

Peer Insights

R E P O R T

Q&A with Gideon Rothschild

Partner at Moses & Singer LLP

Principle Series:

Family Office Insights sits down with Gideon Rothschild, partner of New York City law firm MOSES & SINGER LLP, to talk about the trials and tribulations of estate planning, how to structure a trust properly and what fees are associated with the process.



Family Office Insights is a voluntary, “opt-in” collaborative peer-to-peer community of single family offices, qualified investors and institutional investors.

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Q: Why did you get into the trusts and estates space? What does your practice look like today?

A: Prior to becoming a trust and estate lawyer, I was a CPA with a national accounting firm and then started my own accounting firm where I was the tax partner. One of the specialties I developed early on was that of asset protection planning. This involved creating strategies for high-net-worth clients who had potential creditor and/or litigation exposure to shield their assets. Some of the strategies in the early years utilized offshore trusts but many today simply involve domestic trusts. The candidates for this planning run the gamut from professionals, such as doctors and lawyers, to real estate developers, directors and officers of public companies as well as closely held business owners. Today we emphasize the importance of trusts in all our estate planning engagements.

Q: The world of trusts can be a complicated one and many family offices and high-net-worth individuals may see it as daunting. To take a proactive approach, what can they do to get ahead of the curve before a life event takes place?

A: Trusts need not be daunting, though they can be complicated. The important point to keep in mind is that they be drafted with as much flexibility as the law allows so that they can address unforeseen changes in circumstances. They can provide the beneficiaries with a significant degree of control if that is desired or little control if, for example, the grantor wishes to restrict the beneficiary's rights. In essence, the grantor of the trust can draft it any way he or she wishes. There are very few rules or restrictions that state laws require and unless a provision offends public policy it will be enforceable.

Q: What is the best way to structure trusts?

A: We recommend a flexible structure. Some attorneys draft trusts to provide for mandatory distributions at certain ages and termination when the beneficiary reaches a set age. This exposes the gifted assets to potential creditors or divorce once the beneficiary has outright ownership thereof. It is better to allow a trusted person (the trustee) with maximum discretion to distribute amounts as needed so they remain within the trust in a protected state. The trustee can even be given the power to make loans to the beneficiary or purchase homes or businesses for the beneficiary.

Q: Can you provide our readers with the main 'do's' and 'don'ts' of trusts?

A: Aside from what I noted above about trust distributions remaining discretionary I would also enable a beneficiary who is responsible and mature to remove and replace the trustee if they are not performing their duties in accordance with the beneficiary's needs. By doing so, the beneficiary is given significant control over their trusts. It is also important to comply with all the rules so that a creditor does not have the ability to defeat the trust on the basis of a sham or alter ego argument. Finally, trusts have numerous favorable and not so favorable tax attributes. It is therefore important to

understand how to structure them so as to minimize both income taxes and estate and gift taxes.

Q: Cost and fees are an issue for many. What are the fees associated with creating a trust?

A: The fees can vary significantly depending on the objectives that the trust is intended to achieve. In most cases it is not simply the cost to draft the trust but rather the implementation on how they will be funded that adds to the costs. Will the trust be funded with cash or a family limited partnership holding real estate? Will we need to obtain an appraisal for the value contributed? Will gift tax returns be filed? Will the trust be a grantor trust or non-grantor trust and what income tax returns need to be filed each year? Will there be an institutional trustee and what are the benefits and costs thereof? Ultimately, it is not so much the drafting of the trust that determines the fee, but the implementation thereof to obtain the best results.

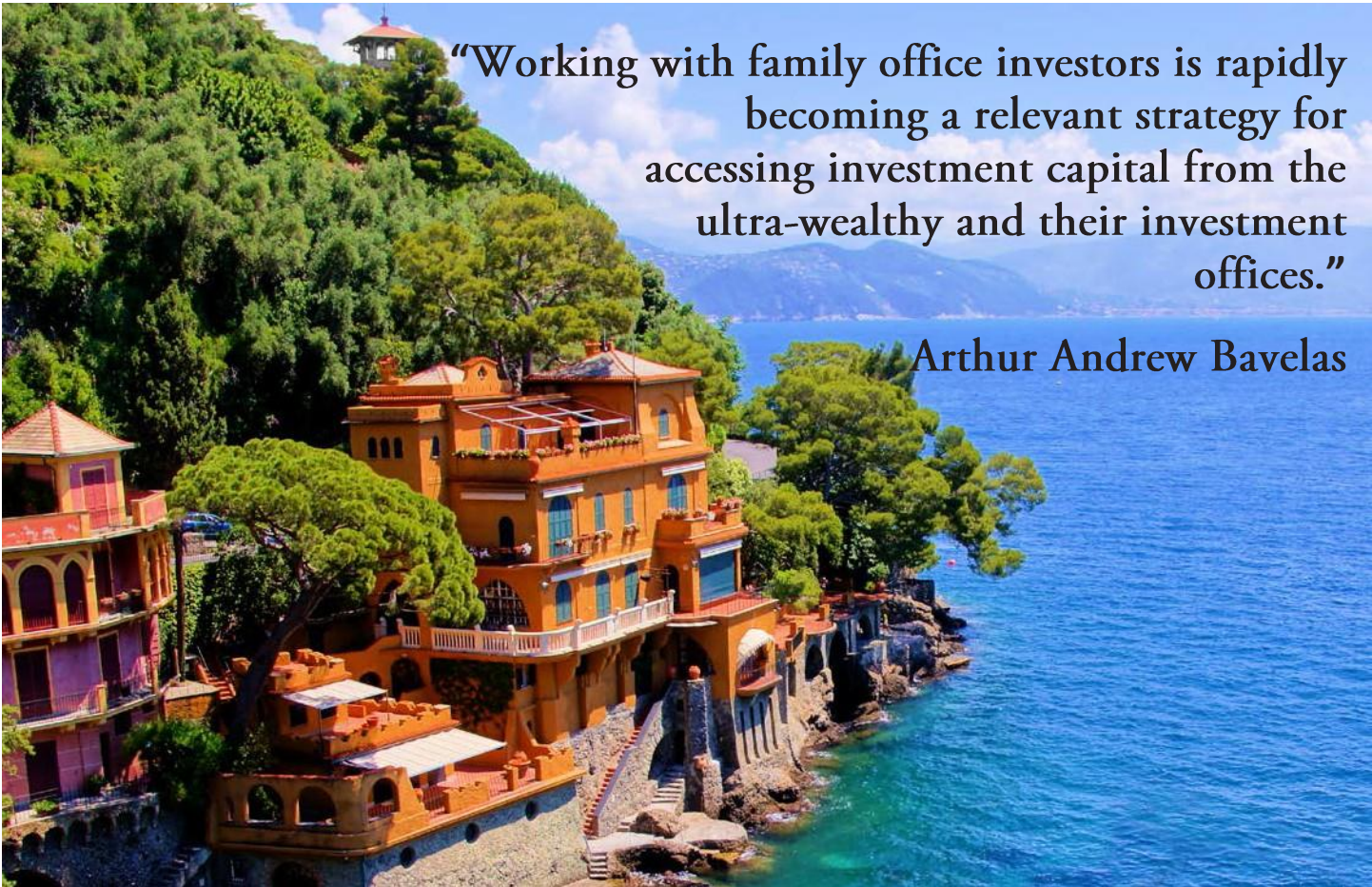
Q: Can you give us an example of how you've worked with a person who's just inherited their family's wealth? What have you counseled them to do with it?

A: In most cases the time to work with a client is when they are planning their wealth transfer to the next generation - and not after the patriarch has just died and left a Will which may not have been well drafted. The best example I can give of the importance of this is the case of a young real estate developer in the midst of the recent downturn who consulted with me after his uncle passed away and left him a \$20 million estate outright. His concern was that he was in default of a real estate loan and had a personal guarantee for \$25 million and now that he was inheriting this wealth he wanted to know how to protect it. Unfortunately, there is a legal concept called fraudulent transfer which would make anything he does at this time to protect the inheritance (i.e. transferring it to someone else or a trust) illegal. So I had to tell him there was nothing that could be done to save the inheritance. If, however, his uncle had left the inheritance in a discretionary trust for the nephew's benefit it would have been completely bullet proof.



Gideon Rothschild

Gideon Rothschild is a partner with the New York City law firm of MOSES & SINGER LLP, where he co-chairs the Trusts & Estates and Wealth Preservation Group. He focuses his practice in the areas of domestic and international estate planning techniques for high-net-worth clients and is a nationally recognized authority on wealth preservation and offshore trusts. For more information, please go to <http://www.mosessinger.com> or email Gideon at grothschild@mosessinger.com.



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Arthur Andrew Bavelas