

Selecting a Trustee

Many estate plans call for assets to be held in a revocable living trust. A trust is a fiduciary arrangement allowing a third party, or trustee, to hold legal title to assets on behalf of a beneficiary or beneficiaries. Trusts specify how and when assets pass to beneficiaries; a trustee is appointed to carry out those written directives, so good judgment and common sense are a must. Who is the right choice?

A trustee can be a non-professional or professional individual, or an institution. Each has its advantages and disadvantages, depending on the specific nature of the trust. A trustee's duties may require expertise in collecting estate assets, paying bills, filing tax returns, as well as managing investments. These duties can last for years, decades or generations so it is important to consider whether that potential successor will be willing and able to serve when needed. A trustee's bedside manner can be an important consideration, too, as they will interact with beneficiaries and have discretion over trust distributions.

The physical location of the trustee can be important for relationship and tax reasons. Selecting a trustee in a state without an income tax can shelter non-distributed income from taxation at the state level, even if the beneficiaries reside in an income tax state. The opposite can also be true, creating an unnecessary tax burden on the trust.

Non-professional Individual Trustee:

The grantor, family members or close friends may be a good option for trusts with a limited number (not necessarily value) of marketable assets or finite time horizon.

Pros:

- Knowledge of family dynamics
- Personal stake/interest
- Potentially no (or low) fees

Cons:

- May be unable or unwilling to serve when needed
- May lack time and expertise
- May create family conflicts

Professional Individual Trustee:

A CPA, lawyer, or professional fiduciary may be better suited to administer larger trusts with more complex assets or a finite time horizon.

Pros:

- Knowledge of family dynamics
- Expertise
- Availability
- Impartiality

Cons:

- Fees
- Mortality
- May be impersonal
- Not full-time occupation

Institutional (Corporate) Trustee:

Banks or trust companies are “permanent” institutions in the business of serving as trustee.

Pros:

- Expertise
- Availability
- Impartiality
- Longevity
- Regulatory oversight

Cons:

- Higher Fees
- Impersonal
- Rigidity
- Limited investment options

Co-Trustees, Trust Protectors and Successor Trustees

Hiring a professional or institution as co-trustee with a family member may leverage the strengths of each, creating a well-rounded team. Some institutional trustees don't allow co-trustees or charge additional fees to work with them; a trust protector may, therefore, be a better solution. A trust protector can serve as an advisor to the trustee and maintains the ability to remove and appoint trustees.

Naming a successor trustee is critical if trust assets have the potential to last beyond a trustee's lifetime. Like trustees, successor trustees can be individuals or institutions. Naming an institutional/corporate trustee as ultimate successor (trustee of “last resort”) is frequently recommended by estate planning attorneys, even if the person(s) establishing the trust appoints individuals as current and successor trustee.

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