



PRIVATE TRUST GROUP OF AMERICA

## What's in YOUR Document Vault?

Have you ever stopped to think about what's in your document vault? Most of us use the office vault, a local bank or similar repository as a “safekeeping” storage facility for estate planning documents and other important client papers. Documents and other important papers finding their way into the vault are generally catalogued and indexed in some fashion – often never to be seen again until the testator or grantor dies.

The document vault usually contains a treasure trove of information about your clients. While the documents themselves, along with the information they provide, must be scrupulously guarded and protected from misuse, actively monitoring and mining the document vault for new information can have a significant impact on *Building Relationships*, *Creating New Business Opportunities* or, in some cases, offer *Protection Against Unexpected Liabilities*. Notwithstanding the multitude of benefits that can arise from an active document vault management program, special *Safeguards* must be put in place to protect bank executives and other non-lawyer fiduciaries from crossing the line into the unlicensed practice of law.

This article outlines some of the benefits of establishing and maintaining a regular management program for document vaults, and only addresses those instances in which a fiduciary relationship (or similar professional advisory relationship) exists between the document owner(s) and the organization responsible for storing the documents. Documents and other important papers held strictly for safekeeping (where no ongoing fiduciary or other professional advisory relationship exists) need not be subject to the active monitoring guidelines suggested herein.

*Building Relationships* – The ultimate success or failure of virtually any trust department or wealth management office is dependent upon personal relationships. The trust *institution* offers a public identity and provides a sense of permanence, but it is the *individual* who molds the customer into a successful, long lasting relationship with the bank or other wealth management organization. Notwithstanding the significant role personalities play in any kind of relationship, most personal fiduciary relationships depend heavily on how pro-active the trust officer or relationship manager is in the eyes of the client. Clients not only expect their trust officers and/or relationship managers to be loyal, accessible, knowledgeable and trustworthy; they also rely on them to be pro-active in terms of providing timely advice that may affect their estate plans or financial well-being.

One way to build new relationships and strengthen existing ones is to periodically review clients' documents for the purpose of ascertaining whether or not changes in family or financial circumstances may have made them obsolete or subject to minor revisions. A periodic review of estate planning documents and other important papers should provide the trust officer or relationship manager with enough insight to initiate contact with the client – even if no changes are contemplated.

The document vault should be one of many resources that provide trust officers and relationship managers with reasons to interact with their clients, but it should not be one that is overused. A brief review once a year, followed by a telephone call (even if no

changes are recommended) is generally sufficient to let your clients know that you value them as a client and are pro-actively monitoring their personal situation.

Of equal importance is the requirement that each telephone call be followed with a brief written summary of the subject matter and any relevant findings, recommendations or suggestions. This should be done in the form of an email, memorandum or letter, depending upon the sensitivity of the information being transmitted. Since email can be intercepted by unauthorized persons if not sent within a secure environment, it is usually prudent to use regular mail for sensitive communications. In addition to providing a documented, contemporaneous understanding of such events, a series of letters or other written communications offer a historical record if it later becomes necessary to reconstruct conversations from clouded or fading memories.

*Creating New Business Opportunities* – Information gleaned from the document vault to uncover potential new business opportunities can vary from the obvious to the arcane. Usually, estate planning documents are accompanied by a “Fact Sheet”, which includes a detailed inventory of assets, a family tree, a list of important contacts and other information vital to managing the financial and personal interests of your client. If such information is not available, it will be in the best interests of the institution and the client to create a Fact Sheet and make sure it is periodically updated.

A careful review of the inventory can lead to undervalued or often overlooked assets, such as the cash build-up in life insurance policies, accumulated appreciation in unproductive real estate, significant retirement plan assets, previously undisclosed business interests or an expected inheritance, to name a few. The family tree and list of important contacts are also potential sources of new business opportunities that are often overlooked.

Two of the most common examples of creating new planning opportunities (i.e., new business) involve “life changes” such as Changes in the Family Unit or Changes in Financial Circumstances. While raising these new planning opportunities generally results in direct business for the drafting attorney, they also strengthen the relationship between the trust officer or relationship manager and the client.

Numerous changes within the family unit can create situations requiring a revision, or at least a review, of estate planning documents. Marriage and divorce are two of the more common changes that would necessitate a review of one’s estate plan, including the marriage or divorce of the client’s lineal descendants. Whenever revisions are called for because of a change in marital status it is generally a good idea to revoke, rather than amend, previous documents and create new ones.

The birth or death of a child or other beneficiary is another common reason to suggest a review of one’s estate plan. Although most estate planning documents include provisions for the possibility of the birth or death of a child or grandchild, care must be given to ensure that such an occurrence does not result in unintended consequences. For example, the birth of a disabled child or grandchild (or if a child or grandchild subsequently becomes disabled) may require changes that allow the disabled child/grandchild to qualify for special needs or similar government assistance programs. Alternatively, changes could be made to direct a larger portion of one’s estate for the benefit of the disabled child/grandchild.

Likewise, significant changes in financial circumstances, including the sale of a business or receiving an inheritance (or possibly disclaiming an inherited interest) create new planning and new business opportunities.

According to Steve Shirley, Director of Trust & Tax Services for the Private Client Group of Ropes & Gray LLP, “The one institution with which I was associated that had a programmatic approach to this process was very successful. Every year the new business officers would contact one-third of the clients whose documents named the bank as executor and/or trustee by letter with a follow-up call.” Shirley went on to say that, “Every year, without fail, this resulted in newly funded trust business since some portion of the customers contacted had a life event that made funding their inactive trust at that time appropriate – timing, timing, timing!”

*Protection Against Unexpected Liabilities* – Unfortunately, there is no perfect way to protect oneself from an unexpected lawsuit in our litigious society. However, it is possible to reduce the chances of one occurring (or, alternatively, to mitigate the damages if one does occur) by having policies and procedures in place that indicate a proclivity for care and prudence. Litigation can be especially troublesome in the estate planning area, which is another reason to have an active document vault management program in place.

Estate planning (including trust administration, estate settlement and wealth management) is fraught with legal liability, which can penetrate the corporate shield of named institutions and extend to the personal liability of individuals in key decision making roles for the organization.

There are serious questions relating to whether or not fiduciaries have a “duty to inform” their clients of changes in the law or other substantive changes that could result in tax savings and/or significantly alter the beneficial results of their estate plan. However, there is absolutely no doubt about a fiduciary’s duty to carry out the dispositive provisions under any instrument for which it is named, qualified and acting, which is another strong argument for having a formal, active document review program in place – as the following real-life example illustrates.

One day a trust officer for what was then the largest bank in New England made a courtesy telephone call to the income beneficiary of one of the trusts for which he was responsible. The beneficiary’s son answered the phone and explained that his mother was playing tennis, but that he would check her availability when she returned home and one of them would follow-up with the trust officer to schedule a meeting. The son called the trust officer a few days later and scheduled a luncheon date between his mother and the trust officer.

On the appointed meeting day and time, the son appeared at the bank without his mother. After apologizing to the trust officer for his mother’s absence, the son explained that his mother had forgotten that she was to compete in a tennis tournament that day. During the course of the luncheon, the son spoke admiringly of how active his mother was and how she was deeply involved in tennis, the bridge club and a host of other activities. The son also asked whether or not it would be appropriate for him to receive income distributions from the trust since his mother did not need the money that was currently being distributed to her on a monthly basis.

Nothing seemed out of the ordinary to the trust officer until he returned to his office and requested the trust instrument from the document vault so he could check on the question of the son's eligibility to receive income distributions from the trust. In the course of reviewing the trust instrument and other relevant papers, the trust officer discovered that the current beneficiary – the active lady so involved with tennis, the bridge club and several other activities – was 96 years old!

Upon further investigation it was discovered that she had died eight years earlier and the son had never informed the bank of her death. The bank had continued depositing her monthly checks after her death (as did the Social Security office) into an account over which her son had joint check signing authority. To complicate matters, the trust was subject to the old Massachusetts inheritance tax laws, which meant that a "future interest" became presently due upon the mother's death. The inheritance taxes were in the hundreds of thousands of dollars and the interest and penalties (all of which were paid by the bank) were in the tens of thousands of dollars.

The moral of the story is that a disciplined, periodic review of the document vault may have given the trust officer reasons to question the longevity of the trust's beneficiary and may have prevented the bank from being subject to substantial penalties and interest. The bank and trust officer could also have been surcharged for negligence.

Safeguards – While maintaining an active document management program has many benefits, ordinary care must be taken to guard against setting false expectations and/or offering legal advice.

In addition to the normal safeguards of establishing inventory controls and determining who has access to the document vault, it is important to have a clearly articulated policy concerning the use of protected client information. Each institution's existing Privacy Policy is probably a good place to start, but that may not be enough to protect bank officers and others from the extended use of that information for the purpose of contacting a client to discuss possible changes to his/her estate plan.

Since a document management program must be pro-active to be effective, special care should be taken not to raise clients' expectations to the level that they rely on you or your institution to the exclusion of all other professional resources. It should be clearly stated, for example, that the information is being provided as a professional courtesy and is based on information believed to be reliable; should not be viewed as being the only change(s) necessary or desirable to achieve maximum tax savings and/or create other planning opportunities, and is not intended to replace or be a substitute for a more comprehensive review by his/her attorney.

Each written communication should contain the caveat that neither the author nor the institution is providing legal advice. Since it is recommended that telephone calls or other oral communications between a trust officer and a client be followed by a written record of the conversation, it is essential that all written communications contain a legal disclaimer. Here, again, Mr. Shirley provides some valuable first-hand guidance, "Having come to Ropes & Gray six years ago from the bank trust and investment world, I'm more sensitized than ever to the need for bank trust personnel to be careful in the course of their 'document review' not to inadvertently step into the realm of the prohibition against practicing law."

In conclusion, maintaining an active document vault management program has many benefits, including solidifying old relationships and building new ones, uncovering new business opportunities, and offering some limited protection against unexpected liabilities. Perhaps the greatest benefit of all is that it reinforces those qualities most clients look for in personal fiduciary relationships – personal attention, loyalty, accessibility, knowledge and trustworthiness.

As the official “gatekeeper” of your clients’ documents, an active document management program supported by a formal policy statement is a necessity. Anyone with authorized access to the document area should be required to sign a statement indicating that he/she has read and understands the document management program and will adhere to the use of confidential information in accordance with the policy statement. Moreover, the program must be actively managed and become a part of management’s general oversight responsibilities.

For more information on how to set up an effective document vault management program, or for a free copy of our estate planning and wealth management “Fact Sheet”, please call Cindy Motta at 978-463-9099, or contact her at the following email address: [cindym@privatetrustgroup.com](mailto:cindym@privatetrustgroup.com).

### **About Private Trust Group of America**

Private Trust Group of America is an employee-owned company specializing in providing administrative and operational support to trust departments and wealth management offices nation wide. With an executive staff that has over 100 years of combined trust and related technology experience, and a professional staff whose average experience exceeds 22 years, Private Trust Group of America offers an unusually high degree of frontline sophistication to its client base.

### **CONTACT INFORMATION:**

Cindy J. Motta, Director of Sales & Marketing  
Private Trust Group of America  
29 Water Street – Suite 215  
Newburyport, MA 01950  
P 978.463.9099  
F 978-463-9499  
Email: [cindym@privatetrustgroup.com](mailto:cindym@privatetrustgroup.com)  
Website: <http://www.privatetrustgroup.com>

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