

Wealth, Legacy, and Family Drama: Inside *The Descendants*

Picture this: You are standing on a piece of land that has been in your family for generations and has been handed down through a trust. The land is imbued with memories from your childhood, your children, and family gatherings. You want to keep the land in the family for years to come. However, the family trust is set to end soon, and when it does, you and your cousins will each own a share of the property.

At that point, the land will likely be subdivided, sold off, and developed. You look at old photos of your family on the land and convince yourself that is not what they would have wanted, and it is not what you want either. Other family members want to sell, however, and cash in.

What can you do, legally, to protect the land while keeping your family members at bay?

***The Descendants* Movie Showcases Trustee Challenges**

The above scenario is the plot of the 2011 movie *The Descendants*, starring George Clooney and based on a novel of the same name.

Although fictional, *The Descendants* has some basis in fact and reflects a common estate planning challenge that many families face when attempting to hold and manage assets (accounts and property) for multiple generations.

Clooney plays Matt King, a Hawaii attorney and sole trustee of a family trust established by his great-great-grandparents, a Hawaiian princess and an American banker. The trust's most valuable asset is a 25,000-acre parcel of pristine coastland on the island of Kauai. The land has been in the family since the 1860s, but the trust is set to end in seven years.

Matt, one of about 20 beneficiaries of the trust, is not reliant on it for income and does not want to sell the land. However, many of his cousins have squandered their inheritance and need the money.

Worried that distributing the land to his cousins would be a “trainwreck”—alluding to the likelihood that the co-owning cousins would end up in a complicated and costly partition lawsuit—Matt must decide what to do with the land.

Right before he is about to sell to a developer, Matt has a change of heart. He decides against selling the family's “piece of paradise,” which his ancestors would not have wanted developed; he then has seven years to find a way to preserve it and the legacy imbued in it.

Matt's decision sets the stage for litigation between him and his cousins, who prefer to sell.

Some Lessons about Trusts from *The Descendants*

The author of *The Descendants* reportedly drew inspiration from family trusts that were in the news around the time she was writing the novel.¹ To this day, large pieces of land are still held in Hawaii by so-called Ali'i trusts that were set up more than a century ago to hold the assets of Hawaiian royalty.

¹ Julia Flynn Siler, '*The Descendants*' Aims to Lay Down the Law in Hawaii, *The Wall Street J.* (Nov. 26, 2011), <https://www.wsj.com/articles/BL-SEB-68005>.

The Descendants offers estate planning lessons about issues like a trustee's power to act unilaterally, the duties that trustees owe to trust beneficiaries, problems associated with co-ownership of valuable undeveloped land, and more.

- Whenever property must be distributed among multiple family members, like the land held in Matt King's family trust, the potential for family conflict exists. The "trainwreck" that Matt King envisions centers on the likelihood of his cousins fighting over how to divide their interests in the land when they become co-owners. This situation can put tremendous pressure on a family trustee, especially one who is also a beneficiary, to remain objective in the face of family demands.
- While it is not specified in the movie how Matt became sole successor trustee, multigenerational trusts need a mechanism for selecting successor trustees who can take over for the initial trustees and those successors who follow them.
- Matt, as the sole trustee, has a legal duty to carry out the trust's purpose in a way that serves the beneficiaries' best interests. When he asks his cousins what they view as being in their best interests, almost all of them want to sell. However, just because a beneficiary says they want something or consents to a trustee's proposed action does not mean they cannot later sue the trustee for a perceived breach of duty if their decision was bad in hindsight.
- A third-party professional trustee or co-trustee may be better suited than a family member to navigate the types of real-life family inheritance issues depicted in *The Descendants*. A corporate trustee from a bank or trust company can also provide continuity over multiple generations.
- The person who sets up a trust and transfers their accounts and property to it should be clear about their intentions so that future heirs do not have to wrestle with the type of decision that Matt agonized over.

Write a Legacy Script for Your Descendants

You do not have to be the descendant of Hawaiian royalty to struggle with the sorts of estate planning quandaries that Matt King faces in *The Descendants*, and it does not have to be a piece of land you are trying to protect. It could be any assets that are placed in a trust and accumulate wealth for successive generations.

The longer the duration being planned for, the greater the potential challenges. Let us help you write a legacy script that honors your family's past and secures the financial well-being of your future beneficiaries.