

Guidance on Choosing a Trustee

It is easy to be passionate when speaking of our families, businesses or other life achievements. However, conversations can become uncomfortable when asked about what plans are in place to protect those things that are most important to us.

“Should I do any estate planning?” or “When should I start my planning?” are not the hardest questions. Often the harder questions are “What do I want to have happen to all that I have worked so hard to achieve?” and “Who do I trust to understand my goals and to carry-out my wishes?”

Successful people delay such planning for many reasons, among them that they would rather enjoy what they have made today and continue to achieve new goals rather than think about the unavoidable future and consider the more challenging questions.

You know how hard you have worked and the sacrifices that have been made to achieve your goals. In order to protect what you have worked for and provide for the most important people in life, you may be counseled to put some or all of your assets in a trust. Once you have made the decision to fund a trust as part of your succession planning, you then need to decide who can best carry-out your plans. “Who do I choose as my trustee or trustees?” becomes a critical planning question.

Should my trustee be my spouse or child?

Only you know the strengths and weaknesses of your family members, putting you in the best position to decide if your spouse or your child can appreciate a trustee’s responsibilities.

Being a trustee creates many duties under state law. These include, but are not limited to, impartiality between the interests of the current and future beneficiaries, properly accounting to all beneficiaries, prudently investing trust funds and prohibition against self-dealing.

Questions to consider: Can your trustee separate his or her personal feelings and interests from those of the beneficiaries and exercise good judgment at all times? Will all be treated impartially if your children are not your spouse’s children? Does your trustee have an ability to analyze investments? Will there be temptation for your trustee to take risk hoping for a hefty return at the expense of the other beneficiaries? What if your spouse re-marries? Will a child who is trustee be able to exercise good judgment when a sibling is a beneficiary or will tension develop between them? Can your sons-in-law and daughters-in-law and their children work peacefully together? Will a child who is balancing his or her family and career have adequate time to devote to serving as trustee?

Should my trustee be my Attorney, Accountant or other trusted advisor?

Attorneys, accountants and financial advisors often have a special and trusted relationship with their clients. When looking for a person who understands a client's financial and personal goals and the person most capable of carrying-out estate or other financial plans, many look no further than these trusted professionals. However, just because an attorney, accountant or other advisor may understand the nature of your business or your financial goals, he or she may not fully appreciate the scope of fiduciary duty or inherent risks and responsibilities of being a trustee.

Questions to consider: Does your professional advisor understand the dynamics of your family? What experience does he or she have as a trustee? Can he or she separate his or her personal financial interests from those of other clients? If there is a breach of duty that results in a significant financial loss to the trust, will your beneficiaries be willing to rely upon the trustee's ability to personally satisfy a judgment if professional malpractice coverage will not make the trust whole?

Should my trustee be a bank or trust company?

Banks and trust companies provide professional fiduciary services and can act independently. Corporate trustees have procedures and systems in place to manage property and invest funds in a fair and consistent manner. Choosing a professional fiduciary may reduce conflicts among family members while providing experienced and professional investment and administrative management. All fiduciaries are held to a very high standard, and this is truer for corporate fiduciaries since we are in the business of providing fiduciary services.

Questions to consider: How much of the trust assets will be spent on fees and be unavailable to my beneficiaries? Should increased investment returns provide value for the fees charged? Will the bank or trust company understand my family or their needs? What can I expect from the administrator making decisions that directly affect my family or realizing the goals of my trust?

What are the advantages to choosing more than one trustee?

You may find it best to answer some of these questions by choosing one or multiple individuals to serve as trustee alongside a corporate trustee. It can be helpful to have more than one trustee in order to balance recordkeeping, investments and other trustee's duties. A properly drafted trust agreement can expressly outline the duties of the various trustees, such as the retention of specific investments, delegation of particular duties or removal of a trustee. An individual co-trustee may have a particular understanding of a beneficiary's needs and assist the other trustees and/or corporate trustee in making discretionary decisions.

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