

Selecting a Trustee? 3 Factors to Consider



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One of the many important decisions to make when constructing an estate plan is determining who will serve in the role of trustee. Because a trustee will have control over assets, typically for many years, choosing the wrong trustee can thwart a client's best laid plans.

Surprisingly, however, many clients do not give sufficient thought to this pivotal role. Here are three factors that your clients should consider when making this important decision:

1. Think twice before naming children.

The initial reaction of many clients is to name children, generally the eldest, in positions of authority in the estate plan. While naming a child can be the right decision in some cases -- if a child is a main caretaker for a disabled or sick sibling, for instance -- it can also be disastrous if the decision is made prematurely or without the proper advice.

If clients are planning on naming children, make sure to ask them if their children get along. Even if clients say that their children get along fine, you should point out that putting one child in control of another's money can create tension. Too many times to count, I have seen siblings who do not get along and, in extreme situations, will even go out of their way to make things difficult for their brother or sister.

I've represented people who have accused their siblings of stealing assets from a trust; I've seen siblings refuse to give each other required information. I've also been involved in situations where three or four siblings are named as co-trustees together, and seen firsthand how difficult it can be them to make decisions without creating bad feelings.

In order to decrease the likelihood of these occurrences, you should encourage your clients to choose the right person for the job -- not just the person who expects to be named (such as the oldest child), or the person who might be offended if not named.

It is also important to remind clients that all trustees, even family members, are entitled to compensation. Being a trustee is a real job that takes time and energy. Family members who serve as trustee without compensation can become resentful about the commitment required. Compensating someone for their time is not only smart, but will reinforce the importance of the job.

2. Consider using a professional.

If your client decides against naming a family member as a trustee, another option is to name a professional trustee. This can either be an institution or an individual, such as an attorney or accountant. Although this can be more expensive, there are many situations where it is the best choice. For example, some clients have no trusted family members or individuals in their lives. In other situations, trust beneficiaries have special needs or addictions that make a professional better equipped to handle the situation.

Even if there are no such issues, when there is a large amount of assets, naming a professional trustee can help ensure better overall management -- including the ability to say no to unreasonable requests for distributions by beneficiaries.

Also: Clients who do choose a professional trustee can also name a trusted friend or family member as a co-trustee. This way the professional trustee can take care of compliance issues, such as tax filings, while the individual trustee can be more personally involved with the beneficiary and his or her needs.

3. Include (limited) power of removal.

It's important for your clients to know that they can give beneficiaries the power to remove and replace the trustee. This power should not be unfettered. Yet it can help the beneficiary out of a number of bad situations, such as if a trustee is unreasonably restrictive with respect to distributions -- or if the trustee and the beneficiary simply do not get along.

If a removal power is not in the trust, and the trustee is not willing to resign, the only option may be going to court to remove the trustee. This can be both expensive and time-consuming.

Your client can help heirs avoid a court fight by writing the power of removal into the trust from the beginning. But consider limiting how often the beneficiaries can exercise the removal power -- perhaps once every three to five years.

Your client should also restrict the identity of the replacement trustee -- in part for tax reasons, but also so that the beneficiary does not go shopping for a new trustee, or name someone under the beneficiary's control. For these reasons, it may be wise to require that any replacement trustee be a professional.

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