

Considerations for Naming a Successor Trustee



The selection of a successor trustee is probably one of the most important decisions in designing a trust, since it will affect the lives of beneficiaries for many years to come. When it comes time to select a trustee for a living trust, most grantors will select a family member or other individual (friend or family attorney) to be successor trustee. However, is a family member the best and most suitable choice for serving in the role of successor trustee? There are several factors which should be considered when selecting a successor trustee for your trust.

Generally, clients' estate plans name an initial trustee along with a contingent or successor fiduciary. Initial fiduciaries are specifically named in the governing document (trust, will, etc.). For example: "Comerica Bank and Trust, N.A. shall be the executor of my estate." Successor trustees can be specifically named in an estate planning document, but we find that most of the time documents do not name a specific successor. Successors can be chosen later by the beneficiary, family members or even the local probate court.

So, what are the primary responsibilities of the successor trustee? The successor trustee or "fiduciary" plays a critical role and may be called upon as a result of either a death or incapacity of the grantor. The duties associated with the successor trustee are gathering and evaluating the assets, deciding on various investment strategies, and exercising control over the various businesses and business interests. In addition, the trustee will also have to deal with income and estate tax matters, which will include the preparation of the estate tax return.

The last duty for the successor trustee is to allocate trust assets among the various sub-trusts and separate shares, which have been created by the terms of the living trust.

Once the various sub-trusts have been set up, the trustee must then administer these trusts for the benefit of the designated beneficiaries. Although the trustee is bound by a fiduciary duty to all the beneficiaries, the trustee generally will have a large amount of discretion. The area that raises the most concern regarding the trustee discretion is the discretion to make distributions to or for the benefit of the trust beneficiaries.

However, trust assets that are held in trust to be distributed at the trustee's discretion generally will have specific purposes to help guide the trustee. The most frequently used purpose is what is known as the ascertainable standard wherein the trustee, in the trustee's discretion, makes distributions for the health, support, maintenance, and education of the beneficiaries. Because the distribution is at "the trustee's discretion," a concern arises with the fact that the trustee must exercise discretion fairly and reasonably, and whether he will do so.

Until the trustee has distributed all the assets to the beneficiaries, the duties of the trustee are to manage, invest and dispose of the trust assets. The trustee must determine how to invest liquid assets for current income or for long term growth. More difficult issues arise when the trust holds controlling interest in a closely held business or assets that may require hands-on supervision, such as real estate. Will the trustee have the time and knowledge as to how to deal with these various types of assets?

Disruption of investment management can be extremely costly and untimely and should be a consideration as well. Estate planning conversations should be frequent as to provide understanding as to how the relationship will be managed, now and in the future. Potentially, these events can result in the grantor's financial advisor losing the relationship due to the change in trustees or worse yet, another financial institution named in the document which was not the grantors intent.

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To protect against losing the relationship, Financial Advisors can suggest that Grantors amend their current estate planning documents to name a “friendly trustee” in their estate planning documents.

Clients and their estate planners can name Comerica Bank & Trust, N.A. as their trustee and/or executor in their estate planning documents or successor trustee to the clients for some point in the future.

For example, a client creates their estate plan that will trigger at some time in the future (generally at the client’s death) and will require estate and/or trust administration. But that event may not be for many years into the future. The plan is needed because no one knows when that event will occur. Therefore, the appointment is a future appointment.

Plan now for some unknown time in the future when the services will be needed.

Questions to Consider:

- **I have clients who named a bank as the trustee of their trusts when they do, that bank is not an alliance partner. Can the client change their document and name a partner as their trustee?** Generally, yes, the clients’ estate planning lawyer makes the final determination and can assist the client with the amendment.
- **I have clients who are beneficiaries of irrevocable trusts with partner trustees. Is it possible to move that trust to a partner trustee?** Generally, yes. The trust document may give the beneficiary the power to remove the current trustee and appoint a new trustee; or depending upon the state, the beneficiaries can ask the court to remove the current trustee and appoint a new trustee.

- **What is the best way for me to protect client assets from leaving my firm when a client dies or is declared incompetent?** As you meet with your clients, proactively ask them about their estate plans. Ask detailed questions such as: have you named an executor? If so, who is the executor? Will any of your assets stay in trust after you die? If so, who will be the trustee? If the answers to these are anything other than one of your trust partners, ask the client if they would be willing to amend their estate plans and insert one of your partners as the executor and trustee.
- **Do I continue to custody and manage the assets when Comerica Bank & Trust, N.A. is named as trustee?** Yes, Comerica Bank and Trust N.A. allows Financial Advisors to sub-custody and manage the assets of the estate/trust.

Lastly, many clients already have relationships with financial institutions, and many times it is their desire to assure that the same people will continue to manage their assets for their children as they did for them. An individual trustee could easily choose someone else to manage the assets, thereby defeating the intention of the grantor to continue to use his advisors. The continuity of investment management is more likely to remain if the grantor names the financial institution he is currently working with.

As you can see, the selection of a successor trustee is probably one of the most important decisions in designing a trust, since it will affect the lives of beneficiaries for many years to come. It is important to consider the various options available and the factors involved to make the best decision available.

Want to Know More?

Want to know more about this topic or any other, Comerica welcomes the opportunity to help.

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