

Top Considerations When Choosing Your Trustee

Amundsen Davis Estate Planning Alert

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For many of my clients, a sticking point in putting together an estate plan is who to pick as the personal representative/trustee (a fiduciary).

The choice of a fiduciary is extremely important. The person you choose must be diligent, honest, and a good communicator. If you name multiple people, the people you choose need to be able to get along with one another and reach a consensus.

Choose someone who can handle all of the financial matters involved with settling your estate and trust, and check with that person ahead of time to make sure they are willing to assume the responsibility. It's a good idea to appoint an alternate Personal Representative or Trustee in case the first person you name is unable or unwilling to fulfill the responsibility.

When choosing a fiduciary it's important to consider what the job entails. The person in this role needs to be able to:

1. Correspond with beneficiaries (often unhappy beneficiaries who want money ASAP);
2. Manage family drama – there is ALWAYS drama after the death of a loved one, and the fights and disagreements from childhood coming roaring forth;
3. Provide accounting to beneficiaries and make sure that beneficiaries have all of the information they request;
4. Invest assets (and make sure not to lose money);
5. Answer phone calls, texts, and e-mails from beneficiaries inquiring when they will receive their inheritance;
6. Manage beneficiaries who suspect stealing and the subsequent phone calls, texts, and e-mails on this subject.

Very often a client's first thought in selecting an executor or trustee is that either a spouse or adult child can handle the job. I encourage clients to really take a good look at their own family dynamics before making this decision. Some questions to consider include the following:

- Do your children communicate regularly?

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- How would one child react to his or her sibling receiving compensation for managing and distributing assets?
- Is any child likely to demand an inheritance immediately?

The benefit of naming an individual to serve as fiduciary chiefly is familiarity with the client's values, family members, and family dynamics. There is a perception that an individual will be less costly, or may even waive fees for serving as fiduciary. However, you will need to hire experienced professionals to help in the discharge of fiduciary duties, so the total cost of administration may actually be the same as hiring a corporate fiduciary.

If you are having trouble deciding on an individual, it is possible to have multiple fiduciaries, a sort of "best of both worlds." For example, Tom Petty named his surviving spouse and two daughters from a prior marriage as co-trustees. This seemed like an ideal solution, but unfortunately, has already led to litigation over who is actually in charge. When considering your trustees, think about who should have the deciding or majority opinion.

If you are concerned that your relatives will not be able to serve as fiduciaries then there are other options. Corporate fiduciaries bring experience, expertise, professionalism, and objectivity to the jobs of trusteeship and estate settlement. Continuity of service is another advantage. Although there may be employee turnover, a trust division doesn't take vacations, get sick, or move out of state. Corporate fiduciaries are regulated and bonded. If you foresee that your children may fight with a surviving spouse, or fight among themselves, a corporate fiduciary is a great option.

If you are concerned about battles between siblings, or spouses, and still want to name one of them as a fiduciary, an excellent option is to choose a neutral third party Trust Protector, who can oversee the situation and remove trustees as appropriate.

The takeaway here is that someone needs to be in charge, and that person should be named in the estate plan. Make sure that it is someone who will stand up for themselves and for you, because they are working to protect your wishes as set forth in your estate plan.

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