

Legacy Trends 2007: Findings from a Survey of Trust and Estate Attorneys

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Survey Methodology

In October 2007, Northern Trust and *Trusts & Estates* conducted an online survey among leading trust and estate attorneys nationwide. 225 attorneys completed the survey.

Our 2007 survey of leading trust and estate attorneys highlights how the profession is evolving in response to three principal trends: the aging of the Baby Boomer generation, the increasing complexity of today's wealth, and uncertainty surrounding the tax code.

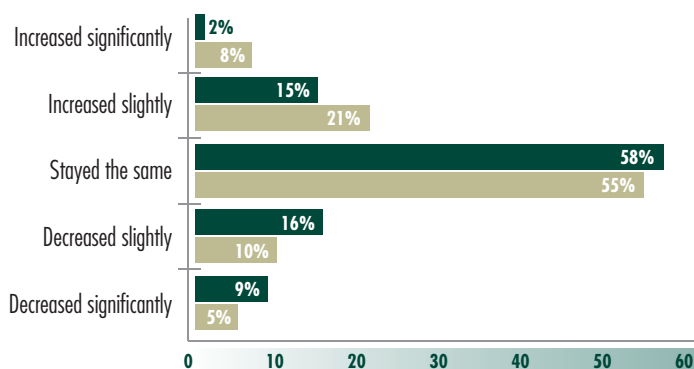
In October 2007, Northern Trust and *Trusts & Estates* surveyed leading trust and estate attorneys nationwide. The purpose of the survey was to gain insights on trends in the fiduciary business, including changes in the use of trustees and in estate planning practices. More than 225 attorneys responded to the survey, two-thirds of whom have been practicing law for more than 20 years.

As many readers are aware, three chief trends are driving the current changes in the trust and estate

planning profession. One trend is the aging of the Baby Boomer generation, which is now entering its peak wealth accumulation years and is dramatically altering the nature of demand for fiduciary services. The other trends are the increasing complexity of today's wealth, and the uncertainly and complexity of the tax code. The results of our survey provide insight into how the trust and estate planning profession is evolving in response to all three of these trends.

Figure 1: Change in Use of Corporate Trustees

How has this percentage changed over the past 5 years?



Base = all respondents, 225.

■ Name a corporate trustee in a current capacity
■ Name a corporate trustee in a future capacity



Northern Trust

Trusts & Estates

Greater Self-Sufficiency

While the overall frequency with which individuals name corporate trustees has changed little over the past five years, respondents indicate that their clients are using corporate trustees less often in a current capacity and more often in a future capacity. (See figure 1, page 1.) This development, though subtle, is significant and is principally due to the aging of the Baby Boomers, who have only now begun to address wealth transfer and legacy planning issues in a serious way.

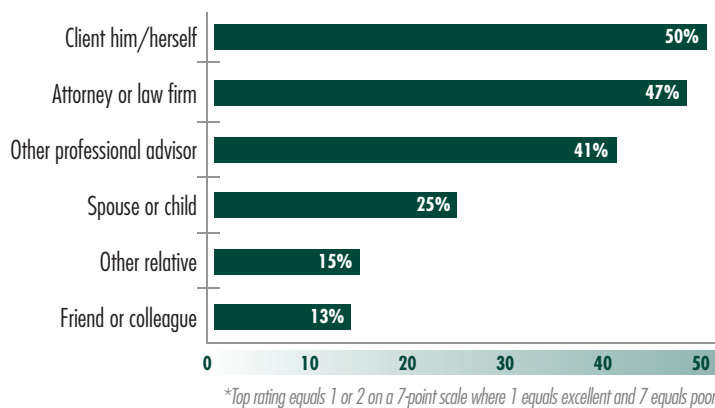
“Baby Boomers have a greater comfort level and are more self-sufficient than their parents in managing their own money,” says Bill Whitt, Director of Market Research at Northern Trust. “They are more likely to name themselves as trustee in a current capacity and name a corporate trustee in a future capacity, when they become unable to serve.”

In many situations—such as those that employ revocable living trusts (an increasingly popular tactic for Baby Boomers)—the increased use of individual trustees is a sensible option. However, attorneys should advise their clients that when naming an individual trustee, they must choose carefully. For example, half of attorneys give an “excellent” trustee rating to clients who serve as their own trustee. By contrast, only one-fourth of attorneys rate clients’ spouses and children as “excellent” trustees, and a mere 15 percent rate clients’ other relatives as “excellent” trustees. (See figure 2, page 2.) Despite these low scores, spouses, children, and other relatives are named nearly one-fourth of the time when an individual trustee is used.

One reason for the decline in use of corporate trustees in a current capacity is that, as one survey respondent noted, women now have greater self-confidence in their ability to manage their funds effectively.

Figure 2: Percent of Respondents Giving Trustee a Top* Rating

How would you assess the overall performance of the following types of individuals when serving as a trustee?



Thus, fewer women feel they need the services of a corporate trustee when their spouse dies or becomes incapacitated.

“It’s not uncommon now for husbands and wives to have high-powered jobs, and both partners are comfortable with making financial decisions,” says Whitt. “It’s a factor in how people are using trustees differently.”

A More Mobile Society

Respondents’ comments on why the use of corporate fiduciaries is changing shows clearly how the three aforementioned trends—the aging of the Baby Boomers, and the growing complexity of wealth and of the estate tax code—are affecting the trusts and estates profession. (See figure 3, page 3.)

In explaining why clients are now more likely to name corporate fiduciaries—particularly in a future capacity—nearly three in ten attorneys (29%) noted that their clients lacked a qualified individual to serve as a trustee.

“Society is a lot more mobile, and Baby Boomers’ families and communities are less cohesive

than their parents’,” says Whitt. Indeed, one survey respondent, in explaining why corporate trustees are used more in his own practice than five years ago, pointed out that “people have fewer friends.”

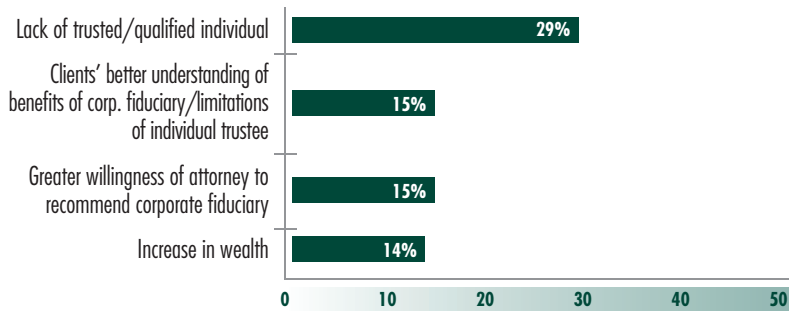
In addition to questions concerning the capabilities of family members who may serve as trustee the time needed to properly manage an estate and the complexity of many estate plans are key considerations.

Attorneys commented that clients are aware of the difficulties involved in serving as a trustee, and that they are concerned about the burdens placed on individual trustees. Further, as the value of their assets and the complexity of their estates rise, clients feel that professional management is necessary. Indeed, several respondents noted that more of their clients today name corporate fiduciaries than in the past because today’s clients tend to own significantly more and diverse assets.

“One generation ago, it was common to name an individual as a trustee because a trustee’s responsibilities were less complex,” says R. Hugh Magill, National Director of Trust Services. “Today’s

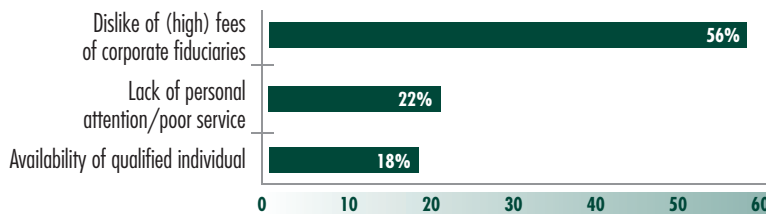
Figure 3: Causes of Change in Use of Corporate Fiduciaries

In your opinion, why has the percentage of your clients naming a corporate trustee **increased** over the past 5 years?



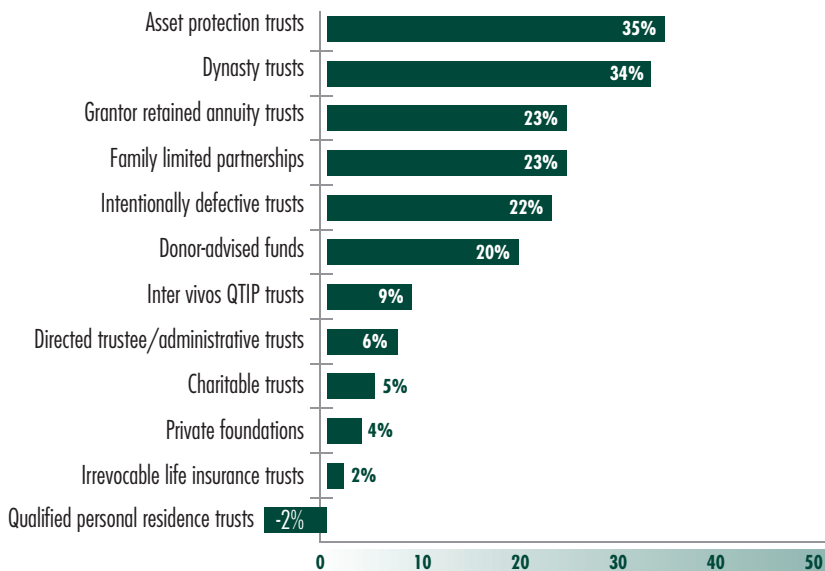
Base: respondents who have seen an increase in the use of corporate fiduciaries and provided an explanation, 70; multiple answers.

In your opinion, why has the percentage of your clients naming a corporate trustee **decreased** over the past 5 years?



Base: respondents who have seen a decrease in the use of corporate fiduciaries and provided an explanation, 58; multiple answers.

Figure 4: Net Percentage* of Attorneys Reporting Increased Client Interest in Trusts and Charitable Giving Vehicles



*Percentage of respondents reporting increased interest minus percentage of respondents reporting decreased interest.

portfolios are far more complex. For an individual to do the job well, it takes a great deal of time.”

The Effect of Industry Mergers

A more negative perception of the banking industry has also affected the use of corporate fiduciaries in the past five years. Respondents say that the biggest reason more of their clients are naming individual trustees today—typically in a current capacity—is due to greater client concerns over the fees charged by corporate trustees (cited by 56% of survey respondents).

But educating clients about the components of trust administration fees can overcome this perception. One respondent noted that, “Clients are beginning to understand that costs of a corporate trustee are comparable, and often less, when you consider the services that an individual trustee will need to obtain.”

There’s no question, though, that bank mergers, and decreased emphasis on bank trust departments and wealth management services, have given clients less faith in the stability of corporate fiduciaries. There is a strong perception that corporate fiduciaries are impersonal, have a high rate of employee turnover, and have poor investment performance.

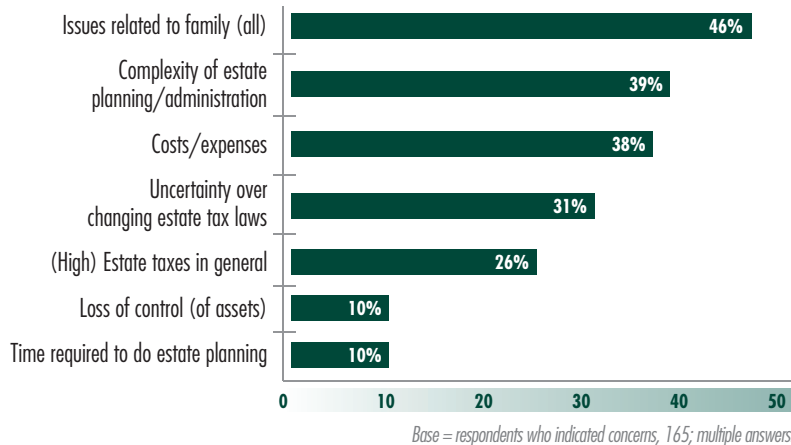
“Because of the uncertainties and disruptions in the industry, factors such as the quality of service, quality of people, and stability of the firm become critical factors for clients in choosing a corporate trustee,” says Whitt.

Battling Client Inertia

Given the greater self-confidence of today’s Baby Boomer clients and the busy lives they lead today, it is perhaps unsurprising that attorneys’ biggest challenge in convincing clients of the need for estate planning is simple “client inertia” (cited by 47% of survey respondents).

Figure 5: Client Concerns

What are the top concerns that clients are voicing to you about estate planning?



“It’s an age-old phenomenon, like dreading the dentist or medical care,” says Magill, “estate planning involves confronting mortality, and it’s a confusing undertaking.”

Also, tax-saving strategies involved in estate planning necessarily involve a loss of control, which is a large pill for clients to swallow. “You can’t transfer assets, continue to control them, and minimize taxes,” says Magill. “These are incompatible objectives.”

Magill underscores the importance of education—for attorneys as well as for clients—in overcoming estate-planning inertia. A majority of survey respondents agree, with more than three out of five noting that keeping current with the latest planning strategies and educating clients are among their biggest challenges.

“Make it an enjoyable activity for clients,” says Magill. “If you can educate the clients, they are more likely to participate in something they can understand.”

New Solutions

Just as the aging of the Baby Boomers and the growing complexity of today’s wealth and of the tax code have affected the usage of trustees, so, too, are these same trends driving

changes in the types of trusts that clients are using. Over the past three years, for example, client interest has increased most in asset protection trusts and dynasty trusts. Societal changes in attitudes toward marriage and divorce, and an increase in the number of business owners and professionals are primarily responsible for the increased use of asset protection trusts. The popularity of dynasty trusts is due primarily to new, less-restrictive state trust laws, which have enabled clients to use these trusts as a powerful estate-planning tool. (See figure 4, page 3.)

Family Concerns

The greater complexity of today’s environment is also having an effect on the concerns that clients are voicing to their attorneys about estate planning. (See figure 5, page 4.) While clients are most likely to be concerned with family issues—as has always been the case in estate planning—a number of non-traditional issues rank as major concerns. These include the complexity of estate planning (cited by 39% of respondents), expenses (38%), and uncertainty over changing

estate tax laws (31%).

As is widely known, there is currently a great deal of uncertainty regarding the temporary estate tax repeal, which, unless Congress acts, will expire after 2010. Congress’s “on again, off again” approach to estate tax reform is frustrating for lawyers and their clients.

Further, at the state level, as states loosen restrictions on trust laws, they are competing with each other to become domiciles for trust assets.

The changing tax climate of this era adds to an estate’s complexities and to clients’ quandaries. Even financially sophisticated clients are confused and often are unable to understand the tax implications of the estate plans they are seeking to implement.

Flexible Solutions

Attorneys are responding to this uncertain estate tax environment in a number of ways. Most commonly, 79 percent of survey respondents say that they are focused on more flexible and easily amended solutions. Attorneys are creating alternative provisions that anticipate changes in estate tax law (40%), counseling clients against making taxable gifts (36%), and focusing more on family issues (35%).

Not surprisingly, as clients are more attuned to their families’ needs and issues, nearly half (46%) view the estate-planning process as a tool to pass their values to the next generation, including crafting their wills to serve as their statement about wealth.

“A generation ago, this would have been a lower number,” says Magill. “The Baby Boomer generation is concerned with how their philosophy of wealth is communicated to the next generation. The estate plan can be viewed as an anchor for the family.”

For more information on trends in the fiduciary business, including the use, and deterrents to the use, of corporate trustees, visit www.northerntrust.com/legacytrends.