

Trusts and Estates Insights

When creating your estate plan, one of the most important decisions you must make is who will be the trustee of any trusts you create. Although it is natural to look first to your family members and trusted friends, it is also important to consider that the trustee role may last for generations, and that it involves substantial duties that could become burdensome. The ideal trustee will make the same decisions for the beneficiaries that you yourself would make, and will bring to bear substantive expertise and administrative capabilities.

The trustee role spans several important timeframes, each of which you should consider when selecting a trustee or trustees:

1. Your lifetime
2. Your spouse's or partner's lifetime
3. After both your and your spouse's or partner's lifetimes

Assuming you have the time and interest, you may wish to retain responsibility by naming yourself as the trustee of your revocable trust. However, you will need help if you lose interest in managing your investments, want to consider more sophisticated planning, or become incapacitated. If you decide to create any irrevocable trusts for the benefit of others during your lifetime, you will likely need to name someone other than yourself as a trustee.



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After your death or incapacity, the primary focus usually is on the welfare of your surviving spouse or partner, but it can extend to others. After your and your spouse's or partner's lifetimes, your estate plan should manage your remaining wealth appropriately for your chosen beneficiaries, which may include children and grandchildren. Although the necessary skills for serving in the trustee role remain the same over these three timeframes, the emphasis on certain skills may change depending upon the circumstances of the beneficiaries and the trust property in each timeframe.

Skills Needed for Serving as a Trustee

A good trustee possesses a combination of certain personal attributes, technical skills, and administrative capabilities:

- **Personal attributes** include sound judgment, empathy, integrity, impartiality, fairness, and confidentiality.
- **Technical skills** include investment acumen (which may involve special expertise for trusts with interests in real estate or a closely held business); income, estate, and generation-skipping tax knowledge; and a full understanding of the fiduciary role and its obligations.
- **Administrative capabilities** include the ability to maintain detailed records, process transactions, separately track income and principal, prepare or review income and other tax returns for the trust, and generate statements and annual accounts.

Most importantly, a good trustee must understand that trustees are bound by certain duties, and that the trust beneficiaries or a court may hold them personally liable for any breach of those duties. As a result, trusteeship should not be entered into as a "favor" or bestowed as an "honor" – it is a substantial responsibility that requires significant commitment. Unless the trust instrument provides otherwise, the major duties of a trustee are as follows:

- 1. Loyalty:** a trustee must administer the trust solely in the interests of the trust beneficiaries, and must avoid conflicts of interest or use of trust assets for the trustee's gain.
- 2. Impartiality:** a trustee must treat the beneficiaries impartially, unless the trust instrument directs otherwise. This includes balancing the interests of current and remainder beneficiaries, as well as treating current beneficiaries impartially and fairly.
- 3. Prudence and Care:** a trustee must secure the trust property, appropriately manage the trust's assets and investments, make distributions in accordance with the trust instrument, and oversee administrative matters relating to the trust, with appropriate care and prudence. This is a high standard of care that applies notwithstanding the prior inexperience of a trustee.
- 4. Communication:** a trustee generally must keep the beneficiaries informed regarding the trust and its administration, including the assets of the trust, investment performance, and other information regarding the trustee's activities. Depending upon the trust instrument and the state of administration, a trustee may have specific accounting requirements. A trustee should also be aware of the beneficiaries' life circumstances and needs.

Who is the “Right” Trustee?

A natural first inclination is to consider a family member or trusted friend who knows you and your philosophies and values well. Family or friends may personally know your beneficiaries and their needs. They also may be willing to serve as a trustee without compensation; however, this should not be your primary consideration, given the required skills and duties previously discussed.

One drawback of choosing among family members or friends is that, even with the best of intentions, they simply may not have the time or ability to do the job well. Serving as your trustee may be a major burden and an obligation they simply cannot fulfill due to other personal or professional demands, or their own health or age. Another drawback is that their existing relationships with certain beneficiaries may cause them to appear or actually be partial, and therefore unable to administer the trust impartially. Individual trustees may also be prohibited by tax laws from having the broadest possible standard for distributing trust assets among the beneficiaries of the trust.

Finally, although friends and family may choose not to charge a fee for trustee services, it is unlikely any one individual will have the full range of skills needed to administer a trust. As a result, a family member or friend may need to hire a custodian or trust administrator, an investment manager, an accountant, and/or an attorney, and oversee these service providers in the course of serving as the trustee. Your trust would bear all of the associated costs.

For these reasons, many families decide to name a professional trustee of their trusts. Professional trustees may be individuals such as attorneys or accountants who routinely serve in a trustee capacity for their clients, or entities such as banks or trust companies.

Most professional trustees, either individually or using their firm's or company's resources, should have the technical capabilities needed for trust administration, although you will want to assess them carefully and determine whether their services are appropriate for your needs. Importantly, because your own relationship with a professional trustee may not be as close as a family member or friend, you will need to assess their personal attributes and understand how decisions regarding distributions and communications with beneficiaries will be made.

Most professionals will be impartial and objective in dealing with your beneficiaries. Most will be able to demonstrate a history of sound judgment, integrity, and confidentiality. However, it may be difficult for you to gauge impartiality, empathy, communication, and fairness.

The best way to gain confidence is for you to have a working relationship with the professional trustee during your lifetime. You can then experience firsthand the professional trustee's personal attributes, including the practicality of their advice and decision-making, and their empathy and fairness. You will see if the professional devotes enough time to your relationship to learn your philosophies, as well as your hopes for — and any concerns about — your beneficiaries.

**Fiduciary Trust
can serve as a
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or provide
support for
other trustees**

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Even after you become confident in a professional trustee, you will want to consider the longevity of the relationship. If the professional trustee is an individual, who will succeed that person down the road? If the trustee is a bank or a trust company, who will be in charge of the relationship with your beneficiaries, and how will decisions be made by the entity? Since a corporate trustee is more likely than an individual to serve for multiple generations, you should consider whether it has a long and lasting commitment to serving as a trustee, or if it views trusteeship as a tangential or even secondary service to one of its many other business lines.

Final Thoughts

In our experience, a carefully selected professional trustee is the better option for most wealthy families. In many cases, the ideal combination is to name a professional and a family member or trusted friend who can work side-by-side as co-trustees. In all cases, you should consider including in the trust instrument some provision, whether exercisable by a beneficiary or a third party, for the removal and replacement of any trustee.

Fiduciary Trust can support trusts in a variety of capacities, including serving as a sole corporate trustee or co-trustee, or providing administrative or investment support for other trustees. To learn more about our trustee services reach out to your Fiduciary Trust Officer or Rick Tyson at 617-292-6799 or tyson@fiduciary-trust.com. ■

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