huge burden to lay on my sister to say, not only do I want you to raise my son, but also don't screwup with his inheritance and here is all this money. That is not her area of expertise. Instead, I have a trust set up and the bank would manage all those funds for my sister. Income would be created by that money every year and that would get paid out to my sister and she could use that to help raise my son. Then, when he becomes the age where he is going to college, she would have discretionary distributions for education expenses, health expenses, maintenance, and support. We have experts who know what those standards are and can apply that properly. When he turns twenty-five, he will get a chunk, at thirty he gets a chunk, and hopefully by thirty-five he could manage that, and he will get the residual amount. That is another way I look at it. There is a burden when you are asking someone who doesn't do it every day to step into act in those responsibilities.

Sam – It is freeing up your sister to really do what you want her to do which is care for and provide for your son. If she had to do all of those other things, then she is balancing all of that in addition to it. It really allows her to focus on what you would want her to focus on.

Sam – You mentioned that a lot of institutions are stepping away from serving in the fiduciary role, which is what our office has experienced. Why do you think that is?

Matt – Liability. There are a lot of legal cases where trustees are getting sued, and I think it is kind of two parts. Number one, you have a lot of banks going through consolidation and they are pulling resources out of communities, so if you are expected to be trustee for someone who is two states away, how in the world are you going to go in and learn who this person is, what they care about, and be able to effectively provide those services? What ends up happening is that they lag and don't do things they should be doing and then ultimately there is a negative impact to the beneficiary, a lawsuit comes about, and the bank has to pay out money and then they end up saying, "You know what we just wrote this million-dollar check, we don't want to be in this business anymore."

Sam –A lot of time that language is used very specifically and very strategically from a drafting standpoint because there are tax implications if you use other language other than that, so I think if you are not somebody who is in the field then it just looks like words on a paper. A lot of times a layman who doesn't have that experience is going to make distributions that just don't follow the guidelines of the trust and that opens an individual up to liability.

Matt – Exactly, and that is the last thing someone wants to leave in their wake is family members fighting or litigation between family members. Nobody wants to leave that.

Sam – Does F&M serve as an agent under a Financial Power of Attorney?

Matt – Absolutely. To give you an example of some of the things we do under that responsibility for an individual, we got involved as Financial Power of Attorney after she had four different family members abuse that privilege. She required a higher level of care because of some memory care issues. I got involved listing and selling the home. Her husband had spread around CDs to about twelve different banks, so we consolidated those investments assets, got her into a facility that provided the care that she needed, we invested that money to provide the income needed for that her care but then also maximized the growth there for the next generation that was going to inherit those funds. We get involved, we get taxes done for our clients, we do the whole thing.

Sam –If an individual would execute a Power of Attorney, the cost is a couple of hundred bucks. The last time I was involved in a guardianship it was more than five thousand dollars to do.

Matt – Absolutely. As you talk about the Power of Attorney you need to keep in mind whoever you name, they have that power from day one. So, you got to play that out as well. A family member or a friend or whoever that you want having that type of control. I have a whole filing cabinet at work where we have power of attorney documents that we have been written in, but no one has asked us to serve yet, so we have the power, we can act at any time, but we wait for you to tell us, "Hey you know what, I think it is time, I need your help." Or a family member to call and say, "We had to put dad in the nursing home, and we are going to need you to act in that capacity." We are not going to step out of bounds unless we are asked to do so.

For more information or to view this video in its entirety, please go to our YouTube channel.

See the insert for an extended portion of Samantha's interview with Matt Berger.

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Sam – I have two thoughts about that; number one is I recently served as the power of attorney for a client who clearly still had capacity and she was admitted into the hospital and a doctor did a psychiatric evaluation via zoom. I have my client who is not good with technology, the doctor was not clearly speaking, it was hard for her to understand, she is hard of hearing, the doctor had a thick accent, and they declared her incapacitated. It was such an unfair determination. I think right now the crisis we are facing is that we are so quick to determine that a person who is aging does not have capacity instead of allowing them to make the choices and make the decisions as long as they are able to do that. I appreciate what you are saying about that. I think my staff gets tired of me ranting and raving about that, but I do think it is an issue. The first thing we do is say “Oh, they don’t have capacity” when, in fact, they do.

Matt – Again incapacity is not something that is here one minute and gone the next. It is a process.

Sam – It is a fluid thing.

Matt – Yes, another client example is I had (an elderly client) who was in the early stages of dementia and when it starts you have six good days and one bad one. Slowly that ratio switches to where you are having six bad days and one good day. One day she showed up with two family members, I think this was a distant nephew and his wife, and they said, “Our aunt has decided she is going to buy us a house.” I am like “Oh ok, is that right?” I looked at her and she said, “Well I would like to help if I could.” I just noticed from the look on her face that she wasn’t having a good day, so, I stalled, and I said “Well I am going to have to figure out how we would structure that gift. Why don’t we reconvene in a couple of weeks after I am able to do some research?” They left. This was on a Friday. Monday morning she calls me at 8:01 and she said, “I know we showed up there on Friday we didn’t do anything, right? We didn’t give them any money, did we?” I said, “No, and thank you so much for calling because I was trying to stall so we would have time to discuss this.” Capacity is not here one moment and gone the next. It is fluid and that does not mean that that person is not capable of making decisions.

Sam – Sometimes people have better times of the day. If I am meeting with a client that has a diagnosis one of the things that I will ask is, what is the best time of the day? Because maybe in the mornings they are the clearest or maybe it is right after lunch that they are the clearest. That is ok because we want to catch them at that clear moment, so we can allow them to make decisions as long as they are able to do so.

Matt – Absolutely. They want to get some help when they need it and I know some people might still have a Springing Power of Attorney in their lockbox. You do not want to go through that process of getting deemed incompetent.

Sam – Exactly.

Matt – You don’t.

Sam – No, no! It is not a pleasant experience, it is cumbersome, and it takes a while to finish. You just don’t want that. The other problem that I have is that so many clients don’t have the powers that are needed in their financial power of attorney document. They might need the agent to update a beneficiary designation or do certain planning for nursing homes. If the power of attorney doesn’t have those powers in it, then you are back to guardianship. If you need a power that is not in the document, then the document is worthless.

Matt – We have people in the 70s and 80s on Facebook that don’t have digital asset language in their financial power of attorney. Facebook is not going to let us in unless we have a document with digital asset language, so we lose all the pictures. We always recommend power of attorney documents. One horror story I will tell you about really quick. We had two clients from the Fulton County area who were getting into their 90s. The wife unfortunately had some sort of dementia and had to go into the nursing home. The husband said, “I want to go in with her.” The problem was the vast majority of their assets were the family farm and it was going to require selling that to have the assets to move in with her. We had to go through that entire court proceeding and it took seven or eight months to get him a ward. Finally, he gets awarded power over her finances and sells the family farm, moves into the nursing home with her. He passed away two weeks later. There’s nine months they could have spent together had they taken some time to draw up those legal documents. It is always something we are asking about and encourage and try to be involved in promoting.