I have been concerned about the emotional and relational impact of trusts since I had a “professionally jarring” encounter in 2001 with a beneficiary of an irrevocable trust established by her grandfather. The dependency, disempowerment and entitlement I witnessed led me to ask “Is there a better way?”

There is a better way to think about the purpose and meaning of trusts which still honors the legal roles and responsibilities but lifts the influence of the trust to the point it becomes a generative (positive) influence in the lives of beneficiaries. The Generative Trust and Generative Trustee are that better way.

Traditional trust design centers on the choice of trustee, the tax and legal purposes of the trust instrument, and the duties and powers given to the trustee. Trust administration continues to focus on managing assets, dealing with beneficiaries and managing risks.

Over the last twenty years I’ve witnessed delegated trusts emerge as a popular choice in many jurisdictions, particularly among the ultra-affluent. I believe we’ll see “Trifurcation” of trustee duties become an increasingly popular paradigm for design and drafting of trusts even in the mass affluent marketplace.

Little, however, has changed in the last three decades in terms of the conversations which estate planning attorneys and prospective trustees have with trust creators around the pros and cons of corporate trustees and family trustees. Only recently, thanks to the efforts of Hartley Goldstone, Kathy Wiseman, and others, are the trustee/beneficiary relationship and conversations growing healthier and more positive. The conversations between the attorney, estate planning strategists and trust creators also need to evolve if we are going to make trusts more generative.

I believe there are two fundamental but vitally important ways in which we need to shift the design and discovery conversations:

1. Trust Creators’ vision around the universe of Whys for creating their trust needs to expand beyond tax minimization, asset protection and probate avoidance. A fourth Why needs to be offered: the possibility that the trust can become a positive and meaningful influence in the lives of today’s beneficiaries and tomorrow’s remaindermen.

2. The function of the Trustee needs to be designed to do more than just manage assets (the “Investment Function”), handle compliance and recording keeping (the “Administrative Function”), and dispense cash or transfer assets (the “Distribution Function”). We should
also offer a fourth functional description of a trustee: the potential of the trustee to have a generative influence on the beneficiaries (the “Generative Function”).

The Generative Trustee concept will improve the distribution function, leading to more positive trustee/beneficiary relationships and promoting the individual growth and well-being of beneficiaries.

**What is a Generative Trust or Trustee?**

Let’s tackle the word generativity and learn how it applies to the trustscape. The concept of generativity was developed through the writings and research of Erik Erikson, the father of modern psychosocial development theory. Erikson posited that generativity arises in middle adulthood, and refers to an adult’s need and ability to care for and guide the next generation.

Generativity is usually applied to the parent-child relationship but I believe it has great application to the role of the trustee. Through a series of questions and answers I’d like to frame the conversation-altering potential of the Generative Trustee concept.

**What is a Generative Trust?** A Generative Trust has two distinguishing aspects: Purpose and Positivity. Instead of protecting beneficiaries from themselves, the Generative Trust serves to empower and encourage beneficiaries. It is a trust whose central purpose is the growth and well-being of the beneficiary. It’s also a trust grounded in the assumption that even though they may be young, immature or unproven, each beneficiary has the potential to become a highly functioning adult.

A Generative Trust is also built on a foundation of positive emotional energy, something completely foreign to trust design conversations but an absolute game changer for both trust creators and beneficiaries. It is a trust that could start out with these two sentences: “This trust was created out of love, faith and hope. The paramount purpose of this trust is to nurture the growth and well-being of the beneficiaries.” Love is the most obvious of the non-tax, non-legal motivating influences for a Generative Trust. Faith is the confidence of the trust creator in the goodness and capabilities of the beneficiary. Hope comes from the trust creator’s dreams for the potential positive and sustainable influence the trust and trustee will be in the life of the beneficiary.

**How is Generativity Put in Motion by a Generative Trustee?** It starts by developing a very positive trustee/beneficiary relationship. Generativity in the trust context may be expressed through mentoring, teaching, training, encouraging and even jointly participating with the beneficiary in volunteer work and charitable giving. Beneficiary grants, opportunity stipends and meaningful trustee/beneficiary conversations and celebrations are hallmarks of a Generative
Trust. A Generative Trustee will attend important milestones activities, whether sporting, educational, religious or relational (birthdays, anniversaries, holiday parties and celebrations).

**Does a Generative Trust Require a Generative Trustee?** No. But it does require a trustee who will support the Generative Function by providing generative opportunities and resources as well as the encouragement to beneficiaries to take advantage of them. The generativity potential of the distribution function may be realized through the use of beneficiary coaches, trust advisors, distribution committees or through intentional use of mentors and consultants. Just exactly how much the actual trustee might do will depend on the design and the interest, capacities and aptitudes of that trustee. They may choose to actively participate or just be a committed supporter of the trust’s generative purpose.

**How do you spot a Generative Trustee? What would you be looking for in an ideal Generative Trustee?** A Generative Trustee isn’t necessarily someone 45 or older. We can find younger individuals whose nature and drive is extremely generative. A key attribute of the Generative Trustee is she helps beneficiaries think for themselves instead of robbing them of that ability. Some of the other attributes of an ideal Generative Trustee include: strong communication skills, life wisdom as well as a healthy dose of common sense, the gift of holding people accountable, a non-judgmental and friendly personna, seeing the potential in others they don’t see in themselves, and curiosity around the beneficiary’s passions and life journey.

**Can you have a Generative Trustee without a Generative Trust?** It’s certainly possible for a trustee to become a Generative Trustee even when the trust document isn’t generative. In rare cases you’ll witness spontaneous generative combustion within the trustee. It’s more likely a beneficiary may learn of the Generative Trust and Generative Trustee concepts and deeply desire to make their trustscape more generative. But if the document doesn’t reflect that purpose there is no leverage. Unless the beneficiary can remove and replace the uncooperative non-Generative Trustee with a Generative Trustee the generative possibility will fail.

**Are Generative Trustees born or trained/coached? How do you find/become a Generative Trustee?** While some of us may be blessed with greater generative drive than others, I’m convinced we can all become more generative with training, coaching and practice. Currently there isn’t a public directory of Generative Trustees. The Purposeful Planning Institute is attracting a number of trustees, both professional, independent and corporate, who are committed to making the trusts they administer generative. Training and coaching is available for those who want to become Generative Trustees or increase their generative skills.

**Contrasting the Generative Trust with the Incentive Trust**

Many trustees function like an ATM machine. The beneficiary shows up with the proper code and the Trustee dispenses the requested cash UNLESS the request exceeds the limits set by the trust instrument.
Sometimes the ATM machine approach is coupled with restrictive conditions or incentives to encourage the beneficiary to do something, take a certain path in life, etc. These trusts are commonly referred to as Incentives Trusts and I’ve lectured extensively about the unintended negative consequences that too often flow from Incentive Trusts.

Incentive Trusts are well-intentioned. The grantor of an incentive trust is certain he or she knows what is best for the beneficiary and wants to protect the beneficiary from making costly mistakes or provide enticing pushes in the “right” life path.

Incentive Trusts are usually built on the foundation of edicts. Do this and you’ll get the reward. Do that and this will be withheld or withdrawn. Psychologists such as Gallo and Grubman warn that incentive trusts more often fail than succeed. Why? Because human nature resists compulsion. Extrinsic financial incentives are likely to have short-term rather than long-term impact. In some cases, the incentives may actually repel rather than compel.

Another danger of the Incentive Trust can be handcuffing the trustee’s ability to react to unforeseen circumstances which threaten the assumptions that the grantor’s incentives were built on.

The Generative Trust stands in sharp contrast to the Incentive Trust. Generative Trusts are usually designed with a best interests distribution standard and provide the trustee with discretion to not only deal with the likely and most anticipated circumstances in the path of a beneficiary but to also liberally consider how the trust can contribute to and improve the beneficiary’s happiness and well-being.

In a discussion of incentive trusts I once heard an ACTEC fellow complain that clients were asking their trustees to become parental surrogates. He pointed out that no matter how hard a trustee tried, she would never alter the effects of poor parenting. In the almost 25 years that have elapsed since that conversation took place, I’ve seen the weeds of incentive trusts emerge. And, I’ve witnessed Generative Trustees overcome, or at least negate, poor parenting.

I’ve become convinced that even when parents weren’t as positive an influence as they might later hope they would have been, it’s not too late to begin thinking about the generative influence a trust might have on your former (now adults) children and on the rising generations of your family.

So how does a trust creator create a Generative Trust? It starts with careful examination of what you hope your Generative Trust will accomplish. You have to shed the blinders that would have you focus only on the tax, asset protection and investment management benefits of a trust. I have found that the Why a Trust? Why This Trust? Purposeful Visioning Exercise is the best
way to redefine what you hope the influence and impact of your trust will be. And, equally important is capturing your most positive expressions of emotional energy around your love for your beneficiaries, and your hopes and dreams for how your gift will contribute to their future happiness and well-being. Exercises such as the I Won the Child Lottery (or the I Won the Grandchild Sweepstakes if your Generative Trust is designed to benefit grandchildren) are very effective at helping to capture this positive emotional energy that can be the feedstock for a Generative Trust.

Twenty years ago I would have dismissed the possibility of transforming trust documents out of their traditional sterility into emotionally positive and warm legacy expressions as fru-fru. Today both I and an increasing number of attorneys, estate planning strategists and trust consultants know that simple but powerful exercises are available to catalyze vision, capture purpose and positivity, and provide meaningful guidance to both trustees and beneficiaries. If this possibility resonates with you, I hope you’ll explore the resources and training the Purposeful Planning Institute is offering.

Can We Turn a Non-Generative Trust Into a Generative Trust?

When individuals who invested significant time, energy and resources in establishing irrevocable trusts first engage in a conversation around the possibility and implications of a Generative Trust many experience “grantor’s remorse”. They’ll wish they could have a mulligan on those trusts that are already established and in operation. Decanting into a new Generative Trust may be a possibility. Or you may want to encourage the Trustee of an already established irrevocable trust documents to become a Generative Trustee or to bring in coaches, consultants or mentors who’ll help make the Distribution Function more generative.

We can start the process of converting a non-Generative Trust into a Generative Trust or invite a trustee to become a Generative Trustee through what I call “Guidance & Guidelights.” Guidance is for the trustees. Guidelights are for the beneficiaries. Guidance & Guidelights can be integrated into a trust, added as an appendix or stand apart from the legal document.

When offering Guidance & Guidelights for already established trusts those documents will not have any binding legal effect, unless of course a trust protector or redacting is part of the process. The most common form of Guidance & Guidelights I work with are Letter of Wishes or Letter of Instructions. These tools can be a vital part of a process to create a new and healthier climate for the old trust. It may lead to what I call a “virtual reformation.”

A virtual reformation occurs when a cooperative Generative Trustee using the discretion already granted inside the old irrevocable trust document seeks to establish a healthier relationship with the beneficiaries and use the trust resources to pursue the generative purpose the Trust Creator expresses years after establishment of the trust agreement. Of course, the trustee has to continue to pay close attention to her legal duties under the original trust instrument. But when a virtual
reformation is possible the Generative Trustee is able to see the spirit of the Trust Creator’s newly created purposeful vision and modify the administration of the trust so that discretion is exercised to pursue that new vision as closely as possible while staying within the legal bounds of the letter of the old instrument.

**A Generative Trustee Is What Makes a Purposeful Trust Generative**

A Purposeful Trust is one which shares the Trust Creator’s positivity (love, faith and hope), values, wisdom and vision and encourages a healthy dialogue and relationship between trustee and beneficiaries. Purposeful Trusts possess the seeds of generativity. But it takes a Generative Trustee to allow those seeds to germinate and produce generative results.

A friend of mine once asked, “What should I do? Build a better ship or train a better captain?” We were talking about the role of a trustee and the trustee’s potential influence, for better or worse, on the next generations of the Trust Creator’s family. I believe the answer to his question is: you must do both. You need both a Purposeful Trust and a Generative Trustee.

The Generative Trustee will invest as much time and energy in the exercise of distribution discretion as is spent on the investment management and trust administration responsibilities. Ideally, a Generative Trustee will serve as both a mentor and accountability partner to the beneficiaries. In many senses the Generative Trustee is the alter ego of a wise and loving parent. But because the possible influence of a Generative Trustee is most strongly felt during and after the beneficiary’s journey to individuation, the Generative Trustee can’t approach their role in a paternalistic or hierarchical manner. They demean the role, however, if they just become “best buds” with the beneficiary.

**What Should a Trust Creator Do When They Learn of the Possibility of a Generative Trust/Trustee?**

Many parents and grandparents are awakening to a realization of the significant challenges facing younger generation family members. Unfortunately families don’t open the front door to discover the trustee stork has delivered a Generative Trustee.

Awakened or enlightened parents and grandparents will recognize the need to assist their G2s and G3s find their calling in life and to move from the shadows of isolation and distrust into the brighter light of engagement and significance. Those family leaders are willing to invest in their greatest asset: their children and grandchildren. They are looking for trustees who will be positive influences on and within the family. They want trustees who are enthusiastically contributing to the flourishing of younger generation family members.

Where will you find a Generative Trustee? You need to actively search for and/or consider the possibility of investing in the training of a trustee who is willing to become generative. This search may lead you to the more progressive trust companies (either independent or within large
institutions) or to individual or professional trustees. For instance, I have an ACTEC colleague who feels the most satisfying and important work he can do at this stage of his career is his influence as a Generative Trustee.

There has been a major shift in the quality of individuals being recruited to join the trust industry from what it was in the early to mid 20th Century. Please understand that I’m speaking of the industry as a whole. There are sparkling outliers within the industry who continue to place great emphasis on hiring exceptional individuals, from both a technical and people skills perspective. But the reality is that the industry as a whole is engaged in a race to the bottom in terms of compensating and training fiduciaries compared to what the industry standard was in the mid-20th Century. In those days the best and the brightest were hired by banks out of business and law schools to serve as trustees. Most of those MBAs today go into M&A work, private equity or hedge funds rather than the business of serving affluent families. Training today emphasizes the administrative and investment functions of the trustee with discussion around the distribution function being limited to legal concerns and tax consequences.

While it was true fifty years ago that families could find a well trained and generative individual working inside the trust department of a bank, it will be increasingly difficult to find great talent in that manner for two reasons. Compensation barriers prevent most institutions from hiring the very best as fiduciaries and there is such a strong demand for such individuals that the really good ones will most likely already have been snatched up by another family.

So I believe the reality is that many families may have to recruit and train their Generative Trustees. The recruitment may lead families to look in places they might not previously have thought to look. For instance, positive psychologists, life coaches and family wealth counselors might make great Generative Trustees. Or they can serve as the generative consultants and coaches who will make the role and function of the trustee more generative.

Attorneys and CPAs can also develop their generative muscles and because of their professional backgrounds make excellent trustees. I’m seeing an increasing number of attorneys serving as trustees, particularly as a second or third stage of their professional careers.

Because a Generative Trust will often be Trifurcated, with the distribution function being turbocharged with generativity, you may want to consider the possibility of an excellent corporate trustee as the administrative trustee (and depending on circumstances possibly as the investment trustee as well) with an individual or committee serving as distribution trustee.

What Kind of Trust Would You Want?

Scott Fithian, the author of *Values Based Estate Planning*, fought a difficult battle with Pancreatic Cancer at a relatively young age. Shortly before he died, he was interviewed by Tim Belber. Tim asked Scott to reflect on what question or thought advisors might put to their clients who were designing multi-generational trusts in order to raise the level of mindfulness in the
design and impact of these trust documents. Fithian responded that the grantor, advisor and
draftsmen should all adopt the mindset of “What Type of Trustee Would I Want If I Was a
Beneficiary of This Trust?”

I call that the mindset the Platinum Rule for trust creation. When I counsel with a highly
controlling wealth creator who is now considering placing a significant portion of his wealth or
enterprise in a long-term trust, I make sure and pose that question. I find that at least 80% of
those highly successful, hard-charging, “father knows best’ grantors actually hit the restart button
on their thinking around the terms and conditions of the trust. When they imagine what it would
have been like for them to be the beneficiary of the trust they are creating they realize they would
have rebelled at the beneficiary straitjacket they’ve been considering putting their family in.

Many of those individuals attribute much of their business success to having a dream which was
like a guiding star. Until they considered the What Kind of Trust Would I Want Mindset they
never understood that much of their original thinking around what their trust would do was
robbing their beneficiaries of the opportunity to create and pursue their own dreams. Most of
them have had mentors or coaches who have been significant influences on their financial and
business success. Once they begin to appreciate what a Generative Trustee’s influence could be,
most want to invest the time and energy necessary to create a Generative Trust and/or find a
Generative Trustee.

The third leg of this What Kind of Trust Would I Want Mindset is the recognition that if their
parent or grandfather had left a legacy trust to them they very much would have wanted to have a
dialogue with the trust creator around what he/she expected of them as a beneficiary. A
Generative Trustee can provide the emotional support and coaching to help a beneficiary become
all they are capable of becoming. But a Generative Trustee can’t serve as the voice of the Trust
Creator. If a Trust Creator wants his/her children and descendants to know why they exerted the
time and energy to create the trust, what they valued and what they had discovered in their life
journey that might be of value to their posterity that has to be captured and preserved in the
Purposeful or Generative Trust.

I’d like to close this white paper by offering an example of how a Generative Trustee can change
the trajectory of a trust, even when the beneficiary seems destined and determined to pursue an
unhealthy lifestyle.

**An Example of a Generative Trustee in Action**

When I first spoke at an ACTEC meeting about the possibility of a Generative Trustee a retired
fellow in his 80s approached me.
This man worked with a trial attorney who had risen to national prominence from humble beginnings in Texas. The trial attorney and his wife had only one child, a son in his late 20’s who was a twice convicted felon then serving his sentence in a state prison. The trial attorney insisted, over his wife’s objections, that their joint trust be an incentive trust. It would provide incentives for their son to get an education, hold a job, and live drug-free. If the son failed the mandatory drug tests, he’d be cut off.

This ACTEC fellow saw this plan go into effect when the trial attorney died a short time later. The wife had wanted to change the plan but couldn’t or wouldn’t go against her husband’s wishes, and she died before her son was released from prison. One day the son showed up in the attorney’s office. He had been reading the trust document. He saw the possibility he could get an education. He asked the attorney, who also served as a co-trustee with XYZ Bank, to champion his request to the corporate trustee for funds to get an education. He wanted to be a lawyer like his father.

The ACTEC fellow counseled the son that as a felon it was a pipe dream to imagine he could get admitted to law school let alone get admitted to the bar. The son persisted. He finished his undergraduate degree, stayed clean, and volunteered in a poverty law clinic. He scored exceptionally well on his LSAT. But he received one rejection after another from the law schools he sought to attend. He returned and asked the attorney to accompany him to meet with the Dean of a law school in their community. In that meeting the attorney told the Dean he would mentor the now 30 something law student and while it was unlikely he could ever practice law he could use his legal education to help others by working behind the scenes in legal clinics or perhaps as a legal assistant. The Dean reluctantly agreed to the experiment.

Three years later the son graduated with honors. He took the bar exam and passed but was denied admission because of the felony convictions. He came to the ACTEC fellow again and said I’m going to appeal my denial. Will you be a character witness? The Dean and the ACTEC fellow were the key witnesses. The son was admitted to the bar and became a very successful lawyer. All of this was made possible because of a Generative Co-Trustee. There wasn’t a Purposeful Trust or a Generative Trust. Just a generative professional who supported the dream of a beneficiary.

Let’s all do our part, whether as the designers, drafters or administrators of trusts, to allow the generative potential of the trustscape to be realized.

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i Trust Creator is a term I’ve coined to describe the grantor of a Purposeful or Generative Trust. It recognizes the possibility a grantor can play a much more active role in the creation of the trust when we use “Purposeful Visioning Exercises” as tools in the discovery and design phases.

ii Trustworthy, Hartley Goldstone and Kathy Wiseman’s book is a collection of positive trustee/beneficiary stories and was the first book to focus on the trustee/beneficiary relationship. That book along with The Cycle of the Gift by
Hughes, Whitaker and Massenzio and *Family Trusts: A Guide for Trustees, Beneficiaries and Trust Protectors* by Hughes, Goldstone and Whitaker represent a new wave of literature emphasizing the importance of more positive trustee/beneficiary relationships.

iii The Purposeful Planning Institute (“PPI”) has created a Why a Trust? Why This Trust? Exercise which we will be happy to provide. Contact me at info@purposefulplanninginstitute.com.

iv Trustscape is a term coined by Hartley Goldstone which refers to the entire landscape making up a healthy trust system.

v The Purposeful Planning Institute will make these exercises available to anyone who wants to create or assist in the creation of a Generative Trust. Currently PPI has 15 exercises available to assist in the creation of Purposeful and Generative Trusts and more are being developed ever year through the efforts of the members of the Purposeful Planning Institute.

vi I spoke to a group of 20 self-made businessmen about creating a more positive trustscape. I started that presentation by asking them, how many of them had had a dream or vision around what they wanted their business enterprise to become. 19 of the 20 reported that they had had such a dream/vision and that it had contributed significantly to their success, much like a north star guided mariners. In a private conversation afterwards with the one individual who said he didn’t have a dream/vision that guided him in his business career, I discovered this individual followed the Stephen Covey time management program and that short-term, intermediate, and long-term goals were an integral part of his planning process. He just had never bothered to create a vision statement and never made the connection between his long-term goals and his “dream”.

vii This story has been redacted only to the degree needed to protect the identity of the attorney and his client.