



FIDUCIARY INSIGHTS

Choosing the Right Trustee

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One of the most important decisions you will make in your estate plan is choosing a trustee to serve now and in the future for trusts that may be created. As you consider your trustee options, it will help to think of your estate plan as more than just a tool for transferring your assets and saving taxes. In essence it is a program for managing your wealth for you and your family during various time frames that could last many years.

The first time frame is your lifetime. You may retain most of the responsibility yourself during this time frame if you are savvy about investments and other financial matters, and have the time. Most people name themselves as the trustee of their revocable trust. However, you will need help if you lose interest in managing your investments, want to consider more sophisticated planning or become incapacitated at some point.

For most married people, a second time frame is the remaining lifetime of the surviving spouse. The primary focus usually is on the welfare of the surviving spouse, but it can extend to children, grandchildren and others.

Another time frame concerns your “ultimate disposition.” For a single person it begins at his or her death, and for a married person it generally begins at the surviving spouse’s death. At this stage your estate plan should manage your remaining wealth appropriately for your children, grandchildren and other ultimate beneficiaries. The plan may include immediate outright distributions, trusts lasting until the beneficiaries reach an age you think is suitable, and/or trusts that may continue for one or more generations.

The ideal trustee will be someone who, throughout all of these time frames, will make the same decisions you would have made if you were still here to make them.

Skills needed for serving as a trustee

A good trustee possesses a combination of certain “soft” or personal attributes and a number of “hard” technical capabilities. You should feel confident that the trustee you select will be able to provide this combination of skills over the long time horizon of your estate plan.

The soft attributes include impartiality, integrity, and the ability to be discreet regarding confidential and sensitive information. Impartiality is needed for making objective judgments when dealing with beneficiaries who may have varying and conflicting interests. It involves being impartial in appearance as well as in fact. A good trustee should have empathy for the beneficiaries and the ability to be firm when necessary.

The technical skills include substantive expertise and administrative capabilities. Investment management is an obvious substantive requirement, and it includes customizing the portfolio to match the particular goals of the trust. These goals will reflect factors such as the individual circumstances of beneficiaries, the time horizon of the trust, and the trust's tax status. Special expertise might be needed to manage assets such as interests in real estate or a closely held business. The trustee should understand income, estate and generation-skipping tax issues that could affect the trust and its beneficiaries.

Administratively, the trustee should be able to maintain detailed records, process transactions, prepare income tax returns for the trust, and generate statements and annual accounts. The accounting task is complicated by the need to track separately the trust's income and principal.

Family members or a trusted friend as your trustee

As you consider who to name as the trustee in your estate plan, it is natural to consider in the first instance family members or a trusted friend. Such individuals are close to you and may understand your philosophies about financial matters and life. They also know your beneficiaries and their needs, and, in fact, may be a beneficiary. They may be willing to serve as a trustee for free.

These advantages are real, but could be offset by a number of disadvantages. A major disadvantage is the reality that family members or friends having the best of intentions simply may not have the time to do the job well. Serving as your trustee may be a major burden and an obligation they simply cannot fulfill due to other personal or work demands.

The history of relationships in your family may make it impossible for a family member to appear impartial in the eyes of others in the family or to be impartial in fact. For example, serious tensions might arise if your financially astute daughter administers a trust for the benefit of her brother, who has no interest in financial matters.

Although a family member or a trusted friend may have financial experience, it is unlikely that such a person will have the full range of technical skills needed to administer a trust. Thus, he or she may need to hire an investment manager, an accountant, and/or an attorney, and oversee these service providers in the course of serving as the trustee. Your trust would bear the associated costs.

You will want to be confident that the management of any trusts created under your estate plan will continue over the long term. Depending upon age, health and other factors, any otherwise suitable person might be unable to provide the assurance of continuous service that you need.

Finally, having a family member serve as trustee might conflict with design and tax objectives of trusts established under your plan. For example, you may want a trust created under your plan for your surviving spouse to have the broadest possible standard for distributing principal and to bypass his or her estate to minimize taxes. To accomplish these objectives, you will have to name an independent party, not your spouse, as a trustee.

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A professional as your trustee

The array of professionals available to serve as your trustee includes individuals such as attorneys and accountants, and organizations ranging from large banks to smaller trust companies. They all possess the hard technical skills needed for trust administration to some degree. However, you should closely assess their technical capabilities.

For example, the investment acumen of professional trustees can vary greatly. Some will manage diversified portfolios based upon modern portfolio theory, while others will adhere to a stock and bond tradition. Some will rely upon their own proprietary products, while others will take the more objective approach of using third-party investment managers.

A major concern with professional trustees is whether they will have the soft attributes that are essential for a successful trustee relationship. Most professionals will be impartial and objective in dealing with your beneficiaries. Most will have integrity and be discreet with confidential information. However, what about the other soft attributes?

It may be difficult for you to gauge how empathetic and caring a professional trustee will be toward your beneficiaries. The best way to gain confidence is for you to have a working relationship with the professional during your lifetime. Over time you will see how empathetic and available the professional is to you. You will see if the professional devotes enough time to your relationship to learn your philosophies, as well as your hopes for and concerns about your family members. You also will see if the professional makes an effort to meet and develop relationships with your beneficiaries.

Even if you become confident in the trustee, you will want assurance that these qualities will remain long after you are gone. Some objective factors will help provide this assurance. If the trustee is an attorney, accountant or some other individual, are there similarly qualified, and perhaps younger, people at the firm who could step in if necessary? If the trustee is a bank or a trust company, do its trust officers have long tenures with the company or is there high turnover?

One advantage of naming an organization as your trustee is that it is more likely than an individual to exist over the long time horizon of your estate plan. However, you should look closely at any organization to confirm this. Does it have a long and firm commitment to serving as a trustee, or is trust administration simply one of many business lines or practice areas that could be deemphasized in the next strategic plan?

What we recommend

We believe that a carefully selected professional trustee is the better option for many people. In some cases, co-trusteeship involving a professional and a family member or a trusted friend can be an excellent “blended” approach. If you decide to name a professional to serve as a trustee, you should consider including in the trust a mechanism for family members to remove the trustee if necessary at any point in the future.

By Robert G. Holdway, Esq., Vice President

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This article was first published in the Summer 2009 Fiduciary Perspective. The commentary was authored by Robert G. Holdway, Esq., and Vice President who specializes in income and estate tax and other financial planning issues.

*If you would like to learn more about Fiduciary Trust Company and its wealth management services, please contact **Randy Kinard** at 617-574-3432.*