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Can Estate Planners and Trust Administrators Offer Help to Trust Beneficiaries Who Want to Learn to Make Positive Life Planning Decisions

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CAN ESTATE PLANNERS AND TRUST ADMINISTRATORS OFFER HELP TO TRUST BENEFICIARIES WHO WANT TO LEARN TO MAKE POSITIVE LIFE PLANNING DECISIONS?

by Robert Whitman*

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I. INTRODUCTION

This Article proposes that estate planners and trust administrators can help trust beneficiaries learn to make positive life planning decisions.¹ The recent financial crisis, combined with increasing life-expectancies, calls attention to the need for estate planners and trust administrators to focus on how they can help beneficiaries become more concerned with and responsible for their financial future.² A recent cluster of books³ provides insights into “happiness research” and the changing ways in which we are going to live.⁴

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1. Nationally accredited estate planners can belong to a number of different groups and participate in a wide range of activities. See American College of Trust and Estate Counsel, <http://www.actec.org>; National Association of Estate Planners and Councils, http://www.naepc.org/aep_qualifications.web; National Association of Financial and Estate Planning, <http://www.nafep.com>.

Trusts may involve more than one primary trust beneficiary, as well as beneficiaries that hold rights as remaindermen. See 2 AUSTIN WAKEMAN SCOTT, SCOTT ON TRUST: LAW OF TRUSTS § 113 (4th ed. 1987). If there are both income beneficiaries and remaindermen, then the trustee owes duties to each group. See *id.* at §§ 164, 169-70; see generally Mark A. Merric, *How to Draft Discretionary Dynasty Trusts—Part 1*, 36 EST. PLAN. 3, 3-10 (2009) (recommending ways in which to draft trusts of longer durations to last in perpetuity).

2. See Vikas Bajaj, *Financial Crisis Enters New Phase*, N.Y. TIMES, Sept. 17, 2008, <http://www.nytimes.com/2008/09/18/business/18markets.html?ex=1379476800&en=52f26e47f4a66243&ei=5124&partner=permalink&exprod=permalink> (“Some economists worry that a psychology of fear has gripped investors, not only in the United States but also in Europe and Asia. While investors’ decision[s] to protect

This Article also suggests that counseling/drafting lawyers must help settlors become aware of the need to create governing instruments that will facilitate flexible trust administration.⁵ This will allow beneficiaries, working with trustees, to achieve more secure and fulfilling lives.⁶ This Article suggests that trustees should structure governing instruments in a way that will help trust administrators assist trust beneficiaries who wish to better understand how to plan for long term security and positive life experiences.⁷ This Article further suggests that corporate fiduciaries create a new position—the life planning officer—to work with trust beneficiaries who want to set themselves up for a happier life.⁸ Lastly, this Article concludes that estate planners and trust administrators can better serve the public’s need for effective wealth transmission and lower the levels of controversy surrounding trust administration by expanding their role as counselor to their clients.⁹

themselves may be perfectly rational, the crowd behavior could cause a downward spiral with greater ramifications.”); *see also* Centers for Disease Control, Fast Stats A to Z: Life Expectancy, <http://www.cdc.gov/nchs/fastats/lifexpec.htm> (last visited Jan. 31, 2009) (stating that the life expectancy for the average American was 71.8 years in 1989, increased to 73.9 years in 1999, and is currently 77.8 years); *infra* Part VI.

3. *See generally* BRUNO S. FREY & ALOIS STUTZER, HAPPINESS AND ECONOMICS: HOW THE ECONOMY AND INSTITUTIONS AFFECT HUMAN WELL-BEING (2002); RICHARD LAYARD, HAPPINESS: LESSONS FROM A NEW SCIENCE (2005); UNDERSTANDING HUMAN WELL-BEING (Mark McGillivray & Matthew Clarke eds., 2006); ERIC WEINER, THE GEOGRAPHY OF BLISS: ONE GRUMP’S SEARCH FOR THE HAPPIEST PLACES IN THE WORLD (2009); JOHN ZOGBY, THE WAY WE’LL BE: THE ZOGBY REPORT ON THE TRANSFORMATION OF THE AMERICAN DREAM (2008).

4. Happiness research “is an approach to assessing welfare which combines the [research] techniques typically used by economists with those more commonly used by psychologists.” CAROL GRAHAM, THE ECONOMICS OF HAPPINESS 1 (2005), http://www3.brookings.edu/views/papers/graham/2005graham_dict.pdf.

In 2007, 36% of 4,000 American adults polled identified with Secular Spirituality. *See* ZOGBY, *supra* note 3, at 132; *id.* (discussing the phenomenon of “Secular Spiritualists,” who believe that the American Dream may be achieved “through spiritual fulfillment rather than material success”). Many of these individuals reported prioritizing well-being over consumption by declining promotions, moving to smaller communities, and cutting back on their purchases. *See* ZOGBY, *supra* note 3, at 128-32.

5. Many people may offer advice, but only a lawyer can engage in the drafting of the governing instrument because that clearly constitutes the “practice of law.” *See* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 4 (2000) (“A person not admitted to practice as a lawyer . . . may not engage in the unauthorized practice of law . . .”).

6. *See* LAYARD, *supra* note 3, at 55-93 (discussing the “Big Seven factors affecting happiness” as determined by international psychological and economic surveys, which are family relationships, financial situations, work, community and friends, health, personal freedoms, and personal values). Mr. Layard emphasizes the fact that increased wealth seldom leads to happiness because people value themselves chiefly in comparison to others, and as long as someone else has more wealth, happiness is elusive. *Id.*; *see generally* Standish H. Smith, *Reforming the Corporate Administration of Personal Trusts: The Problem and a Plan*, 14 QUINNIPIAC PROB. L.J. 563 (2000) (discussing the need for reforms in the Uniform Trust Code to ensure beneficiary satisfaction with corporate fiduciary performance).

7. *See* LAYARD, *supra* note 3, at 65-68 (attributing life fulfillment to (1) the quality of family relationships, (2) the degree of enrichment through a career, and (3) overall physical health).

8. *See* discussion *infra* Part V.

9. *See* Robert Whitman, *Dealing Fairly with Estate and Trust Beneficiary Complaints*, 22 QUINNIPIAC PROB. L.J. 46, 50 (“[Certain] corrupt practices developed as a way to enrich fiduciaries at the expense of beneficiary groups Consequently, the public developed a fear of getting involved with lawyers, fiduciaries, and the probate system generally.”); *see also* Dana G. Fitzsimons, Jr., *Navigating the Trustee’s Duty to Disclose*, 23 PROB. & PROP. MAG. 40, 40-43 (2009) (discussing a trustee’s difficulty in

II. THE DESIRE TO HELP AND PROTECT

In financial planning, most people concentrate their efforts on balancing the desire to take care of their current needs with the desire to leave property to help and protect spouses, life partners, children, and future generations after death. By no means are these desires unique to the present generation. In fact, the history of trusts demonstrates this point very clearly. During the Crusades,¹⁰ European knights¹¹ heeded a call¹² to serve their religion and Kings, thereby ensuring the salvation of their souls.¹³ Before embarking on this perilous journey,¹⁴ a knight would entrust a close friend or kinsman with the

complying with a settlor's wish to withhold information from his beneficiaries and the trustee's duty to disclose, which exposes trustees to, at best, criticism and controversy and, at worst, fiduciary litigation).

10. The Crusades began in 1095 and lasted until approximately 1274. See AUGUST CHARLES KREY, *THE FIRST CRUSADE: THE ACCOUNTS OF EYE-WITNESSES AND PARTICIPANTS* 29 (1921); T. F. TOUT, *THE EMPIRE AND THE PAPACY: 918-1273* 450-62 (4th ed. 1906).

11. "Miles," the Latin synonym for knight, meaning soldier, was used by contemporary scholars and chroniclers:

It was the custom . . . for everyone who wished to be consecrated into the legitimate militia, to confess his sins . . . in the evening that proceeded the day of his consecration, and to pass the night in the church, in prayer, devotion, and mortifications. On the next morning it was his duty to hear mass, to offer his sword on the altar, and then, after the Gospel had been read, the priest blessed the sword, and placed it on the neck of the *miles*, with his benediction. . . .

. . . .
 . . . [I]t was declared by the celebrated Council of Clermont (which authorized the first Crusade) that every person of noble birth, on attaining twelve years of age, should take a solemn oath before the bishop of his diocese, to defend to the uttermost the oppressed, the widows, and orphans; that women of noble birth, both married and single, should enjoy his especial care; and that nothing should be wanting in him to render travelling safe, and to destroy tyranny.

See CHARLES MILLS, *THE HISTORY OF CHIVALRY OR KNIGHTHOOD AND ITS TIMES* 12-13 (1825).

12. At Clermont, France, on November 27, 1095, Fulcher of Chartres recorded the following part of a homily by Pope Urban:

Wherefore, I exhort with earnest prayer—not I, but God—that, as heralds of Christ, you urge men by frequent exhortation, men of all ranks knights, as well as foot-soldiers, rich as well as poor, to hasten to exterminate this vile race from the lands of your brethren, and to aid the Christians in time. I speak to those present; I proclaim it to the absent; moreover, Christ commands it. And if those who set out thither should lose their lives on the way by land, or in crossing the sea, or in fighting the pagans, their sins shall be remitted. This I grant to all who go, through the power vested in me by God.

KREY, *supra* note 10, at 29.

13. See ARTHUR KINGSLEY PORTER, *MEDIEVAL ARCHITECTURE: ITS ORIGINS AND DEVELOPMENT* 5 (1912). "[I]t is difficult for us to-day to grasp the depth of religious feeling, the exalted faith, the hysteria, that lay behind" not only the Crusades, but also the decades long construction projects that resulted in cathedrals. *Id.*

What wonder that the whole world was a prey to disturbance and confusion? For when the Roman Church, which is the source of correction for all Christianity, is troubled by any disorder, the sorrow is communicated from the nerves of the head to the members subject to it, and these suffer sympathetically. This Church, indeed, our mother, as it were, at whose bosom we were nourished, by whose doctrine we were instructed and strengthened, by whose counsel we were admonished

KREY, *supra* note 10, at 25 (quoting Fulcher of Chartres).

14. The straightest overland route from Paris to Jerusalem was about 2,700 miles in length and passed over six mountain ranges, across two deserts, and through hundreds of lawless areas. See CLIVE DAY, *A HISTORY OF COMMERCE* 54-56 (1922). In Roman times, civil and military highways reached from Dover

obligation to see to his affairs while he was away and to protect his spouse and children if he did not return.¹⁵ This transaction, designed to protect both assets¹⁶ and family, was often evidenced by the taking of a sacred oral oath¹⁷ in

(France) to Memphis (Egypt). *See id.* at 54-55. By the time of the Crusades, however, these roads had fallen into disuse, which limited even horse-back travel to about twenty miles per day. *See id.* Thus, the crusaders most likely knew that they were leaving their homes behind for at least a year—not counting the time required to actually conquer the Holy Lands. *See id.* Beyond the problems of decrepit infrastructure, the very local nature of government made European travel a financially and physically hazardous endeavor in the late eleventh century:

It is supposed that the dangers and difficulties of trade were then so great that merchants united in bands for a journey, as caravans are now formed in the unsettled countries of the East. A collection of early gild rules shows that the members were subject to regulations like the following: Every one was obliged to carry armor, a bow and twelve arrows on penalty of a fine; they must stand by and help each other when they set out for a journey; in case one member had not sold his wares the others must wait one day for him; if one was imprisoned or lost his wares on the road the others must ransom him.

....

The King of France tried in vain, in the thirteenth century, to make feudal lords responsible for crimes committed in their territories. The lords were often accomplices in the crimes [E]very merchant had to pay the feudal tolls: tolls for the repair of a road which was not kept up, and tolls for protection which he had to furnish himself. Feudal lords were everywhere, and every feudal lord tried to make money out of the movement of men and goods Even a jongleur, the equivalent to the modern organ-grinder, could not pass the gates of Paris without making his monkey show off to pay his own way. A man had to pay toll not only when he went *over* a bridge; he had to pay a toll when he went *under* it, and could not escape the toll by going *around* it.

Id. at 47, 56-58.

15. One recent estimate of crusader casualties, based on an extensive survey of primary and secondary sources, suggests that of the 60,000 to 100,000 pilgrims who set out for Jerusalem, only about half of them survived the crossing of the Bosphorus to assemble at Nicaea in Asia Minor. *See* JOHN FRANCE, *VICTORY IN THE EAST: A MILITARY HISTORY OF THE FIRST CRUSADE 122-141* (1996). Of these hardened warriors, only one in fourteen returned westward after the siege of Jerusalem. *See id.* For a prime example, King Richard the Lion Heart turned the governance of England over to his brother, Prince John, in his absence during the Crusades. F. YORK POWELL & T.F. TOUT, *HISTORY OF ENGLAND* 110 (1908). King Richard's trust, however, turned out to be ill-founded. *Id.* at 115-17. When King Richard was arrested by the Holy Roman Emperor, Prince John left King Richard to languish in prison for more than two years for lack of ransom. *Id.*

16. *See* WILLIAM STUBBS, *LECTURES ON EARLY ENGLISH HISTORY* 21-22 (1906). Realty, or land held in feof for service owed to a feudal king, was the only dependable form of wealth in a world in which few goods moved in commerce and in which each manor or village was self sufficient for food, industry, and government. *See* DAY, *supra* note 14, at 31-39. But agricultural realty required diligent and knowledgeable management to maintain its value. *See* ABBOT PAYSON USHER, *AN INTRODUCTION TO THE INDUSTRIAL HISTORY OF ENGLAND* 112-116 (1920). Moreover, feudal realty came weighted with "incidents" payable upon transfer of title by grant or inheritance, and non-payment resulted in forfeiture of the realty back to the Crown. *See* STUBBS, *supra*, at 25-26. By granting the land for "use" before departing on crusade, the crusader could ensure the proper incidents were fully paid up. *Id.* Also, better yet, by structuring the grant as a "subinfeudation" or "feoffment in uses," the crusader could avoid the incidents altogether. *Id.*

17. As mentioned, the Church was the true authority among the scattered towns and princes of medieval Europe. *See* STUBBS, *supra* note 16, at 25-26. Oaths taken on sacred relics had greater power than any oral or written grant; after all, a trusting crusader would most likely not return to enforce the terms of a use. *Id.* at 7. But "violation of oaths and fidelity . . . is sacrilege, because it is not only a breach of compact against them [to whom the promise was made], but against God, in whose name the promise [was] made." JOSEPH BINGHAM, *ORIGINES ECCLESIASTICAE: THE ANTIQUITIES OF THE CHRISTIAN CHURCH* 977 (1845). Thus, oath breakers risked excommunication from the Church, with attendant social and political hardships. *See id.*

the presence of many who could later testify to the obligations if they were forgotten or poorly carried out.¹⁸ Eventually the equity court¹⁹ began enforcing these obligations, which lead to the expanded employment of the “use”²⁰ and ultimately to the development of the trust.²¹ The historical importance of the desire to help and protect persons who are important to a settlor underlies the accepted basic rule that the purpose of trusts is to protect trust beneficiaries.²²

III. DEEPLY HELD DESIRES OF THE SETTLOR

Another basic rule in trusts is that the settlor is free to decide on the terms for the distribution of the trust property because it is the settlor’s property that is being placed into trust.²³ Thus, on occasion, a strong-willed settlor may wish to keep firm control over trust beneficiaries even after his death by punishing trust beneficiaries who marry outside the faith²⁴ or who do not pursue a stated educational course of study.²⁵ How many estate planning attorneys do not recall Mrs. Johnston, who wanted her St. Louis residence destroyed after her death?²⁶ How many estate planning attorneys have counseled settlors who demand that their vacation home be retained in trust after their death so that the annual family summer trip to the seashore or the

18. The faithlessness of trustees became a well-known theme of English popular culture. See, e.g., WILLIAM SHAKESPEARE, KING JOHN, act 1, sc. 1 (introducing the Bastard, Philip Faulconbridge—sired on the wife of a Baron Faulconbridge by King Richard Lion Heart—who had dispatched the Baron abroad “for reasons of state” and had taken the Baron’s manor in trust).

19. See VALERIE J. VOLLMAR, ET AL., AN INTRODUCTION TO TRUSTS AND ESTATES 171-73 (2002).

20. As discussed above, the key purpose of the “use” was to facilitate the transfer of land outside the feudal law. See STUBBS, *supra* note 16, at 25-26. Bypassing feudal inheritance had the following two benefits for landholders: (1) greater flexibility in devising property (e.g., preference might be obtained for a child in Church orders by granting good land to the use of superior clergy) and (2) avoidance of the fees payable on death for royal ratification of an heir’s having use of the land. *Id.* Escaping the rules of feudal tenure also made it possible to preserve family lands from forfeiture due to political fallings-out. See HERBERT BROOM ET AL., COMMENTARIES ON THE LAWS OF ENGLAND 754-55 (1875).

21. See VOLLMAR, *supra* note 19, at 171-73.

22. See UNIF. TRUST CODE § 404 (2005) (“A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.”).

23. See VOLLMAR, *supra* note 19, at 254 (“The great beauty of trusts as an estate planning tool is their flexibility: the settlor has almost unlimited freedom to tailor trust distribution to meet the settlor’s tax and nontax objectives . . .”). However, there are exceptions to the freedom of testation, including constitutional violations, law violations, and trusts that contravene public policy. *Id.* at 21-24.

24. See *Pacholder v. Rosenheim*, 99 A. 672, 675-75 (Md. 1916) (upholding a partial marriage restraint provision that required the testator’s niece to marry a member of the Jewish faith with the consent of her parents as a condition precedent to inheriting a portion of testator’s estate); *Taylor v. Feinberg* (In re Estate of Feinberg), 891 N.E.2d 549, 552 (Ill. App. Ct. 2008) (refusing to enforce a partial marriage restraint provision that barred any of the testator’s grandchildren from inheriting under the will if they married outside the Jewish faith, due to public policy concerns over restraint of marriage).

25. See *Julian v. McAdams*, 155 N.E. 524, 524 (Ind. App. 1927) (holding that the decedent’s nephews’ receipt of trust funds was contingent upon attendance at Purdue University).

26. See *Eyerman v. Mercantile Trust Co.*, 524 S.W.2d 210, 217 (Mo. Ct. App. 1975) (holding that the property would not be razed in accordance with the will because this was against public policy).

lake will continue?²⁷ Do estate planning attorneys have an obligation to challenge the settlor's deeply held desires when the attorney believes that the trust, as proposed by the settlor, is not in the best interest of the beneficiaries?

IV. THE PLANNER'S NEED TO QUESTION AND INFORM

Most planners fully recognize that the death of a settlor, who is often the patriarch of the family, generally brings about widespread change. Furthermore, the world around us continues to change rapidly on its own. Accordingly, determining the best course of action for the distribution of property to the surviving beneficiaries of a trust is problematic at best. Must estate planning attorneys help settlors understand this? Can estate planning attorneys, in good faith, for instance, advocate or acquiesce in the use of so-called incentive trusts or punitive restraints? Or must estate planning attorneys work harder to develop more positive and flexible language that takes into consideration the possibility that a beneficiary may encounter unexpected difficulties, like mental illness or physical limitations?²⁸ Should estate planning attorneys allow settlors to try to dictate the lifestyle, living arrangements, choice of work, etcetera, of the beneficiaries? Why not simply advise the settlor to use language which is flexible enough to help beneficiaries work with trustees to achieve a positive lifestyle?

Commonly, governing trust instruments provide only skeletal language to guide trustees in distributing funds, such as the following: "So much, if any of the funds for the support and maintenance of the primary beneficiary." More specific guidelines from the settlor, suggesting the need for the trustee and beneficiary to work together to help the beneficiary achieve worthwhile goals, could create a better guidepost, such as the following:

Recognizing that the following suggestions shall not have the force of law, I would be pleased if the trustee would help the primary beneficiary to accomplish one or more of the following objectives: (i) skill in budgeting and maintaining a home; (ii) educational advancement; (iii) developing a career;

27. See *Hackbarth v. Hackbarth*, 767 A.2d 1276, 1280 n. 3 (Conn. App. Ct. 2001) ("The subject of the trust, the beach cottage, according to the trust agreement, was to 'be maintained and used as a summer residence for the members of the Hackbarth family.'").

28. See *Mental Health: A Report of the Surgeon General - Chapter 2*, http://www.surgeongeneral.gov/library/mentalhealth/chapter2/sec2_1.html (last visited Mar. 14, 2009) (estimating that "about 20 percent of the U.S. population are *affected* by mental disorders during a given year" but that "about 28 to 30 percent of the population have either a mental *or* addictive disorder") (emphasis added). When trust terms are general enough, they allow caring trust officers to provide needed aid for a beneficiary. There is anecdotal evidence that many trust officers go above and beyond to help beneficiaries in need. For example, one trust officer took it upon himself to arrange home health care and domestic assistance for a beneficiary coping with Parkinson's disease. The funds were furnished by the trust, but the trust officer took it upon himself to make sure the assistance given was proper.

(iv) founding a charitable organization; and/or (v) the establishment and maintenance of a long term, sustainable, positive, lifestyle.²⁹

The planner who can convince a settlor to create a plan that is flexible and takes into account the likelihood of the unexpected has served the client well.

V. THE CORPORATE FIDUCIARY CAN ORGANIZE TO HELP TRUST BENEFICIARIES TO MAKE BETTER CHOICES

Suppose a young couple arrives in a strange city for a week's vacation, and they have no information about the city or its various attractions. The young couple did not make advanced plans, except for making a reservation at a five-star hotel. Upon entering the hotel room, the couple unpacks and rests while they determine which hotel service is the most helpful so that they can enjoy and organize their limited time in the city. They decide to visit the concierge.

When the couple meets the concierge, however, they do not expect that the concierge will take away their right to make their own decisions as to what they will do. If the concierge recommends a restaurant to them and they do not enjoy their meal, then they would not sue the concierge or the hotel for bad advice. Rather, the couple understands that the concierge is provided by the hotel as a service for their convenience.

Of course, the couple hopes that the concierge will have suitable experience and knowledge about the city. If the couple is on a tight budget, then they expect that the concierge will suggest a restaurant they can easily afford rather than a very high-priced restaurant.

Not every guest couple will choose to make use of the concierge. Some couples will rely on their own resources to make their decisions. Based on previous experiences, these couples will have their own ideas about how to work out their plans, and no one at the hotel will be concerned. Furthermore, if the couple has a question about the charges for the room or for other hotel services, then they will see other employees of the hotel. The concierge service is simply an extra service designed to help guests organize their vacation.

Although trust officers can be of invaluable assistance to trust beneficiaries, trust officers cannot be expected to play the kind of role that the concierge plays at the hotel.³⁰ Rather, corporate fiduciaries should consider creating a new position, the Life Planning Officer. The Life Planning Officer

29. See Gary Altman and Brenda Bosch, *Encouraging Certain Beneficiary Behavior*, 10 J. PRAC. EST. PLAN. 53, 53-56 (Aug-Sept. 2008) (discussing various examples of trust language that can be employed to motivate and provide incentives for certain beneficiary behavior; for example, incentives can include establishing "employment criteria," conditioning periodic distribution of trust funds on whether the beneficiary "is engaged in full-time meaningful employment," or preventing a beneficiary from becoming a "perpetual student" by offering only a one-time distribution for completion of a graduate degree); see also Merric, *supra* note 1, at 5-10 (discussing methods of drafting dynasty trusts).

30. See *supra* note 32 and accompanying text.

would be a specialist trained to assist a trust beneficiary who needs to determine what lifestyle would be best for the beneficiary in order to create a sensible and satisfying life.

From the literature available on happiness research, the Life Planning Officer could offer a variety of suggestions to the trust beneficiary.³¹ It would be clear, however, that the help being offered does not carry any potential liability with it. The beneficiary would listen to the advice and then decide whether or not to follow it, bearing the ultimate responsibility for the consequences of the final decision. The services of a Life Planning Officer would merely offer the beneficiary another person, besides the trust officer, to consult regarding long range life planning. The Life Planning Officer, however, would be solely concerned with discussing long range life planning and offering ideas that could be adapted for bringing about useful positive decision making, as the Life Planning Officer would not be concerned with the administration of the trust itself.³²

Would all beneficiaries want to make use of the service or need to do so? Certainly not. Many beneficiaries are fortunate in that they have strong and healthy support systems that they can draw upon, while others have ample talent, organizational skills, and creative energy to succeed on their own. Some trust beneficiaries, however, are not as fortunate; therefore, the availability of a Life Planning Officer would be extremely beneficial to them. Further, corporate fiduciaries who provide this expanded service would show care and concern for beneficiaries, increasing goodwill with both current and future settlors and beneficiaries.

VI. BENEFICIARIES WHO MIGHT FIND ADVICE FROM A LIFE PLANNING OFFICER USEFUL

Life Planning Officers would be a welcome addition to corporate fiduciary services precisely because the old adage has proven itself true: money cannot buy happiness. Recent research has suggested that the more vast a person's wealth is, the less personal satisfaction the wealth brings.³³ This is

31. See discussion *infra* Part VI.

32. Recently, financial institutions have come under attack (i) for their mismanagement of government bailout funds and (ii) for not showing enough concern for the interests of the public. See David Stout, *Geithner to Unveil Strategy to Revive Credit Flow and Monitor Banks' Aid Use*, N.Y. TIMES, Feb. 1, 2009, at A18 ("The president said that although the \$700 billion rescue plan enacted late last year helped stave off a collapse of the financial system, 'many are frustrated by the results—and rightfully so.'"). Banks, rather than lending funds to stimulate credit flow, have "hoarded their new capital" and given "Wall Street bankers . . . bonuses far greater than what most Americans earn in a lifetime." *Id.* Offering beneficiaries the services of a Life Planning Officer, whose sole purpose is to assist them in making choices in furtherance of attaining happiness and satisfaction, could not only improve the corporate fiduciary's image, but could also assist them to be more competitive in a crowded field.

33. David Futrelle, *Can Money Buy Happiness?*, CNN MONEY, July 18, 2006, http://money.cnn.com/magazines/moneymag/moneymag_archive/2006/08/01/8382225/index.htm (discussing the work of Harvard psychology researcher Dan Gilbert, who found that increasing annual income from \$20,000 to \$50,000 will

because once an individual's basic needs are met, overall ratings of happiness and satisfaction with life do not increase proportionally with increases in wealth.³⁴ Further, humans, being adaptable creatures, are seldom satisfied with material possessions for very long. This can lead to the phenomenon economists have termed the "hedonic treadmill"—when the pleasure of a new possession plateaus and stimulates the need to acquire another new possession.³⁵ A particularly salient example of this phenomenon was John McCain's recent blunder, when he forgot exactly how many houses he owns.³⁶ Over a certain number, a new house simply cannot bring the same amount of pleasure.

Trust beneficiaries of large trusts are candidates for being subject to the above phenomena. First, their wealth can be stigmatizing. A trust fund baby is defined in the Urban Dictionary as "[a] young person whose parents are wealthy and have set up a trust for their son or daughter. The trust fund ensures that the child will be taken care of financially for life."³⁷ While the definition is straightforward, the dictionary fails to point out that the term may be derogatory. In fact, some children who are trust fund beneficiaries endure guilt and embarrassment about their fortunes.³⁸ Rather than having pride in their families' achievements, they are ashamed to reveal their affluence.³⁹ Excessive wealth can be isolating and can negatively impact the beneficiaries' friendships and personal relationships.⁴⁰

Children of very wealthy parents may manifest feelings of guilt and shame resulting in reckless behavior, depression, or substance abuse.⁴¹ "Many [children of wealthy parents] struggle with alcohol or drug abuse—sometimes to win attention from a workaholic parent."⁴² Children of renowned wealthy parents face even greater challenges, including low self-esteem, identity conflicts, and feelings of inadequacy when compared with their successful

reflect a doubling in rating of life satisfaction but increasing annual income from \$50,000 to \$90,000 produces only a slight increase in life satisfaction).

34. *Id.*

35. *Id.*

36. Associated Press, *McCain Not Sure How Many Houses He Owns*, Aug. 21, 2008, <http://www.msnbc.msn.com/id/26331222/> ("Republican presidential candidate John McCain acknowledged that he wasn't sure how many houses he and his wealthy wife actually own.")

37. Urban Dictionary, <http://www.urbandictionary.com/define.php?term=trustfundbaby> (last visited Mar. 14, 2009).

38. See Anya Kamenetz, *Rich Little "Poor" Kids*, THE VILLAGE VOICE, July 19, 2005, available at <http://www.villagevoice.com/2005-07-19/news/rich-little-poor-kids> (discussing the experiences and feelings of several trust beneficiaries in their twenties about their wealth).

39. See *id.* ("Among educated twentysomethings reared in therapy culture, every personal scandal is fair game at the dinner table. Except for one: coming from money.")

40. See *id.* (stating that one interviewee reported that some "unrestrained spending back in boarding school 'took a toll on his friendships,' when he was 'unempathetic,' and 'unthinking' about the material differences between him and friends on scholarship").

41. See Jim Hopkins, *Rich Kids Pay Price for Silver Spoon*, USA TODAY, May 10, 2002, at 1B (citing the struggles of the children of prominent and wealthy families, for example Alice Walton, of the Wal-Mart fortune, and Donald Trump, Jr., son of the real estate mogul).

42. *Id.*

families.⁴³ Recent social science research suggests that these issues arise during the teenage years.⁴⁴ One study indicates that affluent suburban teenagers suffer from higher rates of depression, anxiety, and substance abuse than their lower-income, urban-dwelling, counterparts.⁴⁵

Why are some affluent teens plagued by these psychological problems? Researchers have suggested that emotional isolation from parents and parents' elevated "perfectionist" expectations of affluent teens may contribute to heightened anxiety.⁴⁶ Further, affluent children "have had so many problems paved over for them that a whole new set of problems has sprung through."⁴⁷ A leading psychotherapist, Madeleine Levine, argues that affluent children are not afforded the same kinds of learning opportunities as non-affluent children because their parents are always present to clean up their children's mistakes.⁴⁸ She attributes many of the teens' problems to a fundamental lack of resiliency.⁴⁹

Besides lacking resiliency, children of affluent parents may have complicated relationships with money that stem from their parents' conflicting "money values."⁵⁰ The term money values describes the way that individuals translate their day-to-day values into their relationship with money.⁵¹ When money values are inconsistent with parents' purported other values, children receive mixed messages.⁵² For example, "constant fretting about every nickel spent may contradict [a belief in] generosity."⁵³ When parents detach their moral values from money, they can inadvertently raise spoiled and greedy children, some of whom are completely ignorant as to how to handle their own finances later in life.⁵⁴

Children of affluent families and trust beneficiaries, in particular, may have difficulties finding fulfillment because money is readily available.

43. *See id.*

44. Suniya S. Luthar, *The Culture of Affluence: Psychological Costs of Material Wealth*, 74 CHILD DEVELOPMENT 1581, 1582 (2003) (discussing the 1999 study by Luthar and K. D'Avanzo finding that 72% of affluent, suburban teenage girls versus 61% of urban teenage girls reported using alcohol, and 59% of affluent suburban, teenage boys versus 38% of urban teenage boys reported using alcohol).

45. *Id.*

46. *Id.* at 1582-83 (discussing the Luthar and B. E. Becker study conducted in 2002 stating that "[r]esults . . . corroborat[ed] the likely role of over-emphasis on achievement and isolation from parents in the adjustment disturbances of affluent youth").

47. Rick Polito, *The Price of Privilege: A Generation of Stressed-Out Kids*, *The Marin Independent Journal*, July 25, 2006, available at http://www.marinij.com/lifestyles/ci_4092447 (last visited Mar. 14, 2009).

48. *Id.* ("The teens never learn the 'self-efficacy' of facing and solving their own problems.")

49. *Id.*

50. EILEEN GALLO & JON GALLO, SILVER SPOON KIDS: HOW SUCCESSFUL PARENTS RAISE RESPONSIBLE CHILDREN 66 (2002).

51. *See id.*

52. *See id.* at 60-61.

53. *Id.* at 66.

54. *See id.* at 113 (providing an example of a well-meaning couple who, in the course of estate planning, realized that their behavior towards money contradicted their values, resulting in grown daughters "who were indulged, self-involved, and helpless when it came to finances . . .").

However, children of average and lower income families must strive to be successful in school so that they may eventually be able to support themselves. Wealthy children lack this motivation. If there is always a monetary safety net, then there may be little incentive to work hard. Further, beneficiaries can feel horribly adrift when they reach the age at which their peers are beginning to start careers.⁵⁵ With no pressing need to work, beneficiaries may lack the drive to be successful in their own right because all their incentive has been removed.

This is precisely why a Life Planning Officer would be particularly useful to certain trust beneficiaries. With a wisely drawn trust instrument and sound advice from a trained individual, beneficiaries would be better able to steer their lives on a positive and productive course, avoiding some of the obvious pitfalls that excessive wealth can create.

VII. CONCLUSION

Trust planning and administration are competitive fields. There are constantly suggestions for new techniques and new services. Ideas that no longer fit our modern lifestyles fall out of fashion, and new ideas that prove useful and workable come to the fore.

The time is ripe for more forceful suggestions by estate planning attorneys to settlors who want to exercise undue control after death. Further, the time is ripe for corporate fiduciaries to install Life Planning Officers to assist trust beneficiaries as needed.

55. See Kamenetz, *supra* note 38 (quoting a beneficiary who stated the following: "My parents made their own money. For them it's emotionally nice that they can help me, but . . . there's a real fear that a hunger has been removed from the equation [F]or me there's an emotional health factor in . . . getting a paycheck.").

