

A CLIENT GUIDE TO CHOOSING A TRUSTEE



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By

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INTRODUCTION: WHY YOUR CHOICE MATTERS

While alive and healthy, most people who make a Living Trust serve as their own Trustee. Some may appoint a spouse to serve as Initial Co-Trustee or Successor Trustee. Choosing who to place in charge of your trust if you (or you and your spouse, if you are married) are unable to serve due to your death or incapacitation is just as important as choosing who will inherit your estate or how much they will receive.

Making an inappropriate selection could leave you without proper care or attention if you become incapacitated, and your assets could be squandered. It's also important to choose a Trustee who will not ignore or mishandle your written wishes about inheritance. Your choice of Trustee will likely affect the lives of your beneficiaries for years to come.

WHAT THIS GUIDE CAN DO FOR YOU

The topic of Trustee selection is complex and can fill an entire book. This guide aims to identify the most common and important issues in the selection of successor Trustees who will follow you – or you and your spouse – in the event of your incapacitation or death. It does not, and cannot, cover everything a person needs to know when creating a trust. It's a good starting place, and with the help of a qualified and experienced estate planning lawyer, it should guide you toward comfortable and appropriate decisions.

This discussion assumes that you, as maker of the Trust (also called the Trustor, Settlor, Grantor, or Trustmaker), are initially serving as Trustee. If you are married, it is assumed your spouse will be the Initial Co-Trustee or your first Alternate Trustee. If you or your spouse does not serve as the Initial Trustee, the considerations discussed below will still be relevant.

It is also assumed that your trust remains revocable until your death. Irrevocable trusts will not be covered. This guide will not cover how a nominated Trustee is activated at your death or incapacitation.

The issues in Trustee selection are diverse yet interconnected. To simplify and organize the issues, the remainder of this report will be organized as follows:

First, the guide begins with a discussion about the art of Trustee selection by way of background, which is followed by an overview of Trustee duties in general and a “wish list” of desirable qualities in potential Trustees.

Next comes a more in-depth review of what is required of a Trustee. Because Trustee duties can vary by situation, the materials will first cover what a Trustee does when the Trustor is incapacitated. Then the duties in general when a Trustor dies. After the death of a Trustor the Trust may serve either to immediately distribute assets and then terminate, or continue until some specified beneficiary age, event, or passage of time. Or, a trust can have differing purposes from beneficiary to beneficiary. The duties of a Trustee in all these circumstances are covered.

Once the situational duties of a Trustee are covered, this guide shifts to discuss the different types of Trustees one may choose. That is, individuals or corporate Trustees? Family members or persons outside the family? How many Trustees to appoint to serve at one time? What about appointing alternates?

After a review of the types of Trustees you can choose from, the guide moves on to factors and criteria to consider for each type of Trustee.

THE ART OF TRUSTEE SELECTION

The process of selecting a Trustee is often fluid. Every family and case is different, and Trustee choices may change and evolve as time passes. It’s common for a family member who was once not seen as an appropriate choice to become a preferred option as time goes on and circumstances change. As family members grow, make mistakes and gain insight or wisdom, your judgment of their capacity to manage your trust will almost certainly change. Perhaps you will experience reservations over a prior choice for a Trustee because of issues like aging, poor health, or errors in judgment you have observed. Your first choice from years ago may move out of your community, or face personal or professional demands that would interfere with his or her duties as your Trustee. Potential Trustees may undergo changes in financial status, or they may have to address urgent family issues, such as the birth of a child, or the care of elderly relatives. Where a first choice dies before you or becomes mentally or physically unable to serve, it may cause you to reflect again on your second or third choices who you may also feel differently about now.

Since the lives of your potential Trustees, like your own, are far from static, it is crucial to understand that Trustee selection is not something to decide upon once and then never revisit.

This guide cannot cover all of the situations that you and those close to you may encounter in the planning process, because each person’s case is different. Rather, the discussion in this report should serve as a springboard for evaluating your own circumstances and to understand issues to discuss with your attorney. *You should not implement any suggestions in this report on your own without guidance from qualified legal counsel.*

TRUSTEE DUTIES: A WISH LIST OF CHARACTERISTICS

Determining and carrying out the Trustor's intent is the Trustee's primary duty. The Ohio Trust Code says the Trustee “shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries” and in accordance with law. This is the general rule in all states.

Your Trustee should be someone who will do this despite any personal convictions to the contrary. For example, let's say that someone named Bob Smith wants his money released to his children at the ages of 30 and 35, free of trust, as well as for their needs leading up to those ages. Meanwhile, Bob's Trustee, Michael, believes that children should earn their own ways, and that sudden unearned wealth stands at odds with that goal. Michael believes that releasing money to Bob's children will discourage them from living productively and being self-reliant. He feels Bob made a mistake in setting up his estate plan as he did. Michael's beliefs should not prejudice him toward denying the requests from Bob's children, since those requests are still in accordance with the terms in Bob's trust. If he cannot carry out Bob's wishes without personal bias, then he is not a good choice.

The Ohio Trust Code, like the law in other states, sets forth basic Trustee duties, specific standards, and limitations. Any person under consideration should be someone capable of understanding and willing to perform according to these standards, a few of the more important standards being the following:

- The Trustee must be loyal to the beneficiaries.
- The Trustee may not transact business on behalf of the trust or in trust assets for his personal gain (no self dealing).
- If a trust has multiple beneficiaries, the Trustee shall act impartially and give due regard to each beneficiary's respective interests.
- Act prudently. This means considering the purposes, terms, distributional requirements, and other circumstances of the trust. The Trustee shall exercise reasonable care, skill and caution.
- Use special skills or expertise, if appointed in reliance on those skills.
- Delegate powers and duties if appropriate.
- Take control of and protect trust property.
- Keep adequate books and records.
- Keep beneficiaries informed and respond to requests for information.
- Legal counsel as to Trustee duties and powers is advisable.

Obviously, a Trustee must be able to read and understand a trust's terms, but legal counsel is still suggested. Sometimes a Trust's intent is not clear. In this case, there are a few legal options: (1) a non-judicial agreement to clarify the terms, if permissible by law; (2) judicial

interpretation via a legal proceeding; or (3) a court-reviewed and approved private agreement

A discussion of Trustee powers is outside the scope of this report. They are defined by the Trust agreement and applicable state law, and typically are quite broad. For purposes of this discussion, it is assumed a Trustee has the power to transact any business on behalf of trust assets that the Trustor would have.

Here is a list of desirable characteristics in a person to serve as Trustee:

- **Objectivity:** Will the Trustee be able to serve you rationally and reliably, without letting personal convictions interfere with his or her duties?
- **Discretion and good judgment:** Is he or she level-headed, comfortable with exercising discretion and making judgment calls in situations with competing interests
- **Stability:** Is he stable and secure enough in his own life to take on the responsibility and care of your affairs, without imposing hardship on self or family?
- **Reliability and Integrity:** Can you rely on her to do what she says she will do, consistently and until the job is done?
- **Commitment and availability:** Are you certain that the individual is willing and able to invest his or her time in keeping the process running smoothly?
- **Honesty:** Is the individual a truthful and diligent person who follows rules and laws?
- **Investment expertise:** Does the individual have knowledge or skills in investing or managing the types of assets you have?
- **Self-awareness and resourcefulness:** Is your Trustee willing to find professionals for help with matters he or she is not familiar with?
- **Ability to resolve disputes:** The issue of inheritance is often an emotional one. Is your Trustee prepared to help foster good relations between beneficiaries to ensure interpersonal harmony? Will she be able to resolve disputes fairly and impartially?
- **Cordiality with beneficiaries:** Is there any risk of your Trustee polarizing or causing friction among family members?
- **Geographically convenient:** Does your choice live in your community? If not, will the distance from you or your assets and family affect ability to perform? If there are co-Trustees to serve, are they in different locales? If so, that could complicate the process.
- **Ability to understand tax and legal matters:** What is the person's experience in legal and financial matters that your affairs may involve?
- **Organization and communication skills:** Is he able to organize himself and maintain that organization throughout the case? Is he a good communicator? Will

he take the time to stay in touch with trust beneficiaries, make reports, and respond to requests for information? Note that certain communications with beneficiaries are required by statute.

- Familiarity with your family situation: Does the individual know your family and lifestyle choices? Does he or she understand your preferences for your children's upbringing? For your heirs? Will he or she carry out your intent regardless of personal beliefs?

SUCCESSOR TRUSTEE DUTIES: AN OVERVIEW

Understanding a Successor Trustee's duties, or your Initial Trustee's duties if you are not serving as your own Trustee, is helpful in picking the right person for the job. Trustee duties may be situational. That is, responsibilities may vary based on what event(s) trigger the successor Trustee's appointment, and how long the Trustee will be expected to serve. The circumstances can also shift. Here are the situations a successor Trustee is most likely to face:

- Trustor incapacitation. The Trustor may be unable to attend to his or her financial and legal affairs due to age, illness, or injury
- Trustor death. When a Trustor dies, the trust becomes irrevocable except in cases where his interest in the trust passes to a surviving spouse. Some duties will apply to the successor Trustee no matter the purpose of the trust. (Note: The basic assumption here is that both spouses are unable or unwilling to serve. If this is the case, the discussion will apply to the successor(s) to the Spouse as Trustee).
- Trustor is deceased, and trust pays out. In this case, the trust is not designed to hold or administer assets indefinitely. Rather, the trust moves assets to the beneficiaries. This is different from a continuing or "hold back" trust.
- Trustor is deceased, but the trust does not immediately pay out and terminate. Also known as a "hold back" situation, the trust holds trust assets for distribution at a later specific time or event, or under circumstances where the Trustee deems it appropriate to make distributions. Income from trust assets is usually paid out on a regular basis.
- Combination of situations: A Trustor can design trust shares for beneficiaries that differ from one another. Some trust shares may pay out immediately, and others may be held back as described above. Or a Trustee serving during Trustor incapacitation will see a shift in responsibilities if the Trustor were to die.

DUTIES OF A TRUSTEE AFTER TRUSTOR INCAPACITY

Here is what your successor Trustee will likely need to do if you should become incapacitated:

Evaluate your current investments: Are your present investments appropriate? Your needs change in a state of incapacity, and investments you made while healthy may no longer be suitable for your needs. Typically, your successor Trustee's goal will be to maintain income and preserve wealth, not to focus on capital growth or wealth accumulation.

Some sources of income are not affected by market volatility. These include nursing home insurance and pensions. However, some income sources may not last indefinitely, such as disability income policies or nursing home insurance. Your Trustee should evaluate how your needs will be met after insurance runs out. There should also be annual accountings prepared for trust assets, which will be delivered to you or your Power of Attorney Agent, unless you waive them.

During your incapacity, your successor Trustee will also need to react to changes in your financial affairs. For example, keep investment portfolios in balance and diversified against risk, and make adjustments reflecting economic conditions. If your needs are being met by nursing care insurance, what will the next step be when the insurance runs out? Your Trustee together with your Power of Attorney Agent should consider Medicaid as an alternative to private pay, assuming you are medically eligible. This requires understanding and planning for Medicaid's *5 year look-back period*, and the myriad of rules that apply to Medicaid qualification. When you apply for Medicaid, or when your Power of Attorney applies on your behalf, they will look at all of the financial gifts you have given and transfers you have made in the five years leading up to your application. These gifts may disqualify you from care, because, in the eyes of Medicaid, they are examples of untapped resources that could have gone toward your health care costs. But a well planned Medicaid Spend Down plan, which is outside the scope of this Guide, could be undertaken to minimize your private pay and protect your wealth. This type of planning should be considered early on because of the five year look back period

Decide where liquid assets will be held: The successor Trustee will need to decide where accounts and securities will be held, etc.

Decide who manages investments: During your incapacity, someone must manage your investments. Will it be the Trustee personally, or a professional hired by the Trustee? According to the Ohio Trust Code, a Trustee *must* engage a professional if he or she does not have the necessary skills or understanding of financial assets and markets. This rule is generally true from state to state.

It will also be the Trustee's responsibility to actively manage any closely-held businesses or rental real estate, or to engage managers in that process.

Determine whether existing investments should be held or sold: In assessing this, your successor Trustee will need to consider a few issues. If there are securities (stocks, mutual funds, bonds, etc.), what is the risk of loss of value due to market volatility? Which securities are paying a good income? Should securities be reduced to cash and reinvested in something less volatile? What would the income tax impact be if sale of securities

realizes capital gains? If you are in the end stage of a terminal illness, should your Trustee take the risk of market volatility so that the securities can be sold or passed on after your death with the benefit of a step-up in cost basis?

It will also be deeply important to ensure that assets are invested and managed *for the purpose of your trust* – that is, for your personal support. Again, this is not a time to grow investments, but rather a time to preserve and protect assets. Risky and speculative investments should be avoided. The interest of future beneficiaries is of secondary importance to your own needs time.

Other important questions for the successor Trustee will include whether to keep and maintain your home or sell it. Is there a chance you may return to your home? Is the house insured and secure? There's also the issue of vehicles. Will disposition be necessary? Perhaps the purchase of disability-equipped vehicles will be in order. Additionally, does the successor Trustee need to take care of or sell any of your rental properties?

Other duties: Your successor Trustee will also be responsible for paying your bills, filing income tax returns, and assisting the health care power of attorney agent and the property POA agent in deciding on your living arrangements.

TRUSTEE RESPONSIBILITIES AFTER DEATH OF TRUSTOR (NO SURVIVING SPOUSE)

If there is no surviving spouse, the successor Trustee's duties after the death of the Trustor include the following:

- Identifying, collecting or taking control of assets
- Determining the date-of-death values of all assets, and getting appraisals if necessary
- Determining which assets could lose value via market forces, and taking appropriate actions to protect against that risk, or securing beneficiary waivers
- Assessing how to manage closely-held business or real estate
- Reading the terms of the Trust; consulting legal counsel for assistance
- Keeping liquid assets on hand to meet cash demands
- Establishing estate accounts
- Paying your debts
- Paying administrative expenses
- Filing your final 1040 returns and paying taxes
- Filing your estate tax returns
- Keeping books and records of receipts and disbursements.
- Allocating assets among the trust shares for beneficiaries, as directed by the Trust.

- Coordinating with the executor if there is a probate
- Investing and/or managing assets pending distributions
- Performing annual and final accountings, or securing beneficiary waivers

IF THE TRUST DISTRIBUTES AND TERMINATES AFTER TRUSTOR DEATH

In some cases, a trust will distribute its assets and then terminate. In addition to the above, the Trustee's responsibilities will include the following:

- Collecting life insurance and annuity benefits that are payable to the trust. The Trustee may also be expected to handle benefits payable directly to named beneficiaries.
- Identifying changes in IRAs and other retirement accounts to pay to named beneficiaries or to the Trustee.
- Preparing annual Trustee accountings and a final accounting at the time of trust termination, or securing waivers from beneficiaries.
- Distributing assets per trust instructions.

HOLD-BACK TRUSTS AFTER TRUSTOR DEATH

In the case of a hold-back trust, a Trustee must make decisions similar to those in the case of an incapacitated Trustor. As in an incapacitation scenario, current investments need to be evaluated. Do the investments align with the trust's overall goals? For example, if a trust is intended to pay for a beneficiary's college expenses, it will have different goals than one designed to help a special needs child. The investments of each type trust and the management of each will vary.

The Trustee will also need to make investment changes that are consistent with the trust's purpose, and will need to diversify investments against risk.

Compliance with state law also remains important in a hold-back trust. It's recommended that a Trustee gets professional legal advice. In fact, if you are acting as a Trustee, you are required by law to find professional help if you lack the experience or skills to see things through. A beneficiary may have legal standing to contest a Trustee's appointment based on failure of performance, and failure to observe the standards of care that a Trustee should follow.

Practically speaking, under a hold-back a Trustee will need to work with the beneficiaries to establish a process for distributing assets. The Trustee must carry out the directives under the trust as to timing and frequency of income distribution, and the timing / standard for distribution of principal. A process for a beneficiary to seek additional distributions should also be established, as well as handling beneficiary disputes.

Finally, the Trustee will have a number of ministerial functions, including organizing of books and records, monitoring accounts and investment performance, and taking care of income tax returns. As is the case in the above trust situations, the Trustee will also have to file annual accountings, or secure a waiver thereof, and do so again when a trust share terminates.

COMBINATION TRUST SITUATIONS

Sometimes a Trustor may have shares distributed immediately, while others are held back. The Trustee must manage each trust share in accordance with the purpose and needs of the beneficiary, as well as the Trustor's intention.

TYPES OF TRUSTEES

You have options as to the type of Trustee you appoint. You may wish for one of your beneficiaries or children to perform these duties. You may have a close friend or relative, or a professional advisor whom you trust to handle these affairs. It's also possible to appoint a professional Trustee or a corporate Trustee, such as a bank or trust company.

Do you want to have more than one Trustee at a time, or appoint a single person with successors / alternates if he or she cannot serve? *There is no single right or wrong answer in all cases. The decision is personal and fact specific.* Appointments must be considered on a case-by-case and family-by-family basis.

Selecting an individual may be advantageous, since he or she may be more in touch with family issues, and more sensitive about the needs of family members. On the contrary, a corporate Trustee may be more objective, stable and reliable than an individual, and will likely have a greater amount of experience and resources. Let's explore your options in a bit more depth.

Children / Beneficiaries as Trustees. Many people choose their children or beneficiaries to serve as Trustee. But how do you choose from among multiple children if you want children to serve?

It may seem intuitive to choose the oldest child first, but legally speaking, there is no birthright to being a Trustee. Being first born is no assurance a child can handle the job responsibly. Age is also a poor criterion because there is no relationship between a child's place in the birth order and his or her suitability to function as a Trustee.

Geography is another variable to consider. Children living out of town are generally less desirable as Trustees, because it may be harder for them to arrange for the Trustor's health care needs or other types of assistance. But if an out of town child works as sole Trustee, it may be fine. The author's rule of thumb is that a local child is a better choice than an out of town child, if you are otherwise equally comfortable with each child serving.

Consider other people in the life of a child. Will there be influence that could affect a child's performance and judgment

You may also do well to consider if any children / beneficiaries are involved in a family business, or own any shares in family real estate. Who stands to inherit property if it is not sold? If one child works in the family business or real estate while reporting to another child who is serving as Trustee, this may foster resentment and lead to family disputes.

Should you appoint more than one person to serve at the same time as co-Trustees, or choose one child at a time? Selecting multiple Trustees can either complicate the situation because involvement of more than one person naturally takes more time compared to only one person at a time. This is especially so where a co-Trustee lives out of town and this set-up is usually impractical. On the other hand, in an estate where the Trustee responsibilities are especially demanding, as in estates that have numerous holdings and out of state properties, two co-Trustees can share and delegate the work between them and make the process more efficient.

What's to happen if your co-Trustees have a disagreement about your intentions? If there is an odd number, they may vote by majority, but this wouldn't be possible with an even number. If it is essential to have multiple Trustees in your trust arrangements, some means of dispute resolution should be provided.

There are risks associated with selecting children as Trustees in a hold-back trust. Resentment could grow out of one sibling managing another's share of the trust. There also could be a chance that the co-Trustees would collude and agree to distribute all assets before the trust provisions allow it. As mentioned above, objectivity and impartiality are essential characteristics of a desirable Trustee, and the potential for familial disharmony should be evaluated.

On the other hand, selecting two children as Trustees could be advantageous. The risk of fraud or violating the trust decreases if unanimous consent is required for transactions. Responsibilities may also be split among siblings as co-Trustees; for instance, one child might handle the trust's investments, while another handles distribution. Dividing Trustee duties among children could also reduce the risk of one acting impulsively or irrationally.

This writer's experience is that settling estates where only one Trustee serves at a time is more efficient than where co-Trustees serve. When appointing children as Trustees one at a time, you can name the other children as alternates. Of course, a child who is not selected first may become spiteful, or siblings may come to accuse the Trustee of being opportunistic and working toward his or her personal gain

Non-beneficiary as Trustee. Perhaps you'll decide that you want a friend, or a relative who is not a beneficiary, to function as your Trustee. This is often a good choice, because they'll likely be familiar with your family, and know you well enough to keep your intentions in mind during the trust proceedings. A non-

beneficiary individual is also more likely to make appropriate investment decisions and work discretely without being swayed by emotions.

Professional Trustee. You may wish to hire a lawyer or professional Trustee. If you hire a professional, he or she must comply with state laws to serve in this capacity.

Corporate Trustees. Corporate Trustees are typically the last resort for Trustors – the exception and not the rule – but they may be the best choice, depending on circumstances. Some commentators believe that due to the alarming increase in incidents of elder financial abuse by family members who are named as Power of Attorney Agents and Trustees, a Corporate Trustee appointment should be the rule and not the exception.

“Corporate Trustee” refers to a trust company, or the trust department of a bank. There are local institutions that operate in this capacity, and regionally-based institutions that may or may not have local offices. National institutions do exist, but they're less likely to have local branches.

When you appoint a Corporate Trustee, a trust officer will be appointed to your case to interact with beneficiaries and carry out the routine matters of trust administration. Trust officers are often in charge of many different cases at once, and have a certain level of autonomy as to routine matters of administration of the trust and distributions. Other players involved in corporate trusts include:

- An investment advisor / portfolio manager who will determine appropriate investments based on the trust's purpose and provisions. He or she will consult with the trust officer to set and adjust the trust investment portfolio.
- A trust committee, which oversees the trust officer and approves non-routine matters outside the trust officer's authority.
- Other professionals, including a real estate or closely-held business specialist. Trust companies also employ lawyers, but they usually defer to the lawyer who set up the trust in the settlement process. After that, they usually use in-house lawyers.

Sometimes a Corporate Trustee is the most obvious choice. There may be a lack of family members whom you can trust, or who can conveniently serve your needs. You may have assets that are complex to manage, like a business or real estate concern. Your trust may be set up to operate on a long-term basis. Corporate Trustees are also useful if a Trustor has children from a previous marriage, and appointing a second spouse who is not the parent of his/her children could create conflicts and stress.

Some reject the Corporate Trustee option because it's perceived as impersonal, but this can be a strength especially if there is a concern that beneficiaries will be overly demanding, bothersome, emotionally dependent, or handicapped.

Corporate trust officers are not as vulnerable to such circumstances as family members, whose closeness to the beneficiaries and family relations get in the way of being objective and sometimes cloud one's judgment.

Others refuse the corporate option because of the fees associate with it. However, any Trustee may and should charge a fee, even the Trustor's children. Overseeing a trust is not a simple commitment, and it takes work. In the case of corporations, though, fees only apply once the business has taken an active role in the trust proceedings.

For smaller estates, it may not be cost effective to appoint a Corporate Trustee, and some trust companies have minimum estate size requirements.

FACTORS IN INDIVIDUAL TRUSTEE SELECTION

Here are some more factors you should consider if you are thinking of appointing an individual Trustee:

- *The age of beneficiaries and expected duration of the trust.* In a hold-back trust, the beneficiary will likely outlive the Trustee, or the Trustee may eventually lose effectiveness and capability to perform. To accommodate this risk, some commentators suggest you include trust provisions that require a Trustee to resign at a stated age, with the right of a beneficiary to waive that mandatory retirement.
- In some cases, grandchildren may be listed as beneficiaries due to the death of a parent. Appointing the surviving parent as Trustee may become problematic, as there will be a temptation for him or her to disregard the trust entirely. A Trustee should not be placed in a position to use trust assets as a way of supplanting parental responsibilities.
- *The effect of Trustee fees on an individual.* As stated, a Trustee should be paid for the job. But, if the Trustee is reliant on fees for his or her living needs, he or she may be reluctant to resign when performance is affected by limitations of age, health, or other personal factors. Including standards in a trust agreement permitting beneficiaries to remove a Trustee for cause is wise but giving beneficiaries *carte blanche* authority to remove and replace a Trustee will render a Trustee ineffective.
- *Liability exposure for breach and the need for legal fees for guidance.* Ask yourself, is the individual level-headed and modest enough to seek and follow legal counsel? More importantly, will an individual even recognize when circumstances suggest outside assistance? Will the Trustee get help if or she is uncertain about a financial transaction or the legal propriety of her actions, or will assistance only be sought once there's a mess to clean up? For example, a client's daughter sold her aging father's house and deposited the proceeds into her personal account. She was listed as co-Trustee with her father. After he died, she explained she thought this was okay and never called us for advice because she didn't think there was a need.

The process of unwinding her self-dealing and making the trust estate whole took much more time and legal fees than if she had taken the simple steps to do it right in the first place.

- *Time and availability.* Does the Trustee have time to do the job? Factors include professional life, family demands, health concerns, financial stresses outside the Trustee position, travel demands, and so on.
- *Potential abuse of power.* Are you certain that a Trustee's personal circumstances will not lend him or her to temptation? A Trustee has great power over money that is not his own, for benefit of others. Where a person is financially troubled, he or she may be unable to resist the temptation of converting your wealth to personal gain.

ADVANTAGES OF CORPORATE TRUSTEE

Corporate Trustees likely have a greater depth of experience in this sort of work than most individuals. They understand fiduciary law, and have sophisticated accounting systems and oversights in place to prevent and catch fraud by trust officers. Corporate Trustees are less likely to make mistakes than individuals because of experience, internal protocol, and more likely to catch, disclose and rectify mistakes. They also have the deep pockets to reimburse a trust for losses caused by trust company errors or fraud, whereas individuals who take money from a trust estate typically will not. The converted money is typically gone and non-recoverable by the time the loss is discovered.

Trust companies do not age, die, or become incapacitated. If a trust company goes bankrupt, it has no affect on your money. If a trust company becomes unprofitable, it is simply sold or merged with another trust company. Many banks and trust companies thrive from fee-based services that are rooted in their trust departments and Trustee services.

Some find it helpful to know that trust companies have “thick skins” – that is, their decisions are not affected by dissonance within a family, nor are they subject to beneficiaries’ potential resentment for not being chosen as Trustee. Selecting a Corporate Trustee can save your family a lot of hassle, particularly if there have been multiple spouses, or children from different marriages.

Trust companies keep a watchful eye on their trust officers, and replace / re-appoint them as necessary. They are closely regulated and monitored by state governments and sometimes federal laws. Working with a Corporate Trustee also diminishes the need to amend your trust over time. They have ready access to legal and professional help, and are less vulnerable to emotional influences than individuals. A Corporate Trustee will not take sides in family conflicts, nor will it be affected by your family history or other such personal issues.

Employing a trust company can also reduce fees to your trust because the corporation can perform both investment management and administrative functions. But on the other

hand, some lawyers believe an outside investment advisor is desirable to provide a check and balance, and to prevent over-investing in a bank's proprietary mutual funds or those of a sister, parent, or subordinate company.

A trust company may also interest you because of its capacity to establish or continue a long-term relationship with your family, helping with "dynasty" trusts, and helping create an inter-generational legacy.

On the whole, trust companies can offer a convenient way to manage the varying aspects of your trust, while helping ensure family harmony.

EVALUATING POTENTIAL CORPORATE TRUSTEES

Assessing a trust company can be a difficult process. Some people think that bigger companies are better. While large corporations have their advantages, their high turnover rates and compartmentalization of duties may make it difficult to establish a personal relationship with your family. Smaller firms, meanwhile, may provide more personal service, but they often have to hire outside consultants for property management, tax preparation, and investment services.

Here is a list of questions that may prove useful in evaluating the desirability of a trust company, no matter what its size:

- How many trusts are under management with the firm?
- Are administrative services performed locally, or at a processing center?
- Are there local trust officers assigned to an account?
- If there are local trust officers, how many are assigned to each case?
- Does the company provide other services beside trust administration?
- Does the company have an in-house legal department?
- How do the in-house professionals work with the legal and tax advisors of beneficiaries?
- Does the company employ investment experts? By what criteria do they structure invest portfolios?
- Are the circumstances of each trust beneficiary taken into consideration in structuring an investment portfolio?
- Is the company willing to provide information about its past investment performance?

- Is the company willing to work with outside investment advisors?
- How are trust administration fees determined? Are the fees subject to negotiation?
- Does the company charge termination fees?
- Does the company charge annual accounting fees in addition to regular fees?

Sometimes beneficiaries' circumstances are a factor. For instance, if the beneficiaries are spread across the country, a nationally-based corporate Trustee may be preferable. It may be helpful to find a corporate Trustee with experience working with assets like real estate, farmland, or businesses. It's also good to know if a corporate Trustee is willing to work with attorneys, accountants, or investment advisors with whom you or your family already have a relationship.

POTENTIAL DISADVANTAGES OF CORPORATE TRUSTEES

There are a few potential risks connected with choosing a corporate Trustee. One potential negative is the company's lack of familiarity with certain beneficiaries, or with family history. For example, you may not want money released to a child who has a history of substance abuse, a gambling addiction, or debt problems. There's also the risk of legitimate needs not being met or understood. Corporate Trustees may make certain decisions by the authority of a committee, which is an inherently impersonal process.

OTHER HELPFUL POINTS TO CONSIDER

- *Divorce.* What if the Trustee is related to you through a marriage, but you go through a divorce? You may consider including an automatic removal clause in the trust that would appoint another Trustee in this event.
- *If possible, appoint at least 3 successors.* It may be unwise to let your Trustee pick his or her successor, since it may supplant your original intentions for the Trust.
- *Beneficiary's right of removal for cause.* You can keep your Trustee in line with your wishes by giving your beneficiaries the right to petition for removal if his actions or choices are questionable or there are performance issues.
- *Don't appoint more than 2 co-Trustees.* Remember, part of your Trustee's job is to see to the Trust's smooth execution. With more co-Trustees come the risk of arguments, differences of opinion, and the unavailability of one of them which can temporarily paralyze the Trustees from transactions. It's also generally undesirable to choose co-Trustees who live in different areas. Preserve what simplicity you can.

- *Trustee suitability changes.* People can “grow into” a suitable Trustee by maturing with age, or “grow out” of desirability because of age, poor life decisions, personal demands, or financial stresses.

This report reflects the opinion of the author. It is based on the author’s understanding of the law and current trends and procedures, and the author’s experience. It is intended only as a simple overview of the basic estate planning issues discussed. This report is not and is not intended to be an exhaustive review of issues and options with respect to Trustee selection. Do not base your own estate planning on the contents of this Report alone. Review your estate planning goals with a qualified estate planning attorney.

ADDITIONAL REPORTS

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- Planning it Right the Second Time Around (estate planning for second marriages)
- Trust Administration: Prior Planning Prevents Problems

ABOUT THE ZIMMER LAW FIRM

Zimmer Law Firm, LLC is a charter member of the American Academy of Estate Planning Attorneys. It is the only member firm in Southwestern Ohio. The Firm has been providing quality estate planning services since it was founded in 1993. The fastest growing demand for its services has been asset protection from the cost of long term nursing care. Whether you need an Elder Law attorney, an attorney for general estate planning with trusts or wills, or an attorney to help settle an estate, our team of qualified staff are here to help you and your loved ones.

In these turbulent times, access to an experienced lawyer to protect your estate and accomplish your goals is more important than ever. If you or your family would like a complimentary consultation to discuss your estate plan or how to protect your estate from depletion to pay for long term nursing care, call us today at **513-721-1513** or visit our website at **www.zimmerlawfirm.com**. Check our website for upcoming seminars, or

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A MESSAGE FROM THE FIRM FOUNDER



The goals of Zimmer Law Firm are to make asset protection and estate planning pleasant, easy, and understandable processes for clients. We believe that planning is much more than just creating legal documents. Rather it is about establishing relationships with clients and their family by providing a continuum of services through the passages of their lives. What we do makes an important difference and we take great professional pride and satisfaction in that.

If you or your loved ones would like a complimentary consultation to review your estate plan or to implement a plan, visit our website at www.zimmerlawfirm.com or call us today at 513-721-1513 (Toll-Free 1-866-799-4050) to schedule an appointment. See for yourself why *Cincinnati Magazine* has recognized the Firm as a Five Star Wealth Manager. For the latest news about estate planning or upcoming law firm events, subscribe to our blog and “like” us on Facebook. Check our website for upcoming educational events. We continue to expand our capabilities and services to meet the demands of a complex and changing estate planning world. Our experience has shown us what was a solution yesterday may no longer be adequate to fully protect our clients today.

This report reflects the opinion of the Zimmer Law Firm. It is based on our understanding of state and federal laws and is intended only as a simple overview of the planning issues. We recommend you do not base your own planning on the contents of this report alone. Review your estate planning goals with a qualified estate planning attorney.

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The Academy is a national organization dedicated to promoting excellence in estate planning by providing its exclusive membership of attorneys with up-to-date research on estate and tax planning,

educational materials, and other important resources to empower them to provide superior estate planning services. The Academy expects members to have at least 36 hours of legal education each year specifically in estate, tax, probate and/or elder law subjects.. The Academy has also been recognized as a consumer legal source by *Money*

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