SELECTING A TRUSTEE

One of the most important decisions you will have to make in your estate plan is selecting a trustee to manage the trust you establish for your children and grandchildren. The trustee you designate will be charged with managing the trust and implementing your wishes as expressed in the trust document.

Who should be a Trustee

As the word is defined, a *Trustee* is a person who administers property for the benefit of a beneficiary. If you were placing an ad for a Trustee, it would likely read as follows:

Trustee Needed

Must be an adult (at least 18 years)

Cannot be incompetent or incapacitated

Cannot be a convicted felon

Cannot be found ill-suited by a court

No experience required

Minimal supervision

No pay (or as little as absolutely necessary)

High stress

No appreciation for your efforts

Could become a full-time position

Based on the above, how many people do you think would apply for the job? Not many.

Role of a Trustee

What should you look for in a Trustee? The selection of a Trustee should be a business decision, rather than an emotional one. It will require a unique person, who should have the following qualities:

- The ability to understand complex tax and trust management issues.
- The time needed to serve in this capacity.
- The knowledge to manage securities, real property, and closely-held businesses.
- The ability to be impartial. In other words, be the "bad guy" to beneficiaries who believe they are entitled to larger payouts.
- The ability to make discretionary distributions to beneficiaries in a reasonable manner.

Example

Take the case of fifty-five year old John. John has a net worth of $6 million, most of which is in a closely-held business. He is concerned about the estate tax his heirs will have to pay upon his death. To avoid estate taxes, John set up an irrevocable life insurance trust, which owns a $3 million life insurance policy. In an effort to save money, John names his business partner and best friend, Peter, as the trustee. Peter gladly accepts the responsibility.

John pays the $22,000 annual premium for the policy in lieu of direct gifts to his two children, who are also the trust's beneficiaries. Upon John's death, the IRS determined the trustee, Peter, had not sent "Crummey Notices" to the children; therefore, the $3 million death benefit was included in John's estate. Peter protested and claimed he had sent proper notification, but could not locate the records or prove the notices were received. He lost the argument.

As a result, John's estate increased in value, thereby increasing its estate tax liability by approximately $1.5 million. In a desperate move, Peter was forced to quickly sell the business at a substantial discount. This action resulted in John's beneficiaries suing Peter for breach of his fiduciary duties. Peter was compelled to use his personal funds to finance his defense and eventually was forced to make an out-of-court settlement in order to avoid the risks of litigation.

Potential Pitfalls in Using Friends and Family

Potential pitfalls to using a well-meaning friend or relative as a trustee include the following:

- The friend or relative may become sick, die, or just don't want to do the job any longer.
- The friend or relative may find it difficult to "take sides" in a family battle.
- The friend or relative may not be able to monitor or select an appropriate money manager.
- Conflicts may develop if the trustee is or becomes a beneficiary.

So the question is what should be done to avoid putting someone close to you, who may not be able to competently perform the trustee's duties, into this unenviable position? Choosing a corporate trustee or having a corporate trustee as co-trustees might be the answer.

The Corporate Trustee:

The advantages of a corporate trustee are as follows:

- They have unlimited lives, do not get sick, and seldom quit.
- They provide accounting, reporting, and ongoing communication.
- They are typically regulated and monitored by government agencies.
- They have strong knowledge of the administrative complexities of trust management.
- They can devote their full time and attention to the business of trust services.
- They can provide access to professional asset management.
- They can resolve disputes with beneficiaries in an unbiased manner.

When choosing your Trustee, you should keep the **complete job description** in mind. The corporate trustee is generally a professional who has more time, experience, and resources to achieve better results than your aunt, uncle or friend, and using a corporate trustee will provide more certainty that the provisions of the Trust will be implemented as you envision.

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