

Finding The Right Trustee For Your Trust

By Elizabeth Green

A trust is a valuable tool in protecting assets from probate and ensuring financial security for loved ones after your passing. When forming a trust, the grantor designates a trustee to make payments and determine how the assets in the trust are distributed. Finding a competent and reliable trustee is crucial. Grantors usually select a friend or family member, while some hire a professional trust company. Both options have their plusses and minuses.

Option One: Friends or Family

A friend or family member is the most common trustee choice for grantors. Giving control of financial assets to another party requires trust, and many people feel more comfortable choosing someone close to them for that immense responsibility. This person should know the grantors, beneficiaries, and their needs. In addition, friends or family will usually take on the task for free, unlike professional trustees who charge a fee.

A drawback to choosing family or friends is that they may not know enough about trust and estate procedures to responsibly distribute the assets and handle the legal and tax requirements, leading to mismanagement of the trust. Also, since they have close ties to the grantor and likely the beneficiaries, this could lead to favoritism among beneficiaries or resentment in the family (if the trustee is a family member), creating further mismanagement.

There is also the possibility of a conflict of interest, such as a family member trustee using their position for personal benefit. When selecting a friend or family member as trustee, ensure they have the time. In addition to deciding on asset allocation, the trustee is responsible for record-keeping of trust account activity, communicating with beneficiaries, filing tax returns, and selling or maintaining property and personal items in the trust. The person chosen as the trustee must have the time and capacity to complete these tasks.

Option Two: Professional Trust Companies

If the grantor or beneficiary has no family or friends, they can rely on to properly manage their trust, a professional trustee can be appointed instead. A significant advantage to hiring a professional is their specialized training in maintaining a trust's financial, tax, and legal responsibilities. They're well-versed in trust statutes, legal language, and accounting procedures. Professional trustees are also more likely to be impartial. They're outside the family, which means they have no personal motives or biases in performing their duties.

The downside to hiring a professional trustee is that they charge a fee for their services, usually between 0.4% and 2% of the annual trust value. This can amount to tens of thousands of dollars per year. This may be too much for some, but others might consider the cost worthwhile. Additionally, trust companies have a reputation for being slow to distribute funds from a trust and interpret the meaning of the trust differently from the original intent.

A professional trustee doesn't have a connection to the grantor or beneficiaries or have a personal understanding of family dynamics and the individual needs and desires of the grantors and beneficiaries. A compromise on this issue can have the attorney who drafted the trust documents as the trustee. The attorney has had more in-depth personal interaction with the parties involved than a trust company but also has the legal expertise to manage a trust.

Option Three: Co-Trustees

Some trusts have more than one trustee. The co-trustees make decisions together; if one is a family member with an in-depth understanding of the personal relationships involved, and the other is a professional experienced in managing trusts, they can work together to cover all possible bases. Co-trustees are a helpful contingency plan if one trustee can no longer serve. The other trustee can take sole responsibility, or a new co-trustee can be named if desired.

Changing Trustees

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Even after making the critical decision of selecting a trustee, sometimes things change. Either the grantor or the beneficiaries may become unsatisfied with the trustee's performance of their fiduciary duties, or the trustee may need to resign due to legal incapacity or a conflict of interest. To avoid court time and costs, it is crucial to include language in the trust allowing beneficiaries to remove a trustee, or naming successor trustees to take over for an outgoing trustee. Assigning a trust protector is another way to resolve potential conflicts or changing circumstances without going to court. The trust protector is someone with no interest in the trust assets, usually an attorney, who has no fiduciary power but can modify trust provisions to preserve the grantor's intent.

Choosing the right trustee is an important decision. This person will control all assets in the trust and other fiduciary responsibilities. Keeping the specific needs of the trust in mind, the best advice is to carefully consider all possible options and pick at least two or three candidates you know are trustworthy and competent to do the job. This provides a current trustee and a backup in case of unforeseen circumstances.

The attorneys at Altman & Associates welcome your questions about choosing a trustee. Schedule a call with a member of the team to discuss this further. You can reach us at 301 468 3220 or through the website at altmanassociates.net.

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