A Momentum Minute

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Working with Co-trustees: How You Can Help

When clients select a successor trustee for their trust, they frequently choose one person to serve as a successor trustee at a time. Many attorneys continue to recommend that only a single trustee be appointed to avoid the potential for disagreements or conflicts between co-trustees during the trust administration after the trustmaker's death or disability. This can be a prudent approach and works well in many situations. This is particularly true when the appointed trustee diligently keeps the trust beneficiaries informed about the trust administration and carefully fulfills the trustee's responsibilities under both the law and the provisions of the trust document.

However, many clients are reluctant to place the entire responsibility for trust administration on one person. As a result, it is increasingly common for a trustmaker to nominate two or more family members or friends to serve as successor co-trustees. In some cases, it may even be beneficial to divide the trustee's responsibilities between a professional trustee and a family member trustee. For example, a professional trustee might be given the responsibility for trust investments, accounting, and tax matters, and the family member trustee may be asked to handle certain distribution responsibilities, such as the timing and amounts of distributions to a minor beneficiary. While this co-trustee approach can have some drawbacks, it also has benefits that may be worth considering.

Advantages and Disadvantages of a Co-trustee Approach

Choosing multiple individuals to serve as co-trustees offers the following advantages:

- Co-trustees can provide checks and balances to guard against potential abuses.
- Sharing or separating the responsibilities of trust administration among co-trustees can expedite the efficient administration of a trust.
- Depending on the terms of the trust, a particular co-trustee may be able to respond quickly to an emergency situation if none of the other co-trustees are available.
- Beneficiaries may be more likely to accept the actions and decisions of unified co-trustees as opposed to the decisions of a single trustee.
- Administrative responsibilities can be allocated among the co-trustees based on each co-trustee's unique strengths and skills.

However, there are also disadvantages to consider:

- Disagreements between co-trustees can lead to conflicts or stalemates.
- Delays can result if the trust requires that all co-trustees be present and act together to conduct trust business.
- Financial institutions, individuals, and businesses may be reluctant to take direction from fewer than all co-trustees, even if the trust document authorizes a single co-trustee to act.
- Compensating multiple co-trustees for their time spent handling trust business can result in potentially higher costs.

What You Can Do to Help

As a professional advisor, you should discuss these advantages and disadvantages with your clients well before a client has a health event that could lead to their incapacity or death. Doing so will help them identify whether they are comfortable with their choice of one successor trustee or multiple successor co-trustees. This discussion may help your clients realize that they need to make changes to their estate planning documents, either to add another individual or a professional fiduciary as a successor co-trustee or to remove certain individuals listed as a co-trustee because of the potential for conflicts. Of course, we welcome the opportunity to meet with you and your clients to discuss available options and make any necessary updates to their estate documents to ensure that their documents better match their intent.

On the other hand, you may not learn of your clients' choices regarding successor trustees until a client has passed away and the successor co-trustees are in your office asking for your help in the trust administration process. If that is the case, you will likely have to play the hand that is dealt and work to bring value to the client through alternative means.

As an advisor, you can play a crucial role in counseling the successor co-trustees by educating them on the financial and tax consequences of certain decisions, such as liquidating different types of accounts and property held in the trust in preparation for distribution. Alternatively, if a trust is being divided into separate subtrusts for tax planning or asset protection planning purposes, the co-trustees may need education on the different options for long-term investing of the trust property to help them fulfill their fiduciary duty under the law to prudently administer the trust.

Counseling and educating co-trustees on these options may also help facilitate the resolution of conflicts that may arise between co-trustees during the trust administration. Your prior experience working with clients with similar conflicts can be a valuable resource to draw upon as you suggest possible compromises and solutions to the co-trustees for resolving their own conflicts. In this way, your professional advice can bring great value and clarity to an otherwise contentious impasse between trustees. The added value you bring to the table will increase the likelihood that the trustees will continue to rely on your professional advice and services throughout the trust administration and in the future.

Whether your clients have a single successor trustee or co-trustees, you can play a valuable role in helping them successfully navigate the many challenges and decisions that can arise during the trust administration. Contact me today so we can discuss additional strategies for working with successor trustees.

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