

WHITE PAPER



What to Consider When Selecting An Executor or a Trustee

All too often, well-designed estate plans fail to meet their objectives due to poor execution of those plans by the people or institutions charged with this responsibility. So what issues should be considered?



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What Are The Options?

While the specific activities of an executor of an estate certainly differ from that of a trustee of trusts established during your lifetime or through your will, the qualifications for each of these fiduciary capacities are very similar. Two schools of thought prevail concerning the selection criteria for both executors and trustees. One side believes an estate plan should be executed by corporate professionals who are focused exclusively on trust and estate administration. The other suggests that dependable family members or close friends will be more effective and attentive in executing these duties and responsibilities. We believe both options have genuine merit, while at the same time possessing not so obvious pitfalls. Our objective with clients when considering these two options is simply

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to ensure all relevant issues have been discussed. Let's examine the good and the bad of both options and then we will highlight a third option that we believe can combine the best of both.

The Friends and Family Choice

There are several good reasons for involving a spouse, capable children, or a trusted family friend in the management of your estate plan. Many times, the trustee or executor role is performed quite well by a trusted individual using the careful assistance of competent legal and tax counsel. Another reason often cited is that this option is ostensibly more cost effective than employing a professional trustee or executor. However, the most compelling reason for choosing a friend or family member to serve as fiduciary is to ensure someone familiar with the family will be in control of future decisions, and most likely will act in the best interests of the beneficiaries in a timely fashion.

There have been innumerable examples of problems within large organizations that provide trust services, including inattentiveness, high turnover of personnel, inadequate investment management, and excessive charges. It is not surprising that many people are unwilling to name a "corporate" trustee and choose an individual instead. But before deciding on an individual to serve as fiduciary, there are also some important issues to consider:

Trustees and executors have overall responsibility for asset management, fiduciary accounting, tax filings, and income and principal disbursement decisions. Inexperience or benign neglect in these areas can create numerous problems. Using specialists such as investment managers, accountants, and attorneys is almost always a prerequisite to ensuring proper administration. However, these advisors are simply "agents," which means the ultimate responsibility still resides with the individual serving in the fiduciary capacity.

While hard to foresee, it may be difficult for an individual (particularly a family member) to remain objective when potentially contentious decisions must be made. It is not unusual for family harmony to quickly dissipate after the death of a patriarch or matriarch. This can add considerable stress to a family member serving in the role of executor or trustee.

Individual trustees serve without regulatory or other oversight, so there are few controls to make sure fiduciary duties are administered correctly. In addition, an individual is usually not required to be insured or bonded, and the assets of a trust could be lost if the trustee makes bad investment decisions or commits fraud.

An individual can be held personally liable to beneficiaries for mismanagement of an estate or a trust. Beneficiaries can sue trustees, and personal assets of an individual trustee could be at risk.

An individual trustee may die, become disabled, or simply resign before the trust ends. Consequently, the assumption of duties by a successor trustee must be anticipated. Appointing an individual to serve as your fiduciary certainly has its benefits. To ensure this role is carried out successfully, it is critical to have adequate communication. If an individual is selected to serve as your executor or trustee, you should set the precedent for good communication by making sure beforehand that they are up to the task. Some may respectfully decline after understanding the full scope of their duties.

The Professional Route

At the beginning of my career, it was customary to name the local bank trust department to serve as a trustee or as your executor. The professionals within these local institutions were often family friends and were focused on trust and estate administration. However, bank mergers have created the ill effects of long-distance bureaucracies and committees with authority to make decisions about families they will never meet. However, some key advantages with professional corporate fiduciaries still exist today. Corporate fiduciaries are in the business of providing professional services to trusts and estates. In addition, these institutions are regulated by state and federal authorities, and are required to have independent audits performed on their operations at least annually. Corporate trustees are also required to maintain fiduciary insurance coverages to protect against fraud, theft, misconduct, as well as errors and omissions. There is also the inherent advantage that a corporate trustee will not unexpectedly die or become disabled. Possibly, the primary benefit of choosing the right corporate trustee is having an organization held accountable for overseeing your assets on a daily basis, not an individual serving on a part-time, volunteer basis. If a Bank or Trust Company is an option you would like to consider, we believe the following checklist of questions may be helpful in finding an institution that best fits your needs:

Who are the professionals that you and your family will be working with and what are their respective duties and experience? How long have they been with the company, and what are their incentives to remain?

How does the company manage trust assets? Do they manage assets “in house” or do they use independent money managers or mutual funds? What are the issues they consider when constructing investment portfolios, and what is their performance record?

Are trust and investment services offered together or through separate “departments?” How will you work with these two areas, and how do they coordinate with one another?

Are they qualified to help with investment, estate, tax, business, and other wealth management planning?

Who owns the company and what happens to you and your family if the company is bought or merges with another company?

What are the fees and what services do they cover? Are you paying for trust and asset management separately or together? What about custody and transaction costs? Does the company have added incentives to use products such as life insurance or annuities as fiduciary solutions? Whether you are creating a trust during your lifetime, selecting an executor as the personal representative of your estate, or establishing trusts through your will, the most important factor in making your fiduciary choice between “Friends and Family” or “The Professional Route” is simply peace of mind. After getting comfortable with the answers received to the above issues, as well as any others more particular to your unique situation, you should be able to determine what works best for you.

Best of Both Worlds?

You may ask, “Isn’t it possible to gain the advantages of both the individual and corporate trustee while avoiding their respective drawbacks?” The following considerations illustrate how one might combine the attractive characteristics of both without undermining the integrity of the administration process:

Consider the merits of naming an individual and a corporate trustee as co-trustees. The individual could be the primary resource for family related issues, while the corporate trustee could be dedicated to daily administration issues such as prudent investing, and tax and accounting compliance. The individual trustee can also be given the authority to replace the corporate trustee in certain circumstances.

Alternatively, consider utilizing a corporate trustee along with a Trust Advisor. The Trust Advisor is an individual independent of the beneficiaries who is charged with ensuring the trustee is responsive and accountable to the beneficiaries. This Trust Advisor is authorized to replace the trustee if deemed prudent.

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Regardless, make sure your document gives the beneficiaries the right to replace the trustee if certain undesirable events occur. As an example, such events may be the turnover of key personnel, an acquisition by another organization, servicing location change, unacceptable prolonged investment performance and unreasonable fee increases. “Portability” and “accountability” clauses can permit beneficiaries to replace an ineffective trustee under certain circumstances and may help avoid a potentially adversarial situation between your beneficiaries and the trustee.

Many attorneys are now drafting wills and trust instruments to combine the benefits of both individual and professional trustees. Although it does not work in every case, this concept may be a viable alternative in situations where both competent individual and corporate trustees are available to work together to carry out their fiduciary responsibilities, fulfill your wishes for the trust assets, and communicate appropriately with your beneficiaries.

Our Approach

Diversified Trust was founded by a group of professionals who set out to offer an alternative to the traditional bank and brokerage company options. Providing investment management, fiduciary services, financial planning, and wealth strategy services is our only business. Today we are one of the largest independent trust companies in the United States. We are grateful our original objective to offer this alternative resonated with those who have become valued, long-term clients over the years. As an employee-owned trust company, our clients and their families receive a continuity of service not often realized in our industry.

We believe keeping our incentives aligned with our clients’ best interest is a consistent formula for long-term success. We understand that making the right choice for one’s trustee and executor involves different issues for everyone, and we do not recommend a “one size fits all” approach. We would welcome an opportunity to discuss this important process, to detail our services, and to provide any assistance which will help meet the needs of your unique situation.

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