CHAPTER 53

Choosing a Trustee for Your Living Trust

GLENN PRICE (Bellevue, Washington)

One of the most important aspects of executing a successful estate plan for yourself and your family is the selection of a trustee. Because a trustee's responsibilities are serious and sometimes time-consuming, it is prudent to evaluate your options carefully before making a selection.

What are your trustee's duties? A trustee is the legal owner of the trust assets and has a fiduciary duty to manage, invest, and distribute those assets in the best interests of the trust's beneficiaries. The trustee's authority comes, first and foremost, from the duties, powers, and instructions described in the trust instrument. In faithfully following that authority, as well as your state's laws, the Internal Revenue Code, and Treasury Regulations, your trustee should always be willing to seek out the advice and guidance of an experienced estate planning attorney, tax advisor, or other advisors. Your trustee is duty-bound to deal with the trust property as a "prudent person" would deal with the property of another. The trustee has a duty of loyalty to carry out the trust's provisions in the best interests of the beneficiaries, without personal conflict or even the appearance of self-interest.

Whom should you choose as trustee? If you are creating a revocable living trust, you will probably serve, at least initially, as the sole trustee if you are single, or as a co-trustee with your spouse if you are married. You are essentially wearing three hats as the: 1) grantor — setting up the trust and putting assets into it; 2) trustee — owning, managing, and distributing the trust assets; and 3) trust beneficiary. A critical decision you must make is who to name to serve as your successor trustee if you should resign, if you become disabled or incapacitated, and when you die.

Considerations in choosing your successor trustee. In selecting a successor trustee, you want the best assurance that your wishes and desires will be carried out, that the trustee will be a responsible person whose judgment, common sense, good organizational skills and willingness to seek professional guidance you can trust and rely upon, and that the successor trustee is available and willing to serve. Your successor trustee could be your spouse, family member, relative, friend, business associate, professional advisor, or a corporate fiduciary such as a bank or trust company. Considerations in making your selection could depend upon the nature and value of the trust assets, the expected length of the trust term, the complexity of the trust's provisions, the age, nature, and circumstances of your beneficiaries, or other factors.

Selecting a family member as trustee. Many people choose family members to serve as trustee. They may not charge a fee (but, as with any trustee, they are entitled to "reasonable compensation" for services performed), and they generally have a personal stake in the trust's success.

If your family member is competent to handle the trust's finances, has the time and interest to do so, exercises reasonable judgment, has administrative capabilities, will follow the trust's (your) instructions, can avoid family conflicts, will be unbiased and unemotional, is familiar with your beneficiaries' circumstances, personalities and abilities, and can be sensitive and unbiased in making decisions, this can be an appropriate choice for a small to medium-sized trust.

The potential downsides of such a choice are lack of expertise and diligence, emotional decision-making, inadequate financial resources to cover mistakes, financial mismanagement, existence of family rivalries and conflicts, and, of course, your trustee's disability or death.

Selecting a corporate trustee. Banks and trust companies are permanent institutions that can manage your trust for decades. If friends or family members are unavailable or unreliable, institutional trustees can have the following advantages: 1) managing trusts is their everyday business; 2) they act objectively and follow trust instructions unemotionally; 3) they have estate administration, tax, and investment expertise; 4) they don't die or become incapacitated; 5) they are highly regulated by government agencies; 6) they have the resources to cover errors and mistakes; and 7) the law holds them to a higher standard of care as professional fiduciaries.

Potential disadvantages of corporate trustees are: 1) their fees; 2) their objective and unemotional decision-making can be perceived as cold and impersonal; 3) they lack specific knowledge and insights about your goals and wishes, your beneficiaries particular needs and personalities, and family dynamics; 4) they can be extremely conservative in interpreting trust terms and making distributions to beneficiaries; and 5) they aren't always the best choice for administering real estate and/or a family business.

How about your advisor? A trusted professional advisor such as your attorney, tax advisor, or investment advisor can be an appropriate selection as trustee if he or she is willing to serve and can do so without conflict of interest.

Co-trustees: The best of both worlds? Naming a family member and an institution as co-trustees can be an effective way to combine familiarity with the beneficiaries with the experience, stability, and expertise of a corporate trustee. Each party complements the other's strengths, better serving the beneficiaries' interests. The family member can mentor the children in financial responsibility while the institutional co-trustee manages the trust. An increasingly popular middle course between naming an institutional trustee and an immediate family member is choosing a relative as sole trustee and hiring a bank or investment company as an independent advisor. This can maximize advantages while reducing fees.

Your attorney can help you choose. As your estate planning attorney carefully shepherds you through the crucial estate planning design process, he or she acquires invaluable insights into your circumstances, goals, fears, concerns, and family dynamics. This insight and knowledge about you and what you wish to accomplish allows both of you to collaborate in evaluating and arriving at the best choices for the critically important roles of trustee, successor trustee, and alternate trustees of your living trust. Take advantage of your attorney's professional ability to help you create the very best estate plan you can. You and your family deserve it.

Glenn D. Price, working closely with his clients' other professional advisors, dedicates his practice exclusively to client-centered estate, tax, retirement, business, and family wealth preservation planning.

Factors to Consider in Selecting a Trustee

X	GOALS
	Willingness and ability to devote the time required during the trust term
	Good judgment and decision-making ability
	Integrity
	Independence from the grantor and beneficiaries (if needed for decision-making)
	Adequate financial, business, tax, and legal knowledge
	Financially secure
	Fair and impartial (no conflicts of interest)
	Accurate understanding of grantor's goals
	Knowledge of individuals involved with the trust, including their personalities
	Knowledge of any family assets to be placed in trust
	Adequate administrative ability, attention to detail, and flexibility
	Capable of working with third parties the trust may hire
	Discretion with respect to confidential matters
	Adequate proximity to trust assets and beneficiaries for the trust term
	Previous experience as a trustee
	Reasonableness of fee structure
	Inclusion of tax preparation and asset management services as trustee and associated fees