CHOOSING A TRUSTEE

The Role of Trustee

A trust is a written legal document reflecting an agreement by a “trustee” to hold and manage property (the “trust estate”) for the benefit of another (the “beneficiary”) according to terms established by the creator (or “grantor”) of the trust.

The following may serve as trustee:

1. The creator of the trust, until incapacity or death;
2. Family member or friend over age 18;
3. Institutional trustee, such as a bank or trust company;
4. Professional fiduciary licensed by the California Department of Consumer Affairs, Professional Fiduciaries Bureau; or
5. Certain other professionals, such as an attorney or CPA.

Considerations for Choosing a Trustee

Although a trustee has legal obligations and fiduciary obligations to the beneficiaries, a trustee may have control of funds for an extended period of time without any court oversight. The creator of a trust must have utmost trust in the chosen trustee.

Background, experience and competency of the trustee
- Honesty and integrity
- Organizational skills
- Financial management skills
- Access to advisors, including accountants, investment advisors, attorneys
- Availability
- Financial stability and ties to the community

Expected duties of the trustee
- Is the trust ongoing, or is it expected to terminate in a short period of time?
- Does the trust give the trustee a high degree of discretion to make distributions?

Value and character of trust assets
- Specialized assets may require specialized knowledge or skills: real estate, securities, limited partnership, family business, mineral/oil/gas interests
- Would the size of the trust estate be “ tempting” to the chosen trustee?

Trust beneficiaries
- Does the trustee have conflicts with the trust beneficiaries?
- Can the trustee manage any conflicts between trust beneficiaries?
- Do the beneficiaries have special needs?
- Special provisions may be required if the trustee is also a beneficiary; in some circumstances it is not appropriate to have a beneficiary as trustee.
Identifying Trustees in Trust Documents

**Successor trustees:** Creators of a trust often identify themselves as the initial trustees. Even so, the trust document should list more than one option for trustee and the order of priority. Then, if a trustee does not or cannot serve, the trust document makes clear the intended successor trustee. Failure to name successor trustees may require court involvement when a trustee can no longer serve due to incapacity or death.

**Co-trustees:** It is sometimes appropriate to have more than one person serve as trustee at the same time. For example, an elderly person may desire to have a co-trustee serve with her to assist in management of the trust. Also, spouses routinely serve as co-trustees for joint trusts. The trust document should specify the extent of a single co-trustee’s authority:

- Will one signature be sufficient to bind the trust?
- Must all co-trustees authorize transactions above a certain dollar amount or involving real property?
- If a co-trustee no longer serves, will the remaining co-trustees continue to serve alone, or must there always be a specified number of co-trustees?

Be aware that having multiple co-trustees may add undesired complications and inefficiencies.

**Costs**

Most trust documents permit trustees to receive a reasonable fee from trust funds to compensate for the time devoted to trust management and the responsibility involved. Family members or friends may choose not to charge fees, especially if they are also beneficiaries of the trust. Professional fiduciaries and institutions usually charge a percentage of the value of the assets under management. Fee schedules vary depending on the type of asset and the degree of management required. Annual fees may range from approximately 1% to 2.5% of assets under management. Individual private professional fiduciaries may charge an hourly rate instead of a percentage.

**Other Decision Makers in An Estate Plan**

Your estate plan may include authorizing other persons to act on your behalf should you become incapacitated or to follow through on your wishes after your death.

**Health care decision maker:** A good health care decision maker has the following characteristics: can handle the responsibility; good decision-making abilities; can advocate on your behalf; understands your wishes; open to communicate about sensitive issues; proximity, or able to travel to be with you, if needed; likely to be available in the future.

**Involvement in lives of minor children:** Guardians for minor children may be nominated for the care of the children (guardian of the person), and to manage finances for the children (guardian of the estate).

**Agent for financial matters under a Power of Attorney / Executor of Will:** Often requires similar characteristics as a successor trustee; the same person may be named for multiple roles.