Price & Farrington's Estate and Tax Planning *Fast*Facts

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Estate, Tax and Wealth Planning for Advisors and Clients

Price & Farrington, PLLC
Attorneys and Counselors at Law
12501 Bel-Red Road, Suite 215
Bellevue, Washington 98005
425-451-3583
Email: contact@pricefarrington.com

How To Be a Trustee, Part 3: *The Role of the Professional Fiduciary*

In our past two articles we've examined how to be a trustee — a primer about roles and responsibilities for the first-time fiduciary. But sometimes Uncle Joe or Aunt Lucy or your best friend aren't the best choices to manage the estate you leave behind for the benefit of your loved ones. This *Fast*Facts examines the value of selecting a ***professional (corporate) trustee*** to dramatically improve your family's trust planning.

Possible candidates for trustee include the ***settlor*** (i.e., the person who establishes the trust), trust ***beneficiaries***, ***family members*** or close ***friends***, ***professionals*** (e.g., CPAs and lawyers) and ***corporate fiduciaries***. The right selection can be made only after careful evaluation of all factors, including the types and size of assets being transferred into the trust, the possible tax ramifications, the length of the trust term, the candidates' qualifications, time constraints, the trustee's specific responsibilities, and the possible fees and administrative expenses to be incurred. Potential income, gift and estate tax considerations will frequently eliminate one or more family members and suggest the naming of a corporate trustee. Also, a corporate trustee's objectivity, experience and expertise could make it the most desirable option for trustee.

The case for corporate trustees. The use of a professional fiduciary as either sole or co-trustee is all too often dismissed by clients without any consideration. This is particularly puzzling in light of the benefits and advantages corporate trustees can offer.

Expertise. Corporate trustees employ people with training and experience in all aspects of a trustee's duties on a full-time basis, unlike individual trustees who can be distracted by having to tend to businesses or jobs of their own. Many trustees employ specialists to deal with unusual illiquid assets such as closely-held businesses, partnership interests, real estate or restricted stock and can assist with the sale of these assets. Corporate trustees also have the internal systems needed to maintain accurate trust records and to simplify the administration process for the client and his or her advisors.

Higher standard of care. The measure of the reasonableness and care of a trustee's actions depends upon its expertise and skill. *A corporate trustee has a higher degree of fidelity, vigilance and skill it must adhere to since it holds itself out as a professional fiduciary*. This higher standard also applies to other trustees who have special knowledge, such as accountants, attorneys or professional investment advisors who are required to use their professional skills when serving as a trustee.

The Uniform Trust Code (UTC) and court opinions interpreting it hold a trustee with greater skills—such as a bank trustee— to a higher standard than an ordinary nonprofessional trustee, and potentially subject the trustee to greater liability for failing to come up to that standard. In other words, *any trustee must act reasonably and prudently in exercising its fiduciary duty. If a trustee has special skills, he or she must utilize them for the best interests of the beneficiaries or risk liability.* This, along with any bonding requirements, requires a corporate trustee to provide greater protection for the trust beneficiaries.

In addition, the corporate trustee will not be as vulnerable to the pressure, influence or emotional appeals of beneficiaries or other family members. Rarely can an individual fiduciary match the combination of expertise, independence, objectivity and professionalism offered by a professional trustee.

Co-trustees. One common criticism of corporate trustees is that they are too impersonal. Naming a professional to serve as *co-trustee* with a family member can be one way to combine a useful familiarity with the beneficiaries with the experience of the corporate trustee. Clients who are concerned that having co-

"Can I get an advance on my inheritance?"

THE HUMAN CONDITION

- ***Trust everyone, but cut the cards.***
- ***Doors don't slam open.***
- ***Like our shadows, our wishes lengthen as our sun declines.***
- ***No man is rich enough to buy back his past.***
- ***The graveyards are full of indispensable men.***

trustees might lead to an impasse can split the trustees' responsibilities to take advantage of each party's strengths, thereby complementing each other and better serving the beneficiaries.

Fees. A perceived disadvantage of corporate trustees is their fees. Typically, their fees are "all inclusive"; that is, they cover investment advice, custody, trust tax returns, beneficiary letters, bookkeeping services and the administrative aspects of the trust. To duplicate these services, an individual trustee would probably need to hire a lawyer, an accountant, an investment advisor and a custodian. In light of the resources available through the corporate trustee's all-inclusive fee, any fee differential might be well justified.

Advantages. Mike Vranizan, Trust Officer for The Whittier Trust Company in Seattle, Washington (206.332.0836), describes three of the advantages a corporate trustee offers as a substitute for Uncle Joe:

☑ ***Continuity.*** — Especially for long term trusts, including generation- skipping situations and whenever the beneficiaries are much younger than the individual trustee.

☑ ***Professionalism/Expertise***. *"From the standpoint of investment knowledge and interpretation of the governing document, you can't give the Seattle Estate Planning Council book on the duties of trustees to the friend or family member who has been chosen to serve, and expect them to take it all in, or perhaps even read it. Uncle Joe may have been very successful in operating a business or his professional career...but he may know nothing about managing the financial assets that come under his purview as a result of his newly appointed responsibilities."*

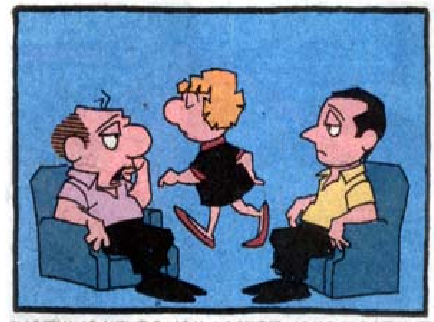
☑ ***Impartiality.*** *"Corporate trustees aren't our brother's keepers. It's much easier for us to make judgments than it is for a child-trustee to make decisions for his step-mother or the step-mother to make decisions for herself. In too many cases the beneficiary-trustee thinks the trust assets are really their assets."* And Mike says, *"if a sole trustee isn't palatable, think about using one as a co-trustee."*

A valuable moral: good planning involves good professionals. A corporate trustee might be one of them. GDP

When Odysseus **went off to fight the Trojan War, he left behind his wife *Penelope*, his minor son *Telemachus* and his most trusted friend, *Mentor*, who was responsible for caring for his estate, the education of his son, and protecting his wife. He returned after twenty years of war adventure that can best be described as an iliad and a journey that can only be described as an odyssey. Upon his return, Odysseus found his arrangements had gone awry.**

During his long absence, Mentor had died, leaving Telemachus somewhat deficient in the manly skills needed to defend his future inheritance. Some 108 suitors had occupied Odysseus' house where they dissipated his wealth and besieged his wife. In the absence of the master, a strong heir or a surviving personal trustee, the vagaries of human character took their course. We could attribute Odysseus' difficulties to the problems inherent in having selected a personal, not a corporate, trustee, who did not survive the unexpectedly long absence or change in circumstances during his absence.

The role of trustee and the law of trusts have evolved over the millennia to respond to the changing needs of individuals to protect their property and their family. The concept of a trust relationship is said to have begun as a response to the exigencies of the crusade situation — the crusader needed someone at home to safeguard property and protect family. This was essentially a caretaker function for a specific time frame—until the crusader returned. Today's trusts are the progeny of long ago. GDP



"Nothing helps you accept your mortality like vowing 'til death do you part.'"

Sidebar: A real life example.

Listen to Kate Thayer, a trust officer with Wells Fargo Bank in Bellevue, Washington (425.450.8074): "We had an elderly client ("Ms. C.") with no family. Before she slipped into dementia she had a trust drafted which stated that if her doctor determined she was incapacitated, her trust became irrevocable and Wells Fargo would manage her financial affairs. Ms. C. donated regularly to several Seattle charities during her life and her trust left her estate to these charities at her death.

"Ms. C. hired a caregiver to help her around the house. As Ms. C's dementia grew, the caregiver's influence grew. We became concerned when we received requests for larger sums of money and the caregiver refused to let us meet privately with Ms. C. It became clear that Ms. C. was incapacitated. We also suspected elder abuse. We contacted Ms. C's doctor and based on his diagnosis, we triggered the incapacity language in the trust. Now in control of the purse strings, Wells Fargo Bank demanded bills and receipts from the caregiver and wouldn't distribute cash without them. The caregiver had gotten herself appointed as power of attorney and had placed her name on title of Ms. C's two homes. This was contrary to our client's long term charitable intentions. Wells Fargo Bank went to court to have the caregiver physically removed from the house and removed from title to the homes. When Ms. C. died, all her estate went to the charities as she had always intended." ■