

Price & Farrington's Estate and Tax Planning FastFacts

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Estate, Tax and Family Wealth Planning for Advisors and Clients

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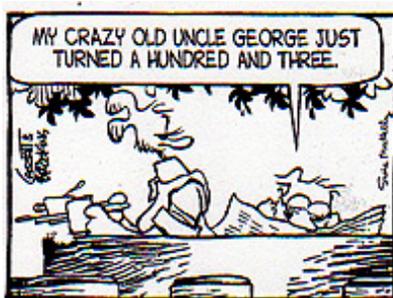
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Choosing a Trustee for Your Living Trust

The following article by Glenn Price has been accepted for publication in the 320-page book: "The WealthCounsel Book of Estate Planning Strategies: The Most Valuable Strategies Used by the Clients of WealthCounsel Attorneys Nationally" to be published by Thanksgiving, 2008.



One of the most important aspects of executing a successful estate plan for yourself and your family is the selection of a *trustee*. Because a trustee's responsibilities are serious and sometimes time-consuming, it is pru-



dent to evaluate your options carefully before making a selection.

What are your trustee's duties? A trustee is the legal owner of the trust assets and has a *fiduciary duty* to manage, invest and distribute those assets in the best interests of the trust's beneficiaries. The trustee's authority comes first and foremost from the duties, powers and instructions described in the *trust instrument*. In faithfully following that authority, as well as your state's laws, the Internal Revenue Code, and Treasury Regulations, your trustee should always be willing to seek out the advice and guidance of an experienced estate planning attorney, tax advisor or other advisors. Your trustee is duty-bound to deal with the trust property as a "*prudent person*" would deal with the property of another. The trustee has a duty of loyalty to carry out the trust's provisions in the best interests of the beneficiaries, without personal conflict or even the appearance of self-interest.

Who should you choose as trustee? If you are creating a *revocable living trust*, you will probably serve, at least initially, as the sole trustee if you are single or as a co-trustee with your spouse if you are married. You are essentially wearing three hats as: (1) the *trustmaker*; (2) the *trustee* owning, managing and distributing the trust assets; and (3) the trust *beneficiary*. A critical decision you must make is who to name to serve as your *successor trustee* if you should resign, become disabled or incapacitated, or die.

Considerations in choosing your successor trustee. In selecting a successor trustee, you want the best assurance that your wishes and desires will be carried out, that the trustee will be a responsible person whose judgment, common sense, good organiza-



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tional skills and willingness to seek professional guidance you can trust and rely upon, and that they are available and willing to serve. Your successor trustee could be your spouse, family member, relative, friend, business associate, professional advisor or a corporate fiduciary such as a bank or trust company. Considerations in making your selection could depend upon the *nature* and *value* of the *trust assets*, the expected length of the *trust term*, the complexity of the *trust's provisions*, the age, nature and circumstances of your *trust beneficiaries*, or other factors.

Selecting a family member as trustee. Many people choose a family member to serve as trustee. They don't charge a fee (but, as with any trustee, they are entitled to "*reasonable compensation*" for services performed) and they generally have a personal stake in the trust's success.

If your family member is competent to handle the trust's finances, has the time and interest to do so, exercises reasonable judgment, has some administrative capability, will follow

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the trust's (your) instructions, can avoid family conflicts, will be unbiased and unemotional, is familiar with your beneficiaries' circumstances, personalities and abilities and can be sensitive and unbiased in making decisions, this can be an appropriate choice for a small to medium-sized trust.

The potential downsides of such a choice are: lack of expertise and diligence; emotional decision-making; inadequate financial resources to cover mistakes; financial mismanagement; existence of family rivalries and conflicts; and, of course, your trustee's disability or death.

Selecting a corporate trustee.

Banks and trust companies are permanent institutions that can manage your trust for decades. If friends or family members are unavailable or unreliable, *institutional trustees* can have the fol-

lowing *advantages*:

- (1) managing trusts is their everyday business;
- (2) they act objectively and follow trust instructions unemotionally;
- (3) they have estate administration, tax and investment expertise;
- (4) they don't die or become incapacitated;
- (5) they are highly regulated by government agencies;
- (6) they have the resources to cover errors and mistakes; and
- (7) the law holds them to a higher standard of care as professional fiduciaries

Potential *disadvantages* of corporate trustees are:

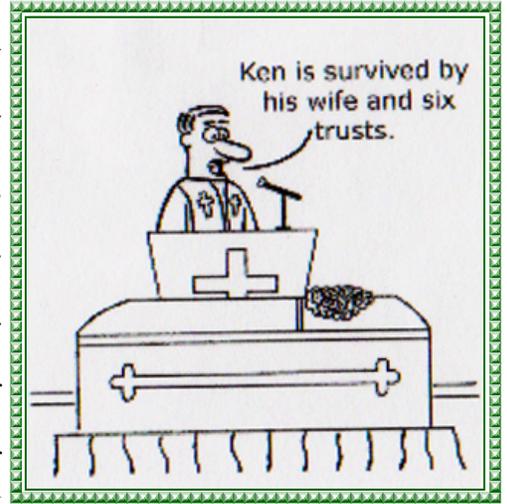
- (1) their fees;
- (2) their objective and unemotional decision-making can be perceived as cold and impersonal;
- (3) they lack specific knowledge and insights about your goals and wishes, your beneficiaries particular needs and personalities, and family dynamics;
- (4) they can be extremely conservative in interpreting trust terms and making distributions to beneficiaries; and
- (5) they aren't always the best choice for administering real estate and/or a family business.

How about your advisor?

A trusted professional advisor such as your attorney, tax advisor or investment advisor can be an appropriate selection as trustee if they are willing to serve and can do so without conflict of interest.

Co-trustees: The best of both worlds?

Naming a family member and an institution as co-trustees can be an effective way to combine familiarity with the beneficiaries with the experience, stability and expertise of the corporate trustee. Each party complements the other's strengths, better serving the beneficiaries' interests. The family member can mentor the children in financial responsibility while the institutional co-trustee manages the trust. An increasingly popular middle course between naming an institutional trustee and an immediate family member as co-trustees is choos-



ing a relative as sole trustee and hiring a bank or investment company as an *independent advisor*. This can maximize advantages while reducing fees.

Your attorney can help you choose.

As your estate planning attorney carefully shepherds you through the crucial estate planning design process, he or she acquires invaluable insights into your circumstances, goals, fears, concerns and family dynamics. This insight and knowledge about you and what you want to accomplish allows both of you to collaborate in evaluating and arriving at your best choices for the critically important roles of trustee, successor trustee and alternative trustees of your living trust. Take advantage of your attorney's professional ability to help you create the very best estate plan you can. Your family deserves it. ■

We are always available to help advisors and clients achieve the very best planning possible.
GDP



Sir Winston Churchill...

Battle
Nothing in life is so exhilarating as to be shot at without result.

Challenge
He who ascends to the mountaintops shall find the loftiest peaks most wrapped with clouds and snow.

Change
To improve is to change; to be perfect is to change often.
One cannot leap a chasm in two jumps.

Civilization
When civilization degenerates, our morals will be gone but our maxims will remain.

Criticism
I am always ready to learn, although I do not always like being taught.

Democracy
Where there is a great deal of free speech, there is always a certain amount of foolish speech.
Democracy is the worst form of government except for all those other forms that have been tried from time to time.

Diplomacy
Diplomacy is the art of telling plain truths without giving offense.

Education
The most important thing about education is appetite.