

Can A Beneficiary Also Be A Trustee Of A Trust

By Gary Altman

Who should be a Trustee?

I am often asked who the Trustee of our trust should be. One of the most important decisions a client will make during the estate planning process is whom to name to serve as trustee of the trust. This person (or entity) will control how trust assets are used to support the beneficiaries and the way the trust assets are managed to ensure enough money is there to support the beneficiaries. When the grantor dies, the successor trustee oversees determining the value of the trust and distributing assets to the beneficiaries. If there are unclear provisions in the trust, the fiduciary is responsible for using good judgment and putting the interests of the beneficiaries first.

This decision is not always easy. Often clients name one of their children to be trustee. Asking your oldest child to be trustee is not always the best candidate. Your child is great at caregiving, but they may not be skilled at handling money, or perhaps your child lives a long distance away. A trustee needs to be a responsible, organized person who can manage finances and tax reporting and recognize that they must fulfill the trustee's fiduciary duty. Trust administration can sometimes involve more than distributing assets, and sometimes a trust can be complicated. If so, the trustee should hire a team of professionals, including a financial advisor, a CPA, and an estate planning attorney.

Naming a child or close relative, or friend is a natural decision. This person is whom the client knows and trusts and usually shares common values and has a sense of the family legacy, goals, and goals of the trust. Naming a child will allow for inside knowledge of the family, its history, and the dynamics between siblings and relatives. Once someone dies, there are often emotional issues that will need to be navigated; siblings are estranged, drug issues, a special needs child etc.

Is a family member a good choice? Can a beneficiary also be a Trustee of a Trust?

Let's look at the pros and cons and responsibilities of being a fiduciary. There are good reasons for naming a trust beneficiary as a trustee. Trust beneficiaries are usually known, trusted, and loved by the grantor. It is often seen as convenient as well. Also, a trustee-beneficiary is vested in ensuring the trust is administered under the grantors' intentions because it benefits them. However, this could not be the case if the beneficiary is displeased with their distribution.

Some pros and cons to consider before naming a family member include:

- Pro: A family member may have more intimate knowledge of your wishes and the needs of your beneficiaries, which could let him act in a more comprehensive capacity regarding administration.
- Pro: A family member may not collect an administrative fee for conducting the duties and instead let those funds go toward the beneficiaries' bequests.
- Con: Choosing one family member over others could increase the chances of sibling rivalry or another family conflict. Why was he or she chosen over me, causing resentment?
- Con: A family member without experience in handling trust administration duties may make costly mistakes.

A trustee beneficiary can navigate these potential pitfalls by following simple guidelines. First, a trustee should be transparent. This means the trustee should communicate openly and regularly with the other beneficiaries about what the trustee is doing and why. Second, a trustee-beneficiary should precisely follow the terms and avoid the appearance of any preference for themselves. While obvious, trustees can make the mistake they oversee and can do whatever they like and then be accused of self-dealing.

A trustee must keep careful records of the tasks they have performed and accounting of transactions which can be time-consuming. While they can be compensated for their efforts, a trustee paid thousands of dollars can leave other beneficiaries wondering what they did for that compensation. The mismanagement of a

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family trust can create acrimony, serious problems within a family, and possible litigation.

If you appoint a Family Member

Have certain protections built into the trust to protect all the parties involved or have an interest in the trust. Trust documents should always have the power to remove and replace the trustee during their life and the ability to replace the trustee after the death of the grantor. Another option is a trust protector clause. An individual is named who is empowered to review and replace a trustee not fulfilling their fiduciary duty. Sometimes two or more trustees are named in a document to serve simultaneously, providing for a check and balance. And last, one can hire a professional trustee for oversight along with a family member.

If there are no family members or trusted friends who can serve in this role, it may be best to consider a professional fiduciary to serve as a successor trustee. An estate planning attorney may also serve as a successor trustee.

The next option is a financial institution or trust company. Traditionally many banks have trust departments that will serve in this role. However, they often have steep minimums and will only work with estates of a certain value. They are inclined to say no first to distributions, do not have great wealth management programs, and can be unpleasant to work with. Along with this, their fees are likely to be higher than a professional fiduciary or a trust company that will work with your wealth advisor.

In our next blog about trustees, we will examine other choices. Whatever you decide, be certain to involve your estate planning attorney, and do not be shy about asking questions. Contact the Attorneys at Altman & Associates for further information on trusteeship.

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