

Hiring A Professional To Be Your Trustee

By Liz Altman

I am often asked during the estate planning process by clients, whom do we name as trustee?

Choosing a trustee to manage your estate is one of the most important estate planning choices you must make. An executor's responsibilities deal with the execution of your will. A trustee has responsibilities for the execution of the trust. They will oversee your assets and the assets of your loved ones, which can last for many years and have significant repercussions that can affect all beneficiaries. When you form a trust as part of your estate plan, a decision will be made on who will oversee the trust's management when you can no longer manage it (also known as your successor trustee). Because a trustee's work may be time-consuming, complicated, and have a risk for liability, many people who create a trust consider naming a professional fiduciary as their trustee, such as a lawyer, accountant, a trust company, or corporate trustee. When looking to hire a professional to serve as your trustee, the following are things to be considered.

Do They Have Adequate Resources?

A professional's agreement to act as your trustee does not guarantee they have the resources needed to administer your trust properly. Be proactive about asking questions. Trust administration is an important job, and satisfy yourself that the person you appoint as your trustee is well-equipped to fulfill the role. The following are some of the important functions you should ask the professional about:

- **Bookkeeping.** The professional you hire should have a good system for trust accounting. Trust funds must be held in a separate account not commingled with their business's funds. There must be a system to keep separate records of income and principal, disbursements from the account, receipts, capital transactions, and more. The professional trustee has a duty to inform the

trust's beneficiaries. Current income or principal beneficiaries are entitled to a detailed accounting to understand the trust's transactions, accounts, and property. Your trust's funds must be used only for your matters: the professional must not use one client's funds to help another or cover expenses for another client.

- **Additional record-keeping.** The professional must be equipped to handle many other record-keeping responsibilities as your trustee, including preparing tax returns (even if they are hiring someone else to do this), handling trust-related correspondence, and keeping records of steps performed to make sure discretionary distributions were proper. This includes information provided as a justification for a distribution request.
- **Adequate staff.** A professional trustee may administer multiple trusts simultaneously. Their business needs to have enough trained and experienced staff members knowledgeable about trust administration to perform the tasks.

Is the Trustee Accessible?

Does the trustee you are considering have enough time in their schedule to handle the responsibilities required by the trust? A trustee needs to be responsive and accessible, primarily when the trust provides for thoughtfully evaluated distributions, such as for a beneficiary's health, education, maintenance, and support. The beneficiary and trustee will need to communicate often if distributions are likely to be made regularly. For example, suppose a trust beneficiary requests a distribution to help pay for a medical procedure. There, the trustee should be able to respond promptly without requiring multiple phone messages or repeated requests.

Administering a trust can be time-consuming, especially if a trust has a complex distribution scheme. For example, suppose a special needs trust is involved. There, significant attention and

Annapolis, MD
839 Bestgate Road,
Suite 400
Annapolis, MD 21401

Rockville, MD
11300 Rockville Pike,
Suite 708
Rockville, MD 20852

Washington, D.C.
Suite 500
1050 Connecticut Ave NW,
Washington, DC 20036

Northern VA
8000 Towers Crescent Drive.
13th Floor
Vienna, VA 222182

knowledge of the beneficiary's needs will be necessary to ensure distributions are appropriately made, so governmental benefits are not lost due to mistakes in the trust administration. In addition, if a trust cares for a beneficiary's addiction and distributions are to be made to support recovery, the trustee must become familiar with the situation and be willing to spend the time needed to administer the trust in the beneficiary's best interests. Suppose trust administration is only a tiny part of the trustee's business. There, they may not have the time needed to handle the tasks required, including communicating with beneficiaries and other relevant parties.

Does the Trustee Have a Succession Plan?

If the trust continues for many years, it may not be prudent to hire someone who will retire soon, especially if your trust beneficiaries are minors. Despite the trustee's age, the trustee must have a succession plan because no one can work forever. Although the terms of your trust should discuss who will act as a successor trustee if the trustee you first appoint cannot continue in the role, does the trust give the trustee the power to designate a successor? Ask who will step into their shoes if something happens to them.

Is the Trustee Willing to Work with Other Advocates for Your Beneficiaries?

Sometimes, for example, if a beneficiary is a minor or has special needs, the trustee must cooperate and communicate with other caregivers. In the case of a special needs trust, for example, the beneficiary may be incapable of safeguarding their interests. In such a situation, a caregiver or advocate must effectively communicate the beneficiary's needs to the trustee. The trustee must have the time and willingness to maintain regular contact with those advocates.

Once you choose a professional trustee you feel comfortable with, tell them they have been named as trustee, even if they will not have to act until you are no longer able or have passed away. Your decision to name a particular professional as a trustee does not mean they must accept that position. Because being a trustee is a vital role with many responsibilities and demands, telling your choice now will avoid problems later if the professional you have chosen does not want the job, mainly if you are no longer around to appoint someone else. If your initial choice declines after you tell them, you can appoint another trustee you have vetted rather than forcing your beneficiaries to go to court to resolve the matter, which may be expensive and time-consuming.

The advantage of a lawyer or an accountant serving as trustee is that they usually have familiarity with the family. They often charge more than a family or friend but generally charge less than a trust company or corporate trustee. Trust companies and banks bring massive structure and oversight from a trust department. They can make tough decisions and tell beneficiaries no when appropriate, which can be useful when there are problem beneficiaries. One drawback though is they require management of the assets and are often hard to remove and inflexible. They are generally known for being tight-fisted in making distributions.

We understand how important it is to choose the right trustee. If you need help choosing a trustee or would like us to meet with your chosen trustee to explain their role in your trust, please call the team at Altman & Associates at 301 468 3220.



Annapolis, MD
839 Bestgate Road,
Suite 400
Annapolis, MD 21401

Rockville, MD
11300 Rockville Pike,
Suite 708
Rockville, MD 20852

Washington, D.C.
Suite 500
1050 Connecticut Ave NW,
Washington, DC 20036

Northern VA
8000 Towers Crescent Drive.
13th Floor
Vienna, VA 222182

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