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Considerations When Selecting Your Trustee

Many clients have a difficult time selecting who should serve as their trustee upon their incapacity and/or death. The individual or corporate entity selected must be diligent, honest, and a good communicator. If you name multiple people, the people you choose need to be able to get along with one another and reach a consensus. It is highly recommended that you appoint an alternate trustee in case the individual or corporate trustee selected is unable or unwilling to fulfill the responsibility.

When selecting the trustee it's important to consider what the job entails and whether the individual or entity will be able to:

1. Correspond with beneficiaries (often unhappy beneficiaries who want money ASAP);
2. Manage family drama – there is ALWAYS drama after the death of a loved one, and the fights and disagreements from childhood;
3. Provide accounting to beneficiaries and make sure that beneficiaries have all of the information they request;
4. Invest assets;
5. Answer phone calls, texts, and e-mails from beneficiaries inquiring when they will receive their inheritance; and
6. Manage beneficiaries who suspect stealing and the subsequent phone calls, texts, and e-mails on this subject.

Before selecting a descendant (child, grand-child, etc..) to serve as your trustee you should consider:

1. Do your children communicate regularly and get along?

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2. How would one child react to his or her sibling receiving compensation for managing and distributing assets?
3. Is any child likely to demand an inheritance immediately?

If you are having trouble deciding on an individual, it is possible to have multiple fiduciaries, a sort of “best of both worlds.” For example, Tom Petty named his surviving spouse and two daughters from a prior marriage as co-trustees. This seemed like an ideal solution, but unfortunately, has already led to litigation over who is actually in charge. When considering your trustees, think about who should have the deciding or majority opinion.

If you are concerned that your descendants serving as the trustee there are other options. This includes a professional trust company or corporate fiduciary. They can often bring experience, expertise, professionalism, and objectivity to the role.

If you are concerned about family fighting, you may want to name either a neutral third party as the trustee or appoint a Trust Protector, who can oversee the situation and remove trustees as appropriate.