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Trust yourself

Not satisfied with an old-fashioned family office?

Want more than just a gatekeeper? How about your own private trust company?

In this age of exploding wealth, the number of captive trust outfits is over 50 and growing fast -- up from perhaps a dozen only eight years ago. Families who have recently formed private trust companies include the Bells of General Mills, the Cargills of the grain-trading company, the Pratt family of Standard Oil and the Ziff publishing dynasty.

"In the last 24 to 36 months it's just exploded," marvels lawyer John P.C. Duncan of Jones, Day, Reavis & Pogue in Chicago. He has set up five new family trust firms for clients and has five more in the works.

One reason for the sudden popularity: it's increasingly hard to find a good trustee willing to take on the responsibility. Consider the trouble that haunted Pamela Harriman almost to her grave.

In 1994 heirs of Harriman's third husband sued, accusing her and trustees Clark Clifford and Paul Warnke of squandering their patrimony.

Harriman had to sell about $18 million worth of Picassos, Renoirs and Matisses to buy them off. The suit was settled in 1995, but her cross- claims against trustees and advisers lingered until 1996, the year before she died.

Who needs that kind of hassle? Why are trustees so vulnerable? As a fiduciary, a trustee's highest duty is to administer and invest trust assets prudently for the sole benefit of the beneficiaries, who can hold a trustee liable for failing in any respect. As the holder of legal title to trust assets, the trustee may also be liable to the IRS, tort plaintiffs, other parties to contracts and even third-party beneficiaries of those contracts. So even if there's lots of money involved, it's not easy these days to find a good trustee.

"Being a trustee is an enormous responsibility as well as an imposition," says Ellen M. Perry, 40, wife of newspaper and submarine heir Henry A. Perry, 50, and president of the Perry family office. Leery of finding someone willing and qualified to serve as trustee for the wealth that will someday go to Henry's two children, Perry last year chartered Teton Trust Co. in Jackson, Wyo. Perry herself runs the firm, which acts as trustee for the Perrys and several other families, holding title to some $100 million in assets.

With a private trust company, the firm itself -- not the individual officers or directors -- is liable for any breach of fiduciary duty. A trust company executive or director can be sued only for failing to exercise reasonable business judgment -- a contention very difficult to prove in court.

Iowa shopping-mall pioneers Matthew and Martin Bucksbaum might have liked to make their longtime family lawyer Marshall Eisenberg trustee of their wealth. Instead, the brothers chartered General Trust Co. in Sioux Falls, S.D. in 1989.

Rather than trustee, Eisenberg is chief executive and director. That way, the Bucksbaums have control, and Eisenberg needn't fear lawsuits.

Owning a trust company gives the family the permanence of a corporate trustee without ceding control over trust assets. That's no doubt one of the reasons that the descendants of publisher William B. Ziff Sr. founded Amelia Family Trust Co. in 1992.

The Ziffs previously had individual trustees -- often relatives -- watching over the trust that Bill Ziff Jr. set up in 1969 for sons Dirk, now 34, Robert, 32, and Daniel, 26. Of course, individual trustees eventually die. How to establish permanence without relinquishing control to a corporate trustee?

Woodcliff Lake, N.J.-based Amelia Family Trust Co. solved the problem. Unlike individual trustees, Amelia can live forever. As shareholders and from time to time as officers and members of Amelia's board of directors, the brothers Ziff have virtually as much control over the trust assets as they would as trustees, whether or not they ever decide to exercise it.

A big advantage of a private trust company is that it can pool small trusts in a common trust fund invested collectively for many family members and other beneficiaries without being constricted by the regulations imposed on mutual funds and hedge funds. That's flexibility for less wealthy family members who, for example, can't qualify for a hedge fund -- which typically requires a net worth of at least $1 million.

Until last year the youngest of the almost 700 descendants of Charles Pratt, John D. Rockefeller's partner, had their money in mutual funds because they had less than $1 million each. "They couldn't access high- quality investment management," says Richardson (Jerry)Pratt Jr., chairman of the clan's 107-year-old New York-based family office, Charles Pratt & Co. LLC, which serves 250 of his kin.

Looking to improve their lot, Pratt, 75, last year founded Dosoris Trust Co. with $620,000. "This is just a very easy way of providing high-quality investment management to young, less wealthy members of the family," says Pratt.

Buffett demibillionaire Stewart Horejsi of Salina, Kans. (see story, p. 129), founded Badlands Trust Co. in Sioux Falls, S.D. last year.

Before that, he oversaw six trusts loaded with Berkshire Hathaway stock for the benefit of himself, wife Fran, his grown children John and Susan, and his 4-year-old grandson and 2-year-old granddaughter. Then 60, Horejsi knew it was high time he named a successor but feared ceding control to a trust company.

"I think they play defense more than offense," says Horejsi, recalling that his company's $27 million profit-sharing plan was once "mismanaged by a New York City trust department." Horejsi also knew a corporate trustee would balk at holding almost nothing but Berkshire Hathaway, as he does: "They'd want to diversify."

One reason Horejsi chose South Dakota is that it has no personal income tax. Also popular are other low- or no-income-tax states like Wyoming and Delaware, which impose no tax on trusts.

Changes in state laws are fostering private trust companies. Several have relaxed the old rule against perpetuities, which outlaws tying up assets for much more than one generation. Idaho, South Dakota, Illinois, Wisconsin, Alaska and Delaware now allow you to lock up wealth forever in a so-called dynasty trust. The only catch is that you must use a local trustee.

Catering to private trust company formation, a few states have relaxed capital requirements, too. Delaware now permits private trust firms to put up just $750,000 instead of $25 millionas before. Texas demands just $150,000, down from $1 million, and exempts family trust companies from most regulations.

What about the cost? Startup expenses for a private trust company can run between $100,000 and $300,000. Most states mandate hiring a seasoned trust officer, who might command $50,000 to $125,000 or more. So figure $150,000 to $350,000 per year to operate.

Sometimes it costs more. Rowland Stebbins III, a Harvard-trained lawyer, spent nearly $1.8 million last year to run Market Street Trust Co. -- which also acts as the family office for the descendants of Amory Houghton of Corning Inc. Founded in 1987, the company has $770 million under management.

Want a trust company without all the costs? Buy shares in a closely held trust company and use it yourself. The Community Trust Co., based outside Harrisburg, Pa., was founded in 1992 by attorney Lowell R.

Gates, 37, and financial planner Matthew Amos, 38.

Community Trust started as a not-for-profit to duck the state law requiring $1.5 million in starting capital. Using desktop computers to manage accounts, they could match big trust companies by charging just 1% compared with, say, 1.25% at Mellon Bank.

Today, Community Trust has $32 million under management in 132 accounts. It has converted to a for-profit enterprise and is making a $975,000 private placement. So far, they have attracted 63 would-be owners.

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