

Whether a Family Member or a Professional, Your Will Administrator Will Have a Tough Job

Selecting a Trustee for Your Estate

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At the end of the 1989 movie “Indiana Jones and the Last Crusade,” an old knight challenges Indy and his nemesis to select which chalice is the Holy Grail. The nemesis is swayed by the glitter of the gold chalice, drinks from it and turns to dust. The old knight explains, “He chose poorly.”

Seems like an understatement. Indiana Jones chooses the unadorned wooden chalice. He explains, “That’s the cup of a carpenter.” He drinks and survives. His deduction given the choices was well-thought-out. The knight responds, “You have chosen wisely.” Designating a trustee should certainly be less daunting than selecting the Holy Grail, but it isn’t as easy as it may first appear.

Background

First, some background on trusts and trustee duties. A trust is simply an alternative way to own assets. Assets may be placed in trusts for many reasons, but the usual ones are to help the assets be managed or distributed at the incapacity or death of the grantor — the person placing the assets in the trust.

In this case you are the grantor and place assets in trust so that your wishes can be extended to those assets beyond your life.

The trust includes a set of instructions to be followed at your incapacity or death. These instructions are to be carried out by your trustee. Many choose to be their own trustee in a living trust and select successors if they can’t act for themselves (due to death or incapacity). You should make sure you get the consent of the person who will act as a successor trustee and give the successor updated copies of the trust should there be corrections.

The choice of who you assign to manage your assets if you can’t is important. Many choose spouses, some choose banks or attorneys and some choose their children. We want to help you make the right choice of successor trustees.

A Trustee’s Responsibilities

Last year we wrote about the duties of an executor or personal representative. Many of the duties of a trustee are very similar. In fact, it’s a usual practice and often makes sense for the executor of your will to be the same as the trustee of your trust. The duties are somewhat different:

- **Your executor only functions** in the case of your death, not in case of incapacity.
- **Once your estate is closed**, the executor’s duties are complete, but a trustee can manage assets for years after the grantor’s death.

- **The executor must file** with probate court, as your will is a public process.
- **Your executor cannot function in any form** while you’re living.

Let’s start with what happens when you die and the trustee takes over your trust. The trustee is responsible for seeing that everything is done properly and in a timely manner. The trustee may be able to do this without professional help, but it’s been our experience that an attorney, corporate trustee or accountant can give your trustee valuable guidance and assistance.

The trustee must inform the family of his or her position and notify any co-trustee as soon as possible. We recommend strongly having one person serve and ideally having that person live in the same geographic area as you do. For whatever reason sometimes that person can’t serve; that’s why naming a successor trustee is so important.

Naming co-trustees means they must all agree to everything and all sign off on everything, which adds difficulty and complexity to the estate settlement process. We recommend the following procedure be followed:

- **The trustee should meet** with an estate-planning attorney and accountant to go over the trust document, trust assets and the trustee’s responsibilities as soon as possible.
- **Before the meeting**, the trustee should make a preliminary list of the assets in the trust and their estimated values.
- **The trustee may also need** to create an employer identification number for the trust. This is easily accomplished by going online with the Internal Revenue Service.
- **The trustee must collect** all death benefits (Social Security, life insurance, retirement plans) and put them in a separate trust account until assets are distributed.
- **The trustee must notify** all financial service firms or assets in the trust that he or she is the trustee.
- **The trustee must keep** careful records of all trust expenses.
- **The trustee may have to contact** an accountant and attorney to prepare final income and estate tax returns, if required.
- **The trustee must verify** and pay all bills and taxes of the trust, make a final accounting of assets and bills paid, and give it to the beneficiaries.

If the assets are to stay in a trust, each trust will need a new tax identification number, and proper bookkeeping

and reporting procedures will need to be established.

If the assets are to be fully distributed, the trustee needs to divide the cash and transfer titles according to the instructions in the trust. That's it — you're finished and the trust is dissolved. The biggest difference between trustee duties and executor duties in this case is that assets passing by trust don't go through the public process of probate.

Choosing a Trustee Wisely

Choosing a family member, or even a close friend, as your trustee may not be the best choice if that person doesn't have the ability to complete the trustee duties. The trustee need not be a financial expert but should be someone with good, basic business sense who knows when it's time to involve an expert.

The trustee should be someone who has good judgment and common sense.

The person you choose as your trustee also should be:

- **not incapacitated** when you may be,
- **still living** when you may not be,
- **well-organized,**
- **dependable,**
- **detail-oriented,**
- **savvy at business,**
- **familiar with your wishes** regarding your property, and
- **honest.**

Using a Lawyer or Bank as the Trustee

If you aren't sure the successor trustee you've selected has the expertise to settle the estate for you, we suggest you advise the trustee to consult with an estate-planning lawyer for assistance. Alternatively, you could select a bank trust department to settle your estate.

We think someone who knows your family may be better suited to be the trustee, and that person can work with a lawyer or a bank to settle the estate and run the trust.

Every situation is different, though,

and if there's a lot of family conflict, this might not be the best choice.

If you do use a bank as a trustee, you know that as long as that bank is around, you have a viable trustee. (Mergers of bank trust departments mean the trustee firm you now select may not be the same in the future, however.) Another advantage is that by choosing a bank trustee, you can avoid potential family strife by having an objective third party administer the trust.

One disadvantage is that corporate trustees generally cost more than an individual trustee, and sometimes significantly more.

In addition, bank trustees can be impersonal and not as familiar with the deceased grantor's wishes or family dynamics.

This could be an advantage or a disadvantage depending on the circumstances. Working with a corporate trustee can involve working with different people over time. Corporate trustees may be more inflexible because of increased liability and the fact that they must answer to their shareholders.

Paying Trustees

As you can see with the above list of duties, being a trustee isn't an easy task. We think that the trustee should be compensated for this work. If you delegate to a lawyer or bank, of course that work will be charged to the trust. Further, the trust's beneficiaries can ask that the trust be audited after the trust has settled.

Note that although many states have statutes limiting executor and attorney commissions in settling an estate, only about half a dozen states provide specific statutory fee schedules for trustees.

Some states allow higher corporate trust fees if the corporate trustee has filed the fee schedule with the court or made an agreement with the grantor. Additionally, when corporate fee disputes arise, trustees are generally entitled to reimbursement of fees incurred in their defense as a trust administrative cost.

Changing Trustees

It makes sense to consider your choice of trustee carefully. Many trusts such as living trusts can allow for changes during the grantor's lifetime. With many states having decanting powers, which allow a trust to be moved into a newer trust with more modern and advantageous features, even irrevocable trusts can sometimes be changed. It may be time to reconsider your existing choices — it's not too late to choose wisely!

No matter whom you choose, make sure the trustee has a copy of your most recent trust. It's most important your trustee understands your wishes and that those wishes are accurately documented in your trust. Notify your trustees and successor trustees of any major changes. These intermediate steps will help safeguard what you want to happen with your assets when you can no longer make those suggestions. **B**

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