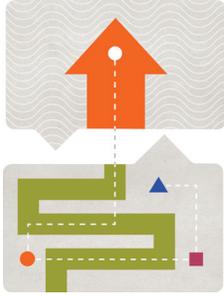


TRUST AND ESTATE SERVICES

## Whom to Name as Your Trustee



Trusts can be effective estate planning tools as part of your overall plan. We've managed trusts for families that span multiple generations, providing fiduciary oversight and skilled administration.

### What should I consider when naming a trustee?

When you create a trust, your first decision is likely to be your most important one—whom should I name as my trustee? Should it be a friend, family member, spouse, or a corporate trustee? The decision-making process when selecting a trustee involves several important considerations:

### Understanding the characteristics of a quality trustee

- Effective leadership with appropriate communication skills
- Expertise in investment oversight
- Ability to provide the amount of time and level of involvement necessary to fulfill all fiduciary duties
- Understanding of the investment manager selection process
- Willingness to weigh the interests of current and future beneficiaries when making decisions
- Familiarity with the principles of accounting and recordkeeping
- Expertise in fiduciary taxation
- Experience with boards of directors and executive committees
- Experience in administration of trusts and limited liability companies
- Ability to understand and navigate family dynamics in an objective manner
- Specialized knowledge related to special assets/special kinds of trusts
- Understanding of the beneficiaries' needs and the ability to address their unique situations
- Willingness to follow the standards of the discretionary distribution language—even when that means turning down a beneficiary or withstanding significant emotional pressure (especially where a family member is involved)
- Ability to maintain confidentiality and can demonstrate that he/she is a trusted advisor
- Proficiency to stay on top of industry trends, tax, and legislation that would adversely affect the trust or its beneficiaries

Continued

## Key terms

**Trust:** A fiduciary relationship in which one party (the grantor or trustor) gives another party (the trustee) title to property to hold for the benefit of a third party (the beneficiary(ies)).

**Grantor:** The person who creates a trust, determines what property the trust will hold, and designates the trust's beneficiary(ies).

**Fiduciary:** A person or organization to whom property or power is entrusted for the benefit of another; a fiduciary obligates himself or herself to act on behalf of another (as in managing money or property) and assumes a duty to act in good faith and with care, candor, and loyalty in fulfilling the obligation.

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## Identifying conflicts of interest

- Make certain each person's role is clearly defined: grantor, attorney, accountant, trustee, beneficiary, financial advisor. In some cases, professionals who serve as trustee may also perform other services, and the grantor should understand what role the professional is undertaking if he or she is providing multiple services to the trust.
- Document and understand how, when, and why each is compensated.
- Understand the relationship of the grantor, spouse, and beneficiaries.

## Performing administrative functions

- Recordkeeping
- Family reporting and meetings
- Performance tracking
- Document retention
- Quarterly and annual reporting

## Considerations for an individual trustee

- Risk management—what and who controls the annual audit requirements and procedures? (Corporate trustees are subject to internal and regulatory audits)
- How often will an individual trustee be able to review the books and assets?
- Who provides oversight of the assets if they are not being held by the trustee?
- What if the trustee breaches his or her fiduciary duty?
  - Will the trustee be responsible for reimbursing the trust for incurred loss?
  - Does the individual have Errors and Omissions coverage for his/her actions as a trustee?
  - Was it unintentional vs. gross negligence\*?
  - Does the individual trustee have deep pockets? (If the trustee is a family member, the situation becomes more complicated)

## Planning for the future

- What plan do you have in place should your trustee be unable or unwilling to serve at some point in the future? Corporate trustees can provide continuity, because there is no need to change trustees upon death or incapacity.
- When and how can a trustee be removed and/or replaced?
  - Should you consider a mandatory retirement age?
  - What if your trustee is no longer competent?
- Nature of trust corpus is a factor; what does the trust hold?
- What specialized expertise does a successor trustee need?
  - Commercial real estate, a closely held business, limited partnerships, limited liability companies, Oil & Gas leases, important collections (wine, art, antiques, jewelry, horses, etc.)

\*Gross negligence means a conscious act or omission in reckless disregard of a legal duty and of the consequences to another party.

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### The Wilmington Trust difference

As seasoned fiduciaries, we have considerable experience administering many types of trusts. We work closely with you, as the grantor of the trust, as well as with your beneficiaries to provide personal and attentive service.

**Please contact us if you would like to learn more about what to consider when selecting your trustee.**

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