



The Importance of Naming the Right Trustee

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TRUSTS ARE FUNDAMENTAL TO MANY ESTATE PLANS because they provide asset protection and probate avoidance.

A trustee is an all-important element in estate planning as they are chosen to act as a fiduciary, meaning they have certain legal responsibilities to the trust and the trust's beneficiaries. Choosing the most appropriate trustee is critical in establishing a trust. The trustee is responsible for administering the trust as established by the grantor for the benefit of the beneficiaries. To this end, there are 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.

The following highlights important areas to consider when naming a trustee:

- **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. 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. For example, is the trustee candidate in a position where he or she could have some personal gain from acting as trustee (besides typical compensation for acting as trustee)? Grantors should also consider less obvious sources of conflict. 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 not required, many grantors choose to compensate a trustee to acknowledge a trustee's time and effort in administering a trust. Some grantors appoint a corporate fiduciary, such as a trust services company or a bank, to act as a 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 have any questions regarding trustees, estate planning or other related matters, contact Shannon Toole or another member of Reinhart's Trusts and Estates Team.



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