

Spring
2026

Worth Knowing

COURTESY OF WILSON LAW GROUP, LLC

PROTECTING WEALTH WITHOUT THE TAX BURDEN:

WHY BDOTs ARE GAINING ATTENTION

As part of our ongoing guidance for clients with trust-based estate plans, it has been our practice to recommend that inheritances be passed into sub-trusts to preserve the our client's legacy and give the beneficiary the benefit of asset protection. These sub-trusts are designed to help shield a beneficiary's inheritance from creditors, lawsuits, and potential claims in the event of divorce. We are now advising many clients to revisit the structure of these sub-trusts and consider converting from traditional separate tax-paying trusts to Beneficiary Deemed Owner Trusts ("BDOTs"). In this article, we outline how BDOTs work, the advantages they may offer, and how they differ from the sub-trusts currently incorporated into your estate plan.

Background

Estate planning goals, methods, and techniques have changed with evolutions in our tax code, creditor protection laws, and society. Going back to the mid-1990s, the amount someone could leave estate tax free to their beneficiaries (the federal estate tax exemption amount) was \$600,000. Today it stands at \$15,000,000.

A priority focus of planning for our clients at that time was the reduction or elimination of their obligation to pay any estate tax. Today, very few of our clients are subject to the estate tax.

Over the course of many years, our society has grown more litigious and many states have codified or clarified the methods in which creditor protection can be created for the inheritance left to heirs. The techniques described in this article reflect this change of focus and provide a significant improvement of our planning for heirs.

Existing Planning

Many of the current estate plans we draft create irrevocable beneficiary trusts ("sub-trusts") at the death of the Grantor (often referred to as the Trustmaker) for the Grantor's beneficiaries.

The sub-trusts provide protection to the beneficiaries of the sub-trusts. Depending on the terms of the sub-trust, the protections could include:

- Protecting the assets in the sub-trusts from being taken at the time of divorce by the beneficiary's soon-to-be ex-spouse;
- Protecting the assets in the sub-trusts from being taken by a creditor in a lawsuit;
- Reducing or eliminating the imposition of estate taxes on the assets when they pass at the death of beneficiary to the beneficiary's children and other heirs;
- Reducing or eliminating the imposition of the generation skipping transfer tax when assets pass to the grandchildren or other future generations of the Grantor;
- Protecting assets from disqualifying a beneficiary from governmental benefits; and
- Protecting the assets from being used for destructive behaviors such as gambling or other addictions.

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Distributions in our Existing Trust Models

In many of our existing trusts, the heir has two roles. The heir acts as the beneficiary of the trust, receiving distributions, and also as the trustee of the trust, managing the trust assets following your instructions. Under the Wisconsin law and tax code, these are two distinct roles. In our existing trusts, the trustee is granted the power to determine when and in what amounts distributions are made to the beneficiary. In most instances, this power includes the right to distribute the income earned by the trust each year and the right to distribute the principal of the trust. In some instances, there are no limitations on what distributions may be made to the beneficiary, and in others, the trustee may only make distributions for the beneficiary's health, education, maintenance, and support needs. Critically, though, the authority to determine whether to make a distribution is held by the trustee.

Income Tax, Tax Preparation, and its Impact

Traditionally, when a sub-trust is created and funded at the death of the grantor, it becomes a separate legal and tax entity. Because of this, the trust must obtain its own tax identification number, and all income and principal associated with that new tax identification number are treated as belonging to the trust, not the beneficiary.

As a result, the sub-trust is generally required to file its own annual income tax return (Form 1041) for any year in which it has more than \$600 of income. On that return, the trustee reports the type and amount of income received, as well as whether that income is retained in the trust or distributed to the beneficiary. If the trust retains income, it pays income tax at the trust level. Notably, trusts are subjected to highly compressed income tax brackets. In 2026, a trust will reach the top federal rate of 37% at just \$15,650 of income. Any income distributed to the beneficiary in the year it is earned is instead taxed at the beneficiary's individual tax rate, and those distributions are reported to the beneficiary on a Form K-1.

In practice, most sub-trusts file annual tax returns for as long as they remain in existence, which for many of our clients can span multiple generations. The cost of preparing these trust tax returns currently ranges from approximately \$450 to \$1,250 per year, and in many cases, this represents the primary ongoing expense of maintaining the trust.

The higher income tax rates paid by trustees have caused many trustees to attempt to distribute most or all of each year's income to the respective beneficiaries, whether the beneficiary has a need for the income.

The distribution of income to beneficiaries that do not have a need for the income is contrary to the asset protection goals of many of the trusts. For example, if a beneficiary receives the income and deposits it in a marital account, the income and all future appreciation on it become marital property, which is divisible in a divorce. The distribution of the income from the trust also makes the income and the appreciation on it available to the beneficiary's creditors.

Grantor Trust Provisions

Internal Revenue Code Sections 671-679 set out the rules under which a person, rather than the trust itself, may be responsible for reporting and paying tax on income earned by a trust. Most of these rules apply to the person who created the trust. However, IRC Section 678 provides a method under which the beneficiary of a trust is deemed the owner of the trust for income tax purposes. By following the provisions of IRC 678, the beneficiary is deemed the owner of the trust, and the income earned by the trust is reportable on the beneficiary's individual tax return.

Beneficiary's Right to Withdraw Income

Under Internal Revenue Code Section 678(a), a beneficiary is considered the owner of any portion of a trust over which the beneficiary, solely, has the power to withdraw the income from the trust. The modification under the new method we are now proposing to a heir's sub-trust would grant the beneficiary this power.

The New Method: Beneficiary Deemed Owner Trusts

In a BDOT, the beneficiary is granted the right to withdraw all of the taxable income earned by the trust each year. If the beneficiary demands withdrawal of income, then the trustee distributes the income outright to the beneficiary. If the beneficiary does not withdraw the income prior to December 31 of the given year, then the income becomes principal of the trust (except in the event of a high-income year, in which case the exception noted in the Section "Hanging Power" may apply).

Additionally, the trustee of the BDOT retains the right to distribute principal to the beneficiary based upon the terms of the trust. This right vested in the trustee maintains the asset protection provisions over the principal of the trust, including any income that has become principal.

To implement the new method, we would modify or restate the existing sub-trust language to incorporate the beneficiary's income withdrawal rights and the language describing the trustee's power to distribute principal.

Benefits of BDOTs

Aside from not being classified as a separate tax entity and requiring the trust to file its own annual income tax return (Form 1041), there are many benefits to modifying the existing sub-trust language to classify it as a BDOT:

- Allow the beneficiary to retain more assets in trust and under asset protection without the imposition of additional tax;
- Allow S-Corp shares to be held in the sub-trust without need for Qualified Sub Chapter S Trusts (QSST) reporting requirements;
- Allow the beneficiary to make use of lower tax brackets;
- Allow the beneficiary to take advantage of more favorable Section 179 expensing;
- Allow the beneficiary to use capital gains exclusion on the sale of residences owned by the trust;
- Allow the beneficiary to use charitable deductions on assets donated by the trust;
- Allow for the use of a disregarded entity to avoid taxable events in certain transactions; and
- Allow the beneficiary greater investment choice without being restricted to income sensitive allocations.

Disadvantage of BDOTs

The primary disadvantage of the strategy arises in the event the beneficiary is sued. In the event of a lawsuit, it is likely that the unwithdrawn income earned in the year of the lawsuit would be available to the creditor. The retained principal, however, would continue to be protected.

Hanging Power

In most instances, income not withdrawn from the trust on or before December 31 of the given year will become principal. Therefore, if a beneficiary has the right to withdraw income from a BDOT and does not take the income, then it may be considered a gift by the beneficiary to the BDOT. The value of the gift is determined by the IRS when the income not withdrawn by the beneficiary in a given year exceeds the greater of \$5,000 or 5% of the aggregate value of the assets of the trust, then the amount over that number shall continue to be available to be withdrawn by the beneficiary after the end of the tax year in which it is received. This is called a “hanging power.”

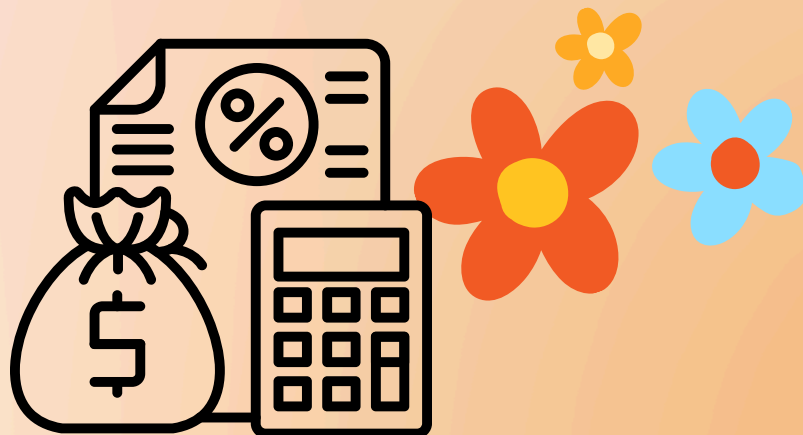
For example: Mary Smith has a BDOT with a principal balance of \$1,000,000. Mary Smith is also the Trustee of the trust. The trust earns \$80,000 of income in 2026.

Mary reports the \$80,000 on Form 1040 when filing her income taxes regardless of whether she distributes the income out of the trust. If Mary does not distribute the income out, then she is deemed by the IRS to have made a gift of \$80,000 to the trust, which would require the filing of a gift tax return. However, this is when the “hanging power” comes into effect and the IRS only treats this as a taxable gift if the amount of income Mary doesn’t withdraw exceeds the greater of \$5,000 or 5% of the trust. For this example, 5% of the trust (\$50,000) is greater than \$5,000. The taxable gift made by Mary would be \$30,000 (\$80,000 - \$50,000). Mary would need to file a gift tax return reporting to the IRS that she made a gift of \$30,000, and the IRS would deduct the gift from her estate tax exemption (currently \$15 million). Therefore, if possible, the beneficiary should distribute the income annually to avoid any gift tax issue.

Estate Tax

Depending on the terms of the BDOT, the beneficiary’s right to withdraw income may cause the principal of the trust to be included in the beneficiary’s estate for estate tax purposes, which may limit certain multi-generational estate tax planning opportunities. For that reason, this strategy should be considered thoughtfully and in the context of your overall plan. That said, given the current historically high estate tax exemption, many of our clients are less likely to face a taxable estate, making this tradeoff more acceptable in the right circumstances.

If this new method is of interest, we encourage you to discuss whether a Beneficiary Deemed Owner Trust is appropriate for your plan at your next RWay meeting. If you are not currently enrolled in the RWay Program, we would be happy to schedule an estate plan review with your attorney to evaluate whether this strategy aligns with your goals and family dynamics.



Staff Shoutout

We're incredibly proud to recognize two of our own—Attorney Rebecca Coleman and our dedicated Administrative Assistant Florentine Amessepe—for representing Wilson Law Group at Legendz HYROX Miami. This competition combines both running and functional workouts, creating an immersive and electrifying race.

Competing in the HYROX Miami Beach Doubles division, they finished in an impressive 1:28:52, ranking 112 in their age group and 398 overall out of an estimated 2,027 competitors. Their performance reflects their discipline, determination, and commitment to pushing beyond their limits.

Their “why” says it all: to push limits and embrace discomfort—on and off the field. That mindset reflects the very spirit of our firm, and we couldn't be more proud to have them representing Wilson Law Group.



Spring Bucket List Ideas



- Do a random act of kindness
- Read a book outside
- Try a new hobby (painting, photography, baking, etc.)
- Have a backyard bonfire or s'mores night
- Host a game night or outdoor movie night
- Go on a picnic (bonus points for a scenic spot near water)
- Plan a weekend road trip with friends
- Try a new workout (at Puppies & Yoga)
- Visit a farmers market and cook a meal with what you find
- Go to a spring festival or fair in your area
- Take a spontaneous day trip to a nearby town
- Plant a garden or start herbs indoors
- Try a new iced drink or spring-inspired recipe
- Visit a local park or nature trail and look for wildflowers
- Watch a sunrise and a sunset in the same week
- Go biking on a trail you've never tried
- Fly a kite on a breezy day



The Hidden Burden: What It Really Means to be an Executor, Trustee, or Agent under a Power of Attorney

An 80-year-old widower relied on his adult daughter for help with his daily life and finances for more than a decade. During that time, she managed his finances under a valid financial power of attorney, handling savings, pension income, and proceeds from the sale of his home. What began as routine assistance gradually became full financial responsibility.

After the father's death, one of his sons—appointed executor of the estate—sued his sister for breach of fiduciary duty. The court ordered the sister to reimburse the estate more than \$15,000, plus \$35,000 in attorney's fees.

The issue was not abuse or bad intent. The father was, by all accounts, loved and well cared for. Rather, it came down to process. Incomplete records and the failure to keep funds fully separate turned well-meaning decisions into costly legal exposure.

This example is not hypothetical but a real case that illustrates what can happen when someone steps into a fiduciary role without fully understanding what it entails.

The people you choose for these roles could face similar consequences if they are not properly prepared, and part of that preparation falls on you.

More Than a Formality: Why These Roles Carry Real Risk

You may be familiar with fiduciaries in professional settings. A fiduciary is someone legally required to put another person's interests ahead of their own. Your lawyer is a fiduciary. So are your accountant and other financial advisors.

What you may not know is that the people you name in your estate plan are held to the same legal standard.

Executors, trustees, and agents under powers of attorney are all fiduciaries. If they make mistakes, fail to keep proper records, or blur financial boundaries—even unintentionally—the consequences may include personal liability, family conflict, and court involvement.

When fiduciaries are unprepared, relationships can fracture, accusations of mismanagement can arise, and judges may need to step in. In an estate planning context, many fiduciary problems arise from inexperience and lack of guidance rather than from misconduct. The fiduciaries you name may have full-fledged professional responsibilities but lack professional background and training.

Being named to one of these roles can feel like an honor until the scope of responsibility becomes clear. And not knowing what the role requires is not a legal defense.

That is why it is important to understand these roles now, while you still have the ability to choose carefully, prepare the right people, and adjust your plan before avoidable oversights put your fiduciaries—and possibly your estate, finances, or health—at risk.

Know Your Role: Fiduciary Duties and When Engaging a Professional Makes Sense

Being named a fiduciary is more than an honorific. It is a serious responsibility that, without support, can become an unworkable burden.

In some cases, hiring a professional makes more sense than relying solely on family or friends. Even when you choose someone familiar, that person should have access to a professional support team, such as your attorney, certified public accountant, or financial advisor, to help navigate the technical and legal aspects of the role.

Below is an overview of what each role involves, what can go wrong, and how professional support can help.

Agent Under a Power of Attorney

- The role: Authorized to manage your finances during your lifetime, including banking, investments, bill payment, and real estate transactions
- What can go wrong: Poor recordkeeping, informal reimbursements, or family disputes, often after your incapacity or death
- What it can cost: Required repayment, personal liability, legal fees, and court proceedings
- How a professional can help: A professional agent or co-agent can provide structure, documentation, and neutrality when finances or family dynamics are complex

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Executor (or Personal Representative)

- The role: Settles your estate after death by gathering assets, paying debts and taxes, and distributing property according to your plan and the law
- What can go wrong: Delays, disputes, or perceived favoritism that trigger objections or claims of fiduciary breach
- What it can cost: Personal liability, removal by the court, legal fees, prolonged probate, and erosion of estate value
- How a professional can help: A professional executor or coexecutor can reduce friction and keep administration on track when complexity or conflict is likely

Trustee

- The role: Manages and distributes trust assets according to the trust's terms, often for many years
- What can go wrong: Misinterpretation of trust provisions, inconsistent distributions, or poor accounting
- What it can cost: Personal liability, removal, surcharge claims, legal fees, and depletion of trust assets
- How a professional can help: A professional trustee can provide technical expertise, consistency, and emotional neutrality

The Hidden Cost That Most People Miss

Beyond legal exposure, fiduciaries often give up hundreds of hours of personal time and may need to make major decisions while grieving, which can cloud judgment and increase risk.

Professional fiduciaries do involve out-of-pocket costs, but those costs are often modest compared with the costs of delays, disputes, litigation, or court intervention. In many cases, professional support preserves more value than it costs.

Another option is compensating family fiduciaries at a similar rate, recognizing the role as the serious responsibility it is.

Preparing and Supporting Your Fiduciaries

Think about your choice of fiduciaries the same way you would your future caregivers. It is about capacity every bit as much as, or more than, trust and familiarity.

Before finalizing your estate plan, ask yourself the following questions about your fiduciaries:

- Does this person have the time, organization, and emotional steadiness the role requires?
- Do they know they have been named to a specific fiduciary role (and what that means)?
- Have I made my expectations clear to them?
- Do they know where my documents, records, and key contacts' information are located?
- What happens if they cannot or should not serve when the time comes?

During the planning process, we can help you move beyond discussions to practical actions that include not only naming the right fiduciaries but also

- helping you organize assets and key contacts' information in a single location;
- designing a guide for specific fiduciaries; and
- having a fiduciary walk-through meeting with you and them to clarify responsibilities before the role becomes active.

Being a fiduciary is a significant burden, but it is not one that fiduciaries must face alone. We are here to help.

The symposium for this spring is full—but don't worry, more great opportunities are on the way! Keep an eye out for our next newsletter, where we'll be announcing the dates and new classes for the upcoming season.

Watch Now!

You can access the recordings of the classes by:

1. Go to wilsonlawgroup.com
2. Click on "Free Workshops"
3. Log in to watch RWay Workshops
4. Password: **Sinatra2013**





Annual RWay Forum Dinner 2026



Faith Larson
Dane County Humane Society

We had a great turnout for the 2026 RWay Forum Dinner! Thank you all for coming, and remember, we are still taking donations for the Dane County Humane Society at our office until April 30th!



Brian Udermann
Guest Speaker



As of April 15th, we have raised \$3,553 for the Dane County Humane Society!



THIS SEASON IN HISTORY!



April 30, 1904 – The ice cream cone made its debut at the St. Louis World's Fair



April 18, 1938 – Superman makes his debut in Action Comics #1

May 4, 1959 – Ella Fitzgerald became the first African American woman to win a Grammy Award



June 2, 1953 – The Coronation of Queen Elizabeth II took place at Westminster Abbey



June 11, 1913 – American football coach Vince Lombardi (1913-1970) was born in Brooklyn, New York. In 1959, he became head coach of the Green Bay Packers, winning five NFL titles and two Super Bowls in nine seasons. He is generally regarded as the greatest coach and the finest motivator in football history.



Fun Things to Do in Madison, WI This Spring.....

Dane County Farmers' Market

Dates: Saturdays in April - November
6:15 AM - 1:45 PM

Location: Capitol Square, Madison



The World's Largest Brat Fest

Dates: May 22 – May 24, 2026

Location: Willow Island at the Alliant Energy Center, Madison



Marquette Waterfront Festival

Dates: June 13 – June 14, 2026

Location: Yahara Place Park, Madison

MARK YOUR CALENDARS

Earth Day
April 22nd



National Superhero Day
April 28th



Cinco de Mayo
May 5th



Mother's Day
May 10th



Memorial Day
May 25th



National Doughnut Day
June 5th



Juneteenth
June 19th

Father's Day
June 21st

