

Who Do You Trust? Considerations For Naming a Trustee

Trusts are a fundamental part of many estate plans because they provide asset protection and probate avoidance. Choosing the right trustee is a key consideration in establishing a trust. This article highlights factors to consider when naming a trustee.

Overview of Trusts in Estate Planning

Two common types of trusts used in estate planning are revocable living trusts and irrevocable trusts. A revocable living trust is a trust created by an individual (the grantor) during the grantor's lifetime. A revocable living trust allows a grantor to manage the trust assets for the grantor's benefit during his or her lifetime and to avoid probate after the grantor's death. The trust is "revocable" because the grantor can change or amend the provisions of the trust at any time until death.

Irrevocable trusts are commonly used to manage and preserve generational wealth. For example, instead of gifting inheritance outright to a grandchild, a grandparent may choose to establish an irrevocable trust that distributes gifted assets throughout the grandchild's lifetime. The irrevocable trust may provide the grandchild with sufficient access to the trust's assets while still restricting that access enough to prevent the trust from being divisible in a divorce proceeding, accessible to creditors, or included in the grandchild's estate for tax purposes.

Duties of a Trustee

A trustee is a fiduciary, meaning they have certain legal responsibilities to the trust and the trust's beneficiaries. The trustee is responsible for administering the trust as established by the grantor for the benefit of the beneficiaries. To this end, Wisconsin law outlines several fundamental duties that every trustee must abide by, including a duty of loyalty to the beneficiaries, a duty to manage financial assets for the benefit of the named beneficiaries and a duty to keep those beneficiaries sufficiently informed about the administration of the trust.

Duty of Loyalty

A trustee owes a duty of loyalty to the trust beneficiaries. An essential part of this duty is avoiding conflicts of interest. For example, a trustee cannot invest trust assets in a corporation in which the trustee owns a significant interest. The

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investment would be problematic because it would personally benefit the trustee and, as a result, may affect the trustee's ability to act solely in the interest of the beneficiaries.

Duty to Manage Assets

A trustee is expected to be prudent in managing trust assets. As noted above, because a trustee has a responsibility to act for the benefit of the beneficiaries, a trustee may not commingle trust assets with their own personal funds or other non-trust assets. The trustee is also expected to oversee the investment of the trust assets with an understanding of the financial needs and risk tolerance of the beneficiaries. Trustees are also frequently required to make appropriate distributions to the beneficiaries, as determined by the trust instrument. Many trusts grant trustees broad discretion with regard to distributions, including the amount and timing of the distributions.

Duty to Inform

A trustee has a duty to inform and report. A trustee is required to keep the beneficiaries reasonably informed about the administration of the trust and is expected to promptly respond to a beneficiary's request for information related to the administration of the trust unless the beneficiary's request is unreasonable under the circumstances.

Choosing a Trustee

There are many factors for a grantor to consider when choosing a trustee. Several of these are addressed below.

Reliability and Responsibility

A grantor should choose a trustee who is reliable and responsible. As discussed above, a trustee owes numerous duties to the beneficiaries of the trust, including a duty to manage trust assets. The grantor should choose an individual or entity the grantor is confident can carry out their duties to the beneficiaries in a professional and responsive manner.

Experience and Knowledge

Another key consideration is whether the individual or entity is qualified to act as trustee. If the trust has substantial assets, an individual with experience managing significant assets or with a background in finance or investments may be better suited to the role of trustee. In contrast, if the grantor is establishing a revocable trust with modest assets, a close family member, such as the grantor's spouse, may be best suited for the role of trustee once the grantor is deceased because



the family member is familiar with the grantor's assets and their wishes, as well as the needs of the beneficiaries.

Potential or Actual Conflicts

A grantor should evaluate any potential conflicts of interest that may arise from a trustee's appointment. Specifically, the grantor should consider whether the trustee is in a position where he or she could have some personal gain from acting as trustee (besides typical compensation for acting as trustee). Another consideration is whether the individual has other duties and responsibilities or acts in a separate fiduciary capacity that could hinder his or her ability to act in the sole interest of the beneficiaries.

Grantors should also consider less obvious sources of conflict. For example, if the candidate for trustee is a family member, what is that family member's relationship like with the beneficiaries? Is it possible the trustee will be hesitant to act in the best interest of the beneficiaries? Will serving as trustee create intra-family strife that jeopardizes future family harmony?

Trustee Compensation and Fees

While a grantor is not required to compensate a trustee, many grantors choose to do so to acknowledge a trustee's time and effort in administering a trust. Whether to compensate the trustee will depend on the nature of the trust and the size of the trust's assets.

A grantor may elect to appoint a corporate fiduciary, such as a trust services company or a bank, to act as trustee. Corporate fiduciaries typically charge between one to two percent of the trust corpus on an annual basis. Such appointments may be appropriate if the trust has substantial assets.

A grantor may also appoint a professional fiduciary, such as an attorney, to act as trustee. These individuals typically charge an hourly fee.

If you are interested in learning more about the role of a trustee, or have questions regarding who to appoint as trustee, contact your Reinhart attorney or a member of Reinhart's [Trusts and Estates Practice](#).

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