

WHAT I LEARNED HIKING IN EUROPE: SHAWSHANK REDEMPTION

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My spousal responsibility of hiking in foreign countries is a gift that I would often like to avoid. Why not look at the Alps on my 50-inch TV, in glorious color, with the beauty of the flaming logs in my fireplace, versus trying to keep up with hikers at 9,000 feet with the wrong gloves and ear and neck coverings? When hiking in reality rather than my TV den, to create



friendly distractions of the aching body, I would ask others in our hiking groups, what movies do you like? The most frequent response, especially hikers from Great Britain, would be “The Shawshank Redemption”.

The 1994 film, one of my favorite movies, is based on the 1982 Stephen King novella about a trust officer in a bank who is wrongly sentenced to life in Shawshank State Penitentiary and eventually outsmarts the corrupt Warden. Based on hearsay, it is my understanding that when Stephen King, who was living in Portland, Maine, at the time, went into the trust department of a local bank for assistance in setting up his estate plan, he based his character on a trust officer in this bank.

A bank trust officer works for a “corporate trustee”. A corporate trustee is either a bank with a trust department or an independent trust company, such as the Trust Company of Vermont. Corporate trustees are regulated by state or federal agencies and courts of law. They are considered experts who

are required to meet higher standards than non professional trustees. Often corporate trustees are considered the “voice of reason” when a person’s estate plan includes a trustee, but are they worth the price? Most corporate trustees base their primary fee on the value of the assets, rather than time spent, so the byproduct in many cases is that they will not offer trust services for smaller trusts.

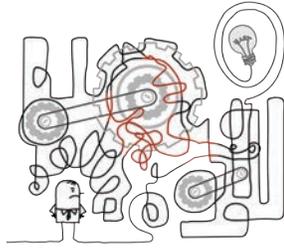
Estate planning lawyers will often recommend revocable living trusts to avoid the probate court for two reasons: privacy and costs. Probate assets, whether passing through an estate or housed in testamentary trusts, are open to public inspection. Most probate court personnel will tell you about those who come into the court to target those with assets who might like their investment products. Costs, on the other hand, may be the primary reason to avoid the probate court. Why account to the probate court, with the associated costs?

One can simply bypass the court with a simple “living” trust where the donor is the trustee, and change the name of the investment management account to



the donor as trustee. When the donor passes on, the property may then pass swiftly to the beneficiaries and avoid the probate process. But if, for example, some of the beneficiaries need a trust because of age, health, behavior and/or their financial management acumen, the trust may become irrevocable and continue on for their benefit. Or, if the trust needs

to be designed to save taxes, the trust may become irrevocable. When a trust becomes irrevocable for a short period of time, simplicity may be a safe and sensible solution when the trustee is not trained in highly complex tax and fiduciary laws. If for longer periods of time, the non-corporate trustee may become a problem. They are not monitored by those that know the rules of being a fiduciary. Most unsupervised trustees are well-meaning, but they may make costly mistakes because of unintentional violation of complex tax and fiduciary laws and the risk may cost a lot more than simply avoiding the probate court. In Vermont, unlike some other jurisdictions, probate court supervision of the estate and the trust (which we refer to as a testamentary trust because it is included in the will), is efficient and should be considered for those trustees who may not fully understand their fiduciary duties.



Estate planning in Vermont is once again experiencing the ebbs and flows of complexities. As the estate tax exemptions increased, the need for sophisticated irrevocable trusts declined in numbers although larger estates may have a greater need based on the future projections of tax law changes. On the other hand, medicaid planning and special needs trusts are growing in numbers and complexity.

Selecting a trustee may be the most complex issue for those that want to take care of others. The key questions are: Do I need a trust? How much will it cost year-by-year, including the accountant's fee for doing the fiduciary tax return, and the cost of those needed to advise the trustee of the "legal" obligations of being a fiduciary?

When a corporate trustee is selected, you may have unintentionally created a legacy of imprisoning your assets for your beneficiaries. Changing corporate trustees may be a very important addition to the trust. Your trust document can include a clause that allows the beneficiary or beneficiaries to change the corporate trustee to another corporate trustee. Fortunately, in 2005 Vermont started to change the rules which at the time made it very difficult to remove a corporate trustee. Now the probate court can easily and quickly remove and replace a corporate trustee for both living and testamentary trusts for a number of very sensible reasons, such as the relationship between the trustee and the beneficiaries and the responsiveness of the trustee to the beneficiaries. The probate court can even have the corporate trustee reimburse the trust for attorney's fees and court costs paid by the trust relating to their efforts to avoid removal.



Vermont also approved a "Trust Protector". That is a person or persons, other than a trustee, who can monitor the actions of the trustee based on the provisions inserted into the trust and/or allow for future modifications of the document without needing to involve the court. As your lawyer may tell you, you can specify how much authority a trust protector will have. The list of powers you might give to this person might be very helpful, or might become unsettling for the beneficiaries of the trust depending on what you select. Often the trust protector's "authority list" is short and simply used to change the provisions to stay up-to-date regarding tax law changes after the trust becomes irrevocable. A trust protector might be a simple and cost-effective way of monitoring the behavior of a non-corporate trustee, for instance by reviewing and approving a trustee's reports or accountings.



Estate Planning can be like trekking in the mountains when you think you are near the top and then discover you still need to hike 3 more hours. Planning your legacy is often more complex and time-consuming than one might expect.

Sometimes when I hike, I think of the Shawshank Redemption. I have been a “Trust Officer” for my entire career. I first worked in a bank trust department and now in a trust company. The movie describes the main character, Andy Dufresne, as a “banker”. My banking friends sometimes bask in the light of the character, Andy. I take issue. In the movie Andy does estate and trust planning as well as tax returns and investments. This is not what bankers do. So, “bankers” take pride if you would like, but we trust officers have just endured the tax season, and we continually face estate plans derailed by tax law changes, and, perhaps most importantly, the pain if the stock market goes down.

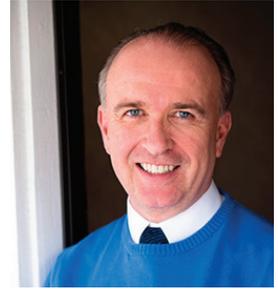
All of us at TCV hope you and your family are remaining safe and well during the pandemic. We look forward to the days ahead where we can meet again in person. In the meantime, for TCV's most recent office policies and service accommodations, please see our website:

www.tcovermont.com



Peter Sherlock Appointed Chairman of the TCV Board

Peter Sherlock, long-time TCV board member, has been elected Chairman of the Board. Complementing our new CEO, Chris Cassidy, the employee-owners of TCV are grateful for his stewardship.



“I was fortunate enough to be asked by Jack (Davidson) at the inception of the Trust Company of Vermont to become involved as a Director. It has been a great pleasure to witness the numerous successes of the organization over the last twenty-plus years, and I look forward to helping in the stewardship of the company in any way I can into the future”

Mr. Sherlock, a Chartered Financial Analyst (CFA), was formerly the principal behind Sherlock Investment Management, Inc., a SEC-Registered Investment Advisor that had been located and operated in Brattleboro, VT for over 20 years. In addition to volunteering on various investment committees for local not-for-profits, Mr. Sherlock currently serves on the board of the Brattleboro Savings and Loan and was previously board chair of the New Hampshire Trust Company and both Southern Vermont Healthcare (Brattleboro Memorial Hospital) and the Brattleboro Retreat. He is a graduate of both the University of Vermont and the University of Massachusetts and when he's not either planning or on new travels, he lives in Arizona and Vermont with his wife, Susan.