

# HELPING YOUR CLIENT SELECT THE RIGHT TRUSTEE

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# DUTIES OF THE TRUSTEE

- Highest fiduciary standard applies
- Legal obligation to follow Trust provisions
- Exercise impartiality, loyalty and fairness
- Maintain prudent investment standards and practices
- Carry out the duty of diversification
- Uphold the provisions of the Uniform Principal & Income Act
- Distribute assets as required (mandatory/discretionary)
- Delegate to and manage outside professionals as needed

# DUTIES OF THE TRUSTEE

- Transact day-to-day Trust business (e.g., marshal assets, pay bills, review insurance etc.)
- File fiduciary accountings, income tax returns and reports
- Inventory assets and determine market values when appropriate (e.g. Date of Death or Alternate Valuation Date)
- Trustee role may be required for generations

# TRUSTEE SELECTION CRITERIA

- Able to be objective and impartial
- Possesses knowledge, experience and business acumen
- Understands the rules / regulations of trust administration
- Willing to serve
- Time horizon – long-term potential for service (age, health)
- Compensation required to perform services
- Accessible to Beneficiaries
- Appears to be a good “intangible” fit

# ELEMENTS OF THE TRUST

- Value, composition and complexity of Trust assets (securities, real estate, alternative investments, oil & gas, etc.)
- Investment, liquidation and diversification requirements of the Trust
- Number of accounts to be funded
- Purpose and likely term of the Trust
- Jurisdiction of the Trust, its assets and Beneficiaries

# TRUSTEE OPTIONS

- Individual as Sole
- Corporate as Sole
- Co-Trustees
  - Two or More Individuals (i.e. wife & child, two children, or friend & wife)
  - Combination of Individual and Corporate
- Corporate as Sole, with Individual as Trust Protector

# INDIVIDUAL OR CORPORATE TRUSTEE?

Type	Pros	Cons
Individual Trustee	<ul style="list-style-type: none"> <li>- Knowledge of family dynamics</li> <li>- Generally lower cost (or none)</li> <li>- Usually serves only one Trust or Trust group</li> <li>- Understands family assets (business, investments, holdings, etc.)</li> <li>- Well known to Grantor(s)</li> </ul>	<ul style="list-style-type: none"> <li>- May lack expertise</li> <li>- Reliance on other professionals (higher cost)</li> <li>- Mortality (lack of continuity)</li> <li>- Family dynamics</li> <li>- Possibility for Conflict of Interest/Mistrust</li> <li>- May not be able to handle larger trusts</li> <li>- Other obligations</li> </ul>
Corporate Trustee	<ul style="list-style-type: none"> <li>- Expert professional knowledge</li> <li>- Can handle all needs</li> <li>- Impartial (independent from Grantor(s) and Beneficiaries)</li> <li>- Regulated</li> <li>- Understanding of laws &amp; diversification standards</li> <li>- Permanent (long-term)</li> <li>- Record storage</li> <li>- Licensed, bonded and insured</li> <li>- Fiduciary accounting capabilities</li> <li>- Better suited for larger or complex trusts</li> </ul>	<ul style="list-style-type: none"> <li>- May be higher cost</li> <li>- May be too conservative</li> <li>- Can be impersonal</li> <li>- Can be slow to respond</li> <li>- Employee turnover rate</li> <li>- Difficulty managing closely-held business/real estate</li> <li>- Investment issues (mutual funds, churning, embedded fees, etc.)</li> </ul>
Co-Trustee	<ul style="list-style-type: none"> <li>- Possibly the best of both worlds</li> </ul>	<ul style="list-style-type: none"> <li>- May be too many cooks in the kitchen</li> </ul>



# INDIVIDUAL OR CORPORATE TRUSTEE?

## INDIVIDUAL:

- Family Member
- Family Confidant/Friend
- Professional (Attorney, CPA, etc.)

## CORPORATE:

- Brokerage Firms
- Commercial Banks
- Independent Investment Firms
- Multi-Family Offices
- Trust Companies

# Five Pillars of Wealth Management



The diagram consists of five vertical rectangular pillars of equal height, arranged horizontally. Each pillar is a different color and contains text. From left to right, the colors are green, orange, blue, purple, and red. The text is centered within each pillar.

Investment  
Management

Family Office  
Services

Fiduciary  
Services

Philanthropic  
Services

Special Asset  
Oversight &  
Management

# Investment Management

## Equities

- Large Cap
  - Core
  - Growth
  - Value
  - Income Oriented
- Mid Cap
- Small Cap
- International Developed
- International Emerging

## Fixed Income

- Taxable
  - Treasuries (state tax exempt)
  - Agencies (state tax exempt)
  - Corporates
  - MBS
  - High Yield
  - Preferred Equity
  - International Sovereign
- Tax-Exempt
  - Revenues
  - Essential Services
    - Electric
    - Water/Sewer
  - General Obligations

## Alternative Assets

- Private Equity
- Venture Capital
- Hedge Funds
  - Long/Short
  - Absolute Return
- Natural Resources
  - Commodities
- Real Estate
- Oil & Gas
- Master Limited Partnerships (MLPs)
- Opportunistic/Distressed Credit

# Family Office Services

## Risk Management

- Balance sheet analysis and optimization
- Asset protection consulting
- Concentrated holding strategies
- Debt structure and analysis
- Property and casualty insurance analysis
- Life insurance analysis
- Personal and family security consulting

## Financial Services

- Cash flow analysis
- Personal bill payment
- Payroll services
- Procure personal loans
- Wire transfers
- Banking introductions and coordination
- Custody of all securities
- Daily sweep of dividends and interest
- Disbursement of income and principal
- Capital calls and disbursements

## Client Administration

- Coordinate with client's professional advisers
- Document management and recordkeeping
- Negotiate significant asset purchases or sales
- Family business succession
- Family meetings
- Wealth education
- Customized reporting
- Quarterly performance measurement
- Online account access

## Tax Strategies

- Work with client's tax professional to plan and coordinate compliance work
- Tax document collection
- Analyze tax situation and raise key issues
- Model implications of various tax planning strategies
- Provide timely information on key tax law changes
- 1099 preparation

## Estate Planning Strategies

- Coordinate with client's estate planning counsel
- Facilitate wealth transfer
- Model implications of various estate planning strategies
- Implement estate tax saving strategies
- Serve as Trustee, Co-Trustee or Directed Trustee
- Serve as Executor

## Concierge Services

- Coordinate residential needs
- Assistance in cataloging, acquiring and selling collectibles
- Assistance in identifying/purchasing vehicles
- Safekeeping of valuables
- Aircraft/yacht management
- Review contracts
- Review club and resort memberships
- Assist with staff/medical assisted living needs

# Fiduciary Services

## Trustee/Co-Trustee

- Independently and impartially administer document terms and Grantor wishes
- Report to, and communicate with, beneficiaries and interested parties
- Manage and coordinate unique trust assets – real estate, oil & gas, private equity, closely held businesses
- Complex entity administration – family partnerships and LLCs

## Executor Services

- Coordinate with estate legal counsel and tax advisor
- Manage overall estate settlement process
- Inventory estate assets
- Hire and supervise auction houses
- Oversee tax preparation and filing
- Provide recordkeeping and trust accounting
- Pay estate bills

## Nevada Trust Situs

- No state fiduciary income or capital gains taxes
- Perpetuities period extends for 365 years
- Provides for Domestic Asset Protection trusts
- Recognizes directed trusts and trust protectors
- Allows for decanting from one trust to a second trust
- Limits creditor's charging orders for LLC's and LP's
- Full team of 20+ trust professionals

## Agency Relationships

- Provide complete trust accounting and record keeping
- Customize reporting to meet needs of fiduciaries, beneficiaries and their advisors
- Manage unique asset holdings
- Handle capital calls and distributions as directed

# Philanthropic Services

## Advisement

- Identify charitable intent & goals
- Select most effective giving vehicle(s)
- Develop mission statement & grantmaking guidelines
- Establish governance policies & structures
- Periodic strategic planning
- Orient/train new Board members/ trustees

## Foundation & Charitable Trust Administration

- Serve as central office and Exec. Director
- Full support for Board/trustees
- Maintain admin & grant files
- Conduct site visits & perform due diligence
- Prepare grant agreements
- Issue checks
- Track grantee reporting and use of funds
- File regulatory documents
- Support outside preparation of 990-PFs, audits

## Donor-Advised Funds

- Name unlimited successor advisors
- Hold alternative assets indefinitely
- Wrap fund in customized supportive services
- Lower fees than institutional or community fund DAFs

## Investment Management & Consulting

- Determine asset allocation
- Protect and grow corpus
- Individually manage portfolios
- Apply socially responsible filtering if desired
- Support impact investing
- Monitor and report on performance
- Hold tangible and alternative assets

## Family Legacy Services

- Facilitate family meetings designed to improve family communication
- Plan for legacy
- Facilitate family retreats
- Support clients in preparing heirs for financial stewardship and philanthropic involvement

# Special Asset Oversight & Management

## Assets

- Residential real estate
- Investment real estate
- Privately-held companies
- Partnerships and LLCs
- Airplanes
- Boats
- Car collections
- Art and antique collections
- Coin and stamp collections

## Asset Management

- Acquisition
- Disposition
- Lease negotiation
- Debt structure and analysis
- Rent collection
- Bill payment
- Cash flow optimization
- Customized reporting
- Document management and record keeping
- Title coordination
- Insurance analysis

## Consulting

- Analysis of asset portfolios
- Deal analysis
- Estate and tax planning strategies
- Succession planning
- Passive income generator
- Passive activity losses
- Entity assessments

# FACTORS TO CONSIDER WHEN SELECTING A CORPORATE TRUSTEE:

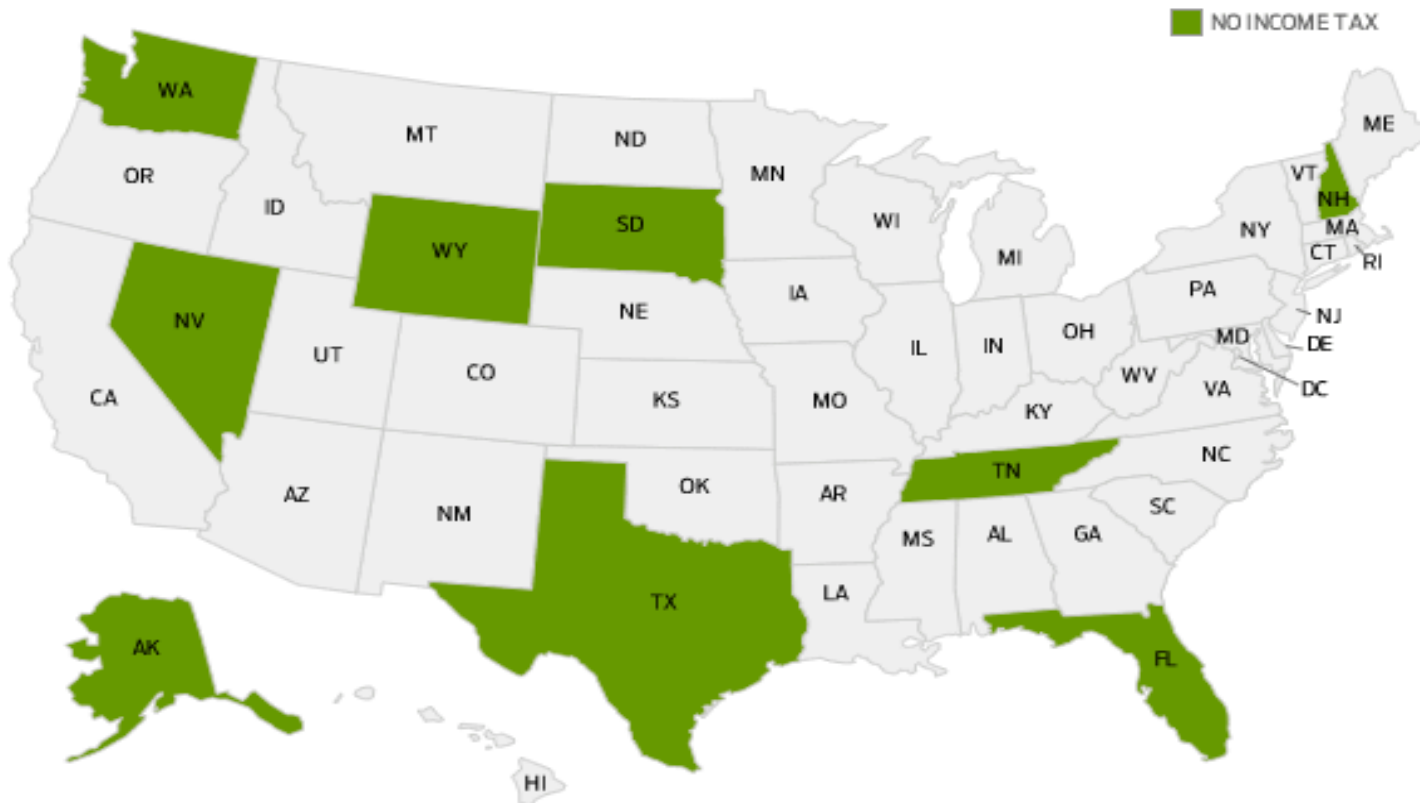
- What is the Trustee's primary business?
- Is the firm privately or publicly held?
- Platform – what are the inherent conflicts?
- What is the client service model?
- What is the account load per client advisor?
- What is the culture of the firm? Is it a good fit?
- What is the historical retention record for clients and employees?
- Does the firm have full-service wealth management capabilities?
- Is the firm flexible and experienced in fiduciary matters and capable of holding assets in trust such as real estate, privately held companies, etc.?
- What are the trust situs capabilities?



# FACTORS TO CONSIDER WHEN SELECTING A CORPORATE TRUSTEE

- What are the investment offerings? Internal/proprietary only or is there access to outside managers?
- Is the investment approach customized or model-based?
- What is the firm's historical investment performance?
- Does the firm utilize mutual funds or individual securities?
- Are investments tax efficient?
- How transparent are fees? Are they embedded in mutual funds other pooled vehicles?

# STATES WITH NO INCOME TAX



**Seven states have no income tax:** Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming. New Hampshire and Tennessee do not tax wages; however, they do tax dividends and interest income

# THE BEST STATES FOR TRUSTS

Tier	State	State Income Tax	Directed Trust Statute	Asset Protection Trust	Dynasty Trust Ability
1	Alaska	No	Yes	Yes	1,000 yrs
1	Delaware	No (except Residents)	Yes	Yes	Perpetual
1	Nevada	No	Yes	Yes	365 yrs
1	South Dakota	No	Yes	Yes	Perpetual
2	Florida	No	Yes	No	360 yrs
2	New Hampshire	No (except dividends, interest on Residents)	Yes	Yes	Perpetual
2	Tennessee	No (except dividends, interest on Residents)	Yes	Yes	360 yrs
2	Wyoming	No	Yes	Yes	1,000 yrs
3	Colorado	Yes	Yes	Uncertain	1,000 yrs
3	Ohio	No (except Residents)	No	No	Perpetual
3	Rhode Island	Yes	No	Yes	Perpetual
3	Utah	Yes	No	Yes	1,000 yrs

All tiers listed in alphabetical order. States links to state trust statutes. Trust companies include state-chartered trust companies and OTS/OCC chartered institutions with trust powers. \*DE includes 19 state-chartered limited purpose trust companies.

Data: February 2011. © 2011 TheTrustAdvisor.com

# FEATURES OF A NEVADA TRUST

## Tax Savings

- A Nevada Trust will generally only be subject to Federal income tax

## Directed Trust Protection

- Nevada allows certain Trust decisions to be made by a Trust Advisor or Trust Protector. Through a Directed Trust, investment, distribution and other decisions may be placed in the hands of a family member, a trusted advisor or long term business associate, while administrative and other responsibilities are maintained with the Trustee

## Perpetuity Protection

- Nevada law allows Trusts to exist for up to 365 years

## Decanting Option

- A Trust can benefit from flexibility in addressing changes in the law. In Nevada, property from one trust can be appointed, or “decanted,” to a second trust to help address such changes

## Creditor/Asset Protection Trust

- Protects Trust assets from legal judgments

# CORPORATE TRUSTEE: INVESTMENT MANAGER OR WEALTH MANAGER?

- What is the difference?
- Which one is appropriate for the Trust/family situation?
- Comprehensive wealth management
  - Balance Sheet Approach
  - Monte Carlo Simulation

# BALANCE SHEET APPROACH

- Build balance sheet of assets and liabilities
- Examine overall asset allocation – liquid vs. illiquid assets; income-producing vs. non-income producing assets
- Maximize total return of each asset
- Protect assets with proper insurance and formation of appropriate legal entities (e.g. LLC)
- Evaluate and manage debt

# APPLYING THE BALANCE SHEET APPROACH

Asset	Wealth Management Analysis
Cash & Cash Equivalents	<ul style="list-style-type: none"> <li>• How Invested? Safety?</li> <li>• Bill Pay, Budget, and Cash Flow Analysis</li> <li>• Global Asset Allocation – Income vs. Total Return</li> <li>• Consolidated YTD Income / Expense Report</li> </ul>
Diversified Investment Portfolio <ul style="list-style-type: none"> <li>• Fixed Income</li> <li>• Equities</li> <li>• Alternative Assets</li> </ul>	<ul style="list-style-type: none"> <li>• Global Asset Allocation – Liquid vs. Illiquid Assets</li> <li>• Monte Carlo Simulation Wealth Forecast</li> <li>• Portfolio Analysis and Review</li> </ul>
Concentrated Public Stock Position (Low Cost Basis)	<ul style="list-style-type: none"> <li>• Outright Sale</li> <li>• Hedging Options</li> <li>• Establish CLT or CRT</li> <li>• Establish Foundation or DAF</li> <li>• Gifts to Charity</li> </ul>
Residential Real Estate	<ul style="list-style-type: none"> <li>• Property, Casualty / Umbrella, and WC Insurance Review</li> <li>• Mortgage / Debt Structure Analysis</li> <li>• Family and Domestic Help Medical Insurance Coverage</li> <li>• Staffing / Payroll</li> <li>• State Residency Considerations</li> </ul>

# APPLYING THE BALANCE SHEET APPROACH

Asset	Wealth Management Analysis
<b>Investment Real Estate</b> <ul style="list-style-type: none"> <li>• Commercial</li> <li>• Industrial</li> <li>• Multi-Family</li> </ul>	<ul style="list-style-type: none"> <li>• Global Asset Allocation – Alternative Asset vs. Fixed Income</li> <li>• Property, Casualty / Umbrella, and WC Insurance Review</li> <li>• Property Management</li> <li>• Entity Ownership and Structure</li> <li>• Mortgage / Debt Structure Analysis</li> <li>• 1031 Exchange Options</li> <li>• Lease Review</li> <li>• Estate and Tax Planning Opportunities</li> </ul>
<b>Privately Held Company</b>	<ul style="list-style-type: none"> <li>• Succession Planning</li> <li>• Buy / Sell Agreement</li> <li>• Entity Ownership and Structure</li> <li>• Financing and Debt Structure Analysis</li> <li>• Estate and Tax Planning Opportunities</li> <li>• Valuation Updates</li> </ul>
<b>Personal Collections</b> <ul style="list-style-type: none"> <li>• Art</li> <li>• Jewelry</li> <li>• Wine</li> <li>• Etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Detailed Inventory and Photographs</li> <li>• Proper Storage</li> <li>• Insurance Review</li> <li>• Valuation Updates</li> </ul>



# APPLYING THE BALANCE SHEET APPROACH

Asset	Wealth Management Analysis
Vehicles	<ul style="list-style-type: none"><li>• Insurance Review</li><li>• Covered Drivers</li><li>• Covered Vehicles</li></ul>
529 Plans	<ul style="list-style-type: none"><li>• Evaluate Investment Manager and Historical Performance</li><li>• Assess Fee Structure</li><li>• Assess Jurisdiction for Favorable Tax Benefits</li><li>• Change State Plans as Appropriate</li></ul>
Irrevocable Life Insurance Trust (ILIT)	<ul style="list-style-type: none"><li>• Annual Policy Review and Audit</li></ul>

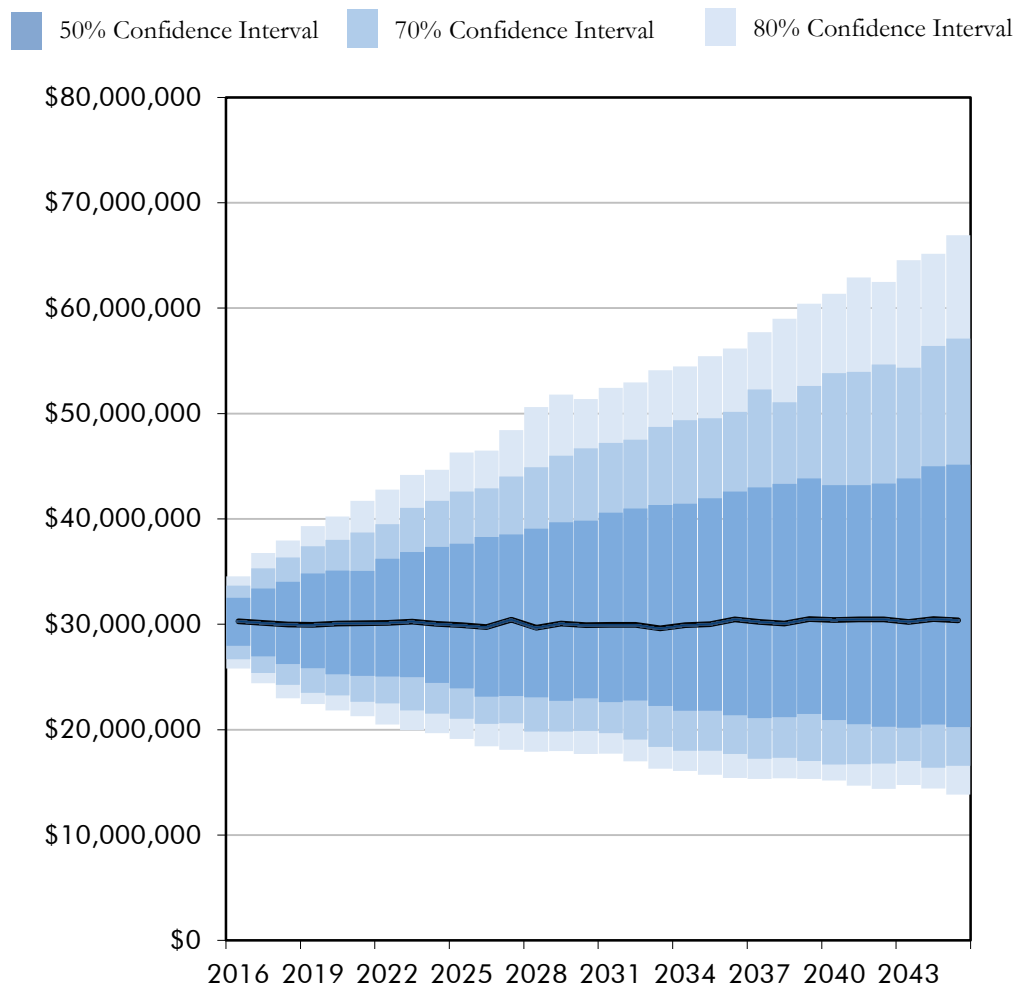
# SAMPLE MONTE CARLO SIMULATION

## 3% WITHDRAWAL (CONSERVATIVE)

Asset Class	Allocation	Expected Return	Standard Deviation
Cash	1.0%	0.0%	0.0%
Tax- Exempt Fixed Income	13.0%	2.0%	3.8%
Taxable Fixed Income	14.0%	3.2%	3.4%
Equity	62.0%	6.2%	16.2%
Alternatives	10.0%	5.5%	12.0%
Total Portfolio	100.0%	5.7%	11.3%

Other Assumptions	
Opening Balance	\$ 30,000,000
Client Withdrawals	3.0%
Fees	1.0%
Dividend Tax	31.4%
Ordinary Income	51.0%
Portfolio Turnover	15.0%
Capital Gains	31.4%

Year	Median Values	
	Distribution	Market Value
2020	898,926	30,059,346
2025	901,838	29,922,513
2030	904,816	29,910,394
2035	900,240	30,008,526
2040	916,899	30,404,400
2045	916,513	30,358,421



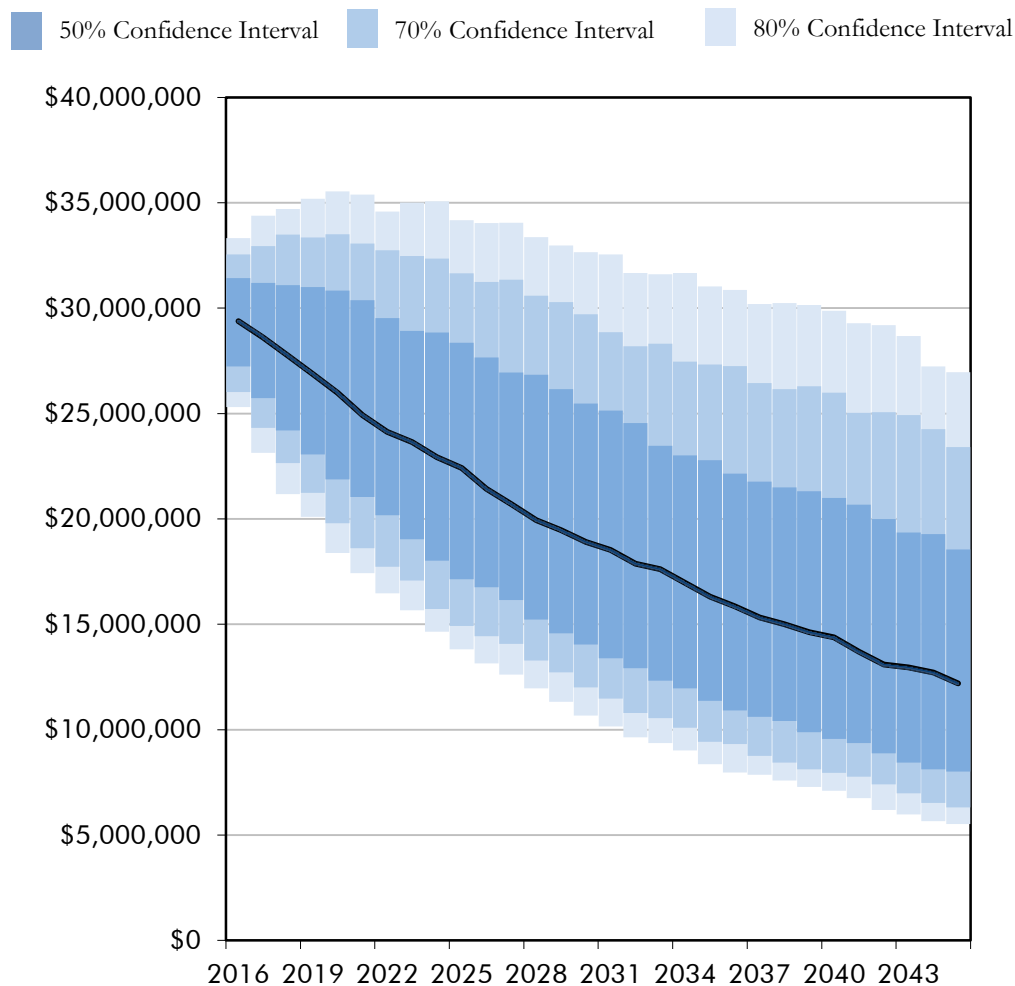
# SAMPLE MONTE CARLO SIMULATION

## 6% WITHDRAWAL (AGGRESSIVE)

Asset Class	Allocation	Expected Return	Standard Deviation
Cash	1.0%	0.0%	0.0%
Tax- Exempt Fixed Income	13.0%	2.0%	3.8%
Taxable Fixed Income	14.0%	3.2%	3.4%
Equity	62.0%	6.2%	16.2%
Alternatives	10.0%	5.5%	12.0%
Total Portfolio	100.0%	5.7%	11.3%

Other Assumptions	
Opening Balance	\$ 30,000,000
Client Withdrawals	6.0%
Fees	1.0%
Dividend Tax	31.4%
Ordinary Income	51.0%
Portfolio Turnover	15.0%
Capital Gains	31.4%

Year	Median Values	
	Distribution	Market Value
2020	1,613,833	25,976,782
2025	1,376,104	22,412,106
2030	1,168,191	18,901,706
2035	1,018,594	16,305,540
2040	878,202	14,388,821
2045	764,041	12,191,861



# John W. Prokey

**John Prokey** is the Senior Managing Partner of Ramsbacher Prokey Leonard LLP. Mr. Prokey's law practice focuses on providing advice in wealth planning, estate and trust administration, and tax arenas. His clients include individuals, private fiduciaries, institutions, and other business and non-profit entities. The wealth planning portion of Mr. Prokey's law practice emphasizes advising individuals and fiduciaries in estate planning, wealth preservation, tax, and business matters. Mr. Prokey also advises fiduciaries and beneficiaries in trust and probate administration matters, with emphasis in complex administrations. Mr. Prokey's law practice includes representing taxpayers in all levels of federal tax controversy, including IRS examination and Appeals, and before the U.S. Tax Court. Clients, their families, and other practitioners rely on Mr. Prokey for dispute resolution in these arenas, including serving as a mediator.

Mr. Prokey is a Fellow of The American College of Trust and Estate Counsel. He is also a member of the California State Bar, and currently serves on the Trusts and Estates Section Executive Committee. He is a former member of the Taxation Section Executive Committee and the former Chair (2004-2005) of its Estate and Gift Tax Sub-Committee. He is a member of the Santa Clara County, Silicon Valley, and American Bar Associations.

Mr. Prokey is a frequent lecturer and guest speaker at numerous seminars and conferences throughout California and elsewhere, and is an author on various tax and estate planning topics. Recent and prior year speaking engagements include the CalCPA Advanced Estate Planning Institute, Annual Estate Planning Symposium, Tax and Update Planning Conference, AICPA Advanced Estate Planning Conference, the San Diego Tax and Estate Planning Forum, the Hawaii Tax Institute, CEB/UCLA Estate Planning Conference, Continuing Education of the Bar Estate Planning and Administration, Santa Clara University School of Law, Bar Association of San Francisco, East Bay, Orange County, Santa Clara County, and Stanislaus County Estate Planning Councils, CPE Forum of the Central Coast, East Bay Trust & Estates Lawyers Seminar, and Paralegal Association of Santa Clara County. (Please see Exhibit "A" for list of speaking engagements since 2009.)

Mr. Prokey received his Baccalaureate of Science degree from Santa Clara University in 1994 and his Juris Doctor degree from Santa Clara University School of Law in 1999, graduating *cum laude* in both undergraduate and law school studies.

# Peter J. Zarifes

Peter is a Managing Director and Director of Wealth Management in the South Pasadena office of Whittier Trust. He has more than 25 years of experience working with high net worth individuals and families.

Prior to joining Whittier Trust, Peter worked for over a decade at Bessemer Trust where he was a Managing Director and Senior Client Account Manager, and was responsible for the business throughout the western United States. Prior to that, Peter spent 11 years as a Principal at Desmond, Marcello & Amster, where he specialized in the valuation of privately-held companies and intangible assets. Peter began his career in the Audit Department at Price Waterhouse. He is a contributing author to several books and publications on business valuation and has qualified as an expert witness on this topic. His unique combination of skills and experiences is particularly helpful to clients who are involved with closely held businesses.

A native Southern Californian, Peter received his Bachelor of Arts degree in Economics, *magna cum laude*, from Claremont McKenna College and was elected to Phi Beta Kappa and Omicron Delta Epsilon. He received his Master of Business Administration degree from the Harvard Business School.

# Disclaimer

*This presentation is for educational and illustration purposes. Prior to pursuing or engaging in any of the strategies and examples presented herein; a tax professional and/or legal counsel should be consulted, as appropriate.*