

# Choosing a Trustee

## Introduction

Choosing a trustee is one of the most important, and often difficult, decisions you will make during your estate planning process. While you may serve as trustee of your revocable trust during your lifetime, upon your death (or incapacity) your trust becomes irrevocable and a successor trustee must be appointed to act. This article discusses the advantages and disadvantages of selecting an individual versus a corporate trustee in order to help you determine an appropriate solution for you, for your family, and for generations to come.

## Selecting a Trustee

Not surprisingly, many individuals appoint a trustee with whom they have a personal relationship, shared values, and unwavering confidence that the person selected will act as expected with respect to prudent investment of trust assets and discretionary decisions granted in the trust. To many, being appointed as a trustee of a friend or relative's trust may be considered an honor, though it also comes with a heavy dose of fiduciary responsibilities and potential liabilities.

Whether you are appointing a trustee or accepting the role of trustee, understanding the many duties a trustee owes to the trust beneficiaries is critical. The trustee's primary responsibility is to interpret and administer the trust in accordance with the trust provisions as well as federal, state, and local laws. To fulfill this task, the trustee must invest trust assets prudently, distribute trust income and principal pursuant to the trust's direction, prepare detailed accounting records, file the appropriate state and federal tax returns, and pay the taxes for the trust.

Each state has its own trust laws that require the trustee to act loyally and impartially, avoid conflicts of interest, separate and preserve trust property while making that property productive, and defend the trust against claims on trust property. These obligations may require protective measures such as procuring casualty and liability insurance, mitigating environmental hazards, developing a prudent investment strategy, and ensuring the trust's investment managers are following the trust guidelines. While a trustee is typically granted the authority to delegate certain responsibilities to hired attorneys and investment advisors, such delegation does not relieve the trustee of his or her duty to monitor such professionals, nor will it relieve the trustee of the liability that may arise from a failure to do so.

It is highly recommended that the designated trustee possess, at a minimum, some knowledge in investments and general business practices, trust administration, and tax preparation and accounting. While not prerequisites to acting as a trustee, an individual lacking these skills must engage the

### KEY CONCEPTS

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The corporate trustee is held to a higher standard.

appropriate professionals who can assist the trustee in meeting his or her duties and obligations. Additionally, it is critical that a trustee be in a position to act with impartiality to all of the trust beneficiaries. Finally, while state courts have jurisdiction to appoint a trustee when no successor trustee is designated, naming a trustee you are certain will be around to fulfill the responsibilities required for the duration of the trust—a term which may last for multiple generations—may be the preferred alternative.

## Individual Trustee vs. Corporate Trustee

There are two basic choices when considering who should be designated as trustee. An individual, a bank, or a financial institution may offer trust services. As the “Settlor” of a trust, you may select an individual such as a family member, a close personal friend, or even a trusted professional advisor (i.e., an attorney or accountant). If the designated trustee is willing and competent to serve, choosing an individual as trustee may offer some advantages over relying on a corporate trustee.

For example, a Settlor commonly selects an individual who likely possesses detailed knowledge of the Settlor’s business and financial background, as well as the family dynamics. This familiarity may be particularly helpful if the Settlor is contemplating an absolute discretionary standard of distribution under the trust since the chosen trustee will likely already know (or be told) of the Settlor’s original intent with respect to the trust property. In essence, the individual trustee can step into the Settlor’s shoes when determining what the Settlor would have done under certain circumstances. Even though an individual trustee is entitled to reasonable compensation for administering the trust, it is common for an individual to agree to serve for a lower fee or, in some cases, agree to completely waive the trustee fees. As a result, trust assets that would have been used to pay for the trustee’s services may now remain inside the trust for the trust beneficiaries. Alternatively, the savings could be viewed as offsetting other costs an individual trustee will often incur, such as hiring outside professionals for investment management, legal services, and accounting, and tax preparation.

Additionally, an individual trustee is more likely to be aware of changing circumstances and family dynamics and is typically known and trusted by the Settlor as well as his or her family members (and trust beneficiaries). As such, the individual trustee may have personal influence over the family usually not present in a relationship with a corporate trustee. Finally, an individual trustee generally feels a sense of loyalty to the Settlor. Knowing the individual will carry out the Settlor’s wishes in accordance to his or her original intent may provide additional comfort to the Settlor.

On the other hand, choosing a corporate trustee may offer several distinct advantages over an individual trustee. Corporate trustees generally administer many trusts on an ongoing basis and have qualified experts on staff who are knowledgeable with the applicable legal requirements. Because a corporate trustee is supported by skilled professionals with specialized training, there is greater investment expertise, extensive knowledge of tax and accounting issues, and plentiful resources for the corporate trustee to rely upon in administering the trust. Furthermore, the corporate trustee is held to a higher standard of care through state and federal regulatory supervision, as well as through internal audits and compliance oversights. Since there is typically no personal stake in the distribution of trust assets, nor are there personal ties to family members or trust beneficiaries, a corporate trustee may often be in a better position to meet its duty of impartiality to all the trust beneficiaries—a key factor in resolving unanticipated disputes within the family and trust beneficiaries. More importantly, unlike the individual trustee, a corporate trustee may continue to act for generations, long after you or your individual trustees are deceased.

Finally, when comparing the costs of a corporate trustee with an individual trustee, the expertise and services available through a bank or financial institution are generally included in the pricing structure of the corporate trustee’s fees. For the individual trustee, the trust will likely have to pay for the costs (in addition to the trustee fees) of engaging the proper professionals who will assist the trustee in investment management, legal

matters, custody of trust assets, tax preparation, accounting services, etc. These additional expenses may result in higher overall administration fees when compared to the “one-stop shopping” services a corporate trustee is in a position to provide.

## Co-Trustees

A hybrid solution is to designate two or more trustees to act at the same time, referred to as “co-trustees.” Appointing co-trustees can be advantageous because each trustee may encompass different strengths, expertise, and familiarity with family dynamics. By using a combination of individual and corporate trustees, it is possible to leverage the high degree of professional skills offered by a corporate trustee with the personal connection of the individual trustee.

Since co-trustees generally must act in unanimity or majority rule (where three or more co-trustees are appointed), there must be a consensus on all matters respecting the trust. If co-trustees are designated— one an individual, the other a bank—each party will act as a form of check-and-balance so a prudent and objective approach will always be taken with respect to the administration of the trust.

## Conclusion

In conclusion, it is likely that you have worked a lifetime to secure the financial wellbeing of your family as well as the continuity of wealth transfer from one generation to the next. Therefore, you should choose wisely when selecting an individual or a corporation who will ultimately be responsible for carrying out your wishes. Determining who is the most qualified trustee or co-trustees may be the most essential decision you can make to ensure your legacy will be disposed of as you intended and that your descendants will be treated fairly and competently.

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