

How to Choose a Trustee

Part One

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Trusts are one of the most basic, and most important, estate planning tools in the planner's toolbox. Trusts come in several flavors, colors and sizes and have many important uses. However, regardless of the type of trust you use in your estate plan, the selection of the trustee is one of the most important decisions you will make. Just like the ancient knight said to Indiana Jones in *The Last Crusade*, it is critical that you "choose wisely."

Your estate plan is made up of a series of documents that provide instructions on how you want things to work if you become disabled and after you're gone. Whether you have a large net worth or an estate of more modest means, who you put in charge of following those instructions is essential. No matter how carefully the trust document is prepared or how carefully your intentions are expressed, choosing the wrong trustee may result in several problems. Conflict and chaos among family members may well rule the day, instead of love, harmony and peace of mind. Additionally, the trust and your heirs may be subjected to unnecessary expenses, taxes and investment losses. Bottom line, your wishes and loving instructions may not be followed as you intended.

However, the right trustee often will be able to find ways to carry out your wishes with the least cost and conflict, even if mistakes were made in creating the trust or if unforeseen problems arise after you've gone.

While no trustee is perfect, the right choice will have most of these eight

characteristics of a good trustee.

1) *Competence.* Competent doesn't necessarily mean that your trustee needs an MBA from Harvard. However, a competent trustee should be able to understand what specific duties are expected, select a course of action, recognize the limits of his or her knowledge and capabilities, and have the maturity to hire professional assistance when needed.

2) *Best Interests of Beneficiaries.* A trustee's overriding consideration in following the trust instructions is complying with a "fiduciary duty," meaning that all decisions must be made in the best interest of the beneficiaries. Some decisions may be unpopular or difficult, like selling a family home or dealing with one-of-a-kind personal items. Other subjective and potentially difficult decisions relate to how and when a beneficiary may receive a distribution from the trust, particularly when the trustee is given broad discretion over distributions.

3) *Trustmaker's Goals versus Beneficiaries' Needs.* A trustee must understand why you created the trust, your priorities and goals, and the financial needs of your beneficiaries. The trustee must be aware of all of your assets, both inside and outside the trust and must be able to create a plan so that distributions from the trust will fit into your family's overall financial plan and meet the needs of the beneficiaries. Your trustee must also be aware of a beneficiary's special needs. If a child is physically or mentally handicapped and requires special care and treatment, these considerations must be incorporated into the overall plan.

4) *Trust Subject Matter.* While an individual trustee may be able to

manage the few periodic and routine administrative duties if most of the trust assets consist of cash accounts or mutual funds, a professional trustee may be better suited to handle more complex investment or distribution decisions.

5) *Experience.* The job of a trustee is often difficult, time-consuming, and multifaceted. Choosing a trustee with experience in investments, taxes, resolving conflict among family members and similar legal issues is generally preferable to a trustee with no background or experience in fulfilling a trustee's duties.

6) *Availability and Willingness.* Most trusts are designed to afford control and protections over assets for a long time, many for several generations. A trustee's duties extend for the term of the trust. Handling, supervising and managing assets for generations of beneficiaries over such a long time is a big job with much responsibility.

7) *Proximity.* Most families are spread around the country. While not absolutely necessary, it might be more practical and beneficial to appoint a local trustee to make sure that beneficiaries' needs are met on a timely and regular basis.

8) *No Conflict of Interest.* Putting one child in charge of a parent's assets, a surviving spouse's estate, or another child's inheritance is a sure fire way to make sure your family ends up fractured, disgruntled, mad and hurt, even potentially suing one another. Think long and hard about this choice. It rarely works.

We would be happy to help you "choose wisely." Call us at 719-444-0300