SELECTING A LICENSED PROFESSIONAL FIDUCIARY AS YOUR TRUSTEE

Selecting a trustee is one of the most important considerations in drawing up a trust. A trustee is an individual in whom another has placed the utmost trust and confidence to manage and protect the property for the benefit of the trustor and his or her beneficiaries. After you are no longer in the picture, your estate plan depends on your trustee to carry out your wishes for the future benefits of your family and/or favorite charity. Selecting the wrong trustee can result in the frustration of your plans, for example, in aggravating family discord and creating unnecessary legal fees and conflict. Your plan's intent is to improve the lives of your beneficiaries, not to create additional grief for your family.

The traditional choices of trustee have included a family member, a bank trust department or a trusted advisor, such as an attorney or accountant. In recent years a new profession has been developed that offers the trustor a fourth option, which in many cases will prove to be the best choice of all. Recent changes in California law have created the Licensed Professional Fiduciary (LPF) designation, which is open to highly trained and experienced professionals who have undergone rigorous background checks, passed examinations, provided references and have submitted to regulation by the California Fiduciaries Bureau.

An LPF may serve by court appointment as a guardian, conservator and personal representative of an estate. But more importantly, for estate planning purposes, they can be specifically designated in wills and trust documents to serve as trustee, executor, successor trustee, or co-trustee. An LPF can serve revocable living trusts, irrevocable trusts, testamentary trusts, charitable trusts, and other types of trusts.

As with all trustees, the LPF has the responsibility of carrying out the terms of the trust, as set forth in the trust document. Trustee duties can include funding the trust with appropriate assets, safeguarding assets, investing the trust assets in a prudent manner, reporting to beneficiaries, keeping proper records, filing income tax returns, and making distributions in accordance with the trust terms.

Before appointing a trustee, ideally you should meet with them to explain first hand your intent and the hopes you have for the future of your beneficiaries. The level of experience and technical expertise does vary considerably among potential trustees, so it is important to find one who fits your particular planning needs and who can work smoothly with your beneficiaries.

Why then would someone opt to choose an LPF over a more traditional choice, such as a family member, a bank or a trusted advisor?

Family members usually have good intentions. But when the time comes to serve, they are often unable to devote the time needed to do the job expeditiously. Because they are family they are usually expected to put in a lot of work for little, if any, compensation. The family member often has no training in keeping records, handling investments, and supervising lawyers, accountants and other advisors. Often real or perceived deficiencies of the family trustee lead to discord, second guessing, and finding themselves caught in the middle of old family issues. Your hopes and wishes for your family's legacy can be easily thwarted.

An LPF is independent and duty bound to treat all parties fairly and impartially, in accordance with all trust provisions. The fees charged by an LPF will usually be more than the fees charged by a family member. However, they are trained to handle the paperwork and bookkeeping chores in an efficient and timely manner, which can often result in lower legal, CPA and other professional fees. In cases where there is a family business or complex investments involved, it can make sense to designate a family member and an LPF as co-trustees, so that each can perform the trustee tasks that they know best.

Traditionally, a bank trust department was often named as trustee or successor trustee, under the theory that an institution would provide a stable safe haven, if family members were unable or no longer able to serve. In the old days a bank trust officer would have developed a close relationship with the family that would span many years. Unfortunately, with the on-going chaos in the financial and banking industries, the old well-known bank in town may not be in existence when most needed. At one time very low, turnover of personnel in the banking industry is now the same or worse than other industries.

Trustee fees charged by banks are usually based on a percentage of assets under management, which often becomes a higher fee than with other trustee choices. And, because of minimum fees, a bank may not be suitable for the smaller or even mid-size trust. By contrast the fees charged by an LPF are normally more reasonable and more flexible, sometimes based on a hourly rate instead of a percentage of assets. You should be clear about fees before designating your trustee and successor trustee.

Although not always the case, bank trust departments are usually limited to the investments recommended by their in-house investment management departments, which would normally manage the trust assets. An LPF, on the other hand, has the flexibility to select from the entire universe of money managers and investment advisors.

Finally, then how does the trusted professional advisor (such as a lawyer) stack up against the LPF? Competence is rarely an issue with a lawyer as trustee. However, timeliness of service is a frequent issue with lawyers, who oftentimes are over-booked and under staffed. Oftentimes the lawyer/trustee was very close to the grantor, but not acquainted at all with the beneficiaries. Or the lawyer may have a close professional relationship with the beneficiary who is the trustee, but not the other beneficiaries, which can lead to the appearance of a conflict. Because fees for service as trustee are usually a third or a half as much as fees for legal services, lawyers usually turn over most of the trust administration to their paralegals or other office staff.

In most cases a collaborative approach is the best of all worlds. Your attorney has a role as the estate planner and the author of the trust and other documents. During the life of the trust he or she can represent the trustee or the beneficiaries. Family members are an important part of the team. It is their family's legacy after all. Bankers and investment professionals are key players. And in the middle of it all, someone who can work with all of them and fill the vital role of carrying out your wishes, is the Licensed Professional Fiduciary.

Planning your estate, setting up a living trust and will, will determine how your property is managed and distributed after you are gone. Your real legacy, however, is not the property or the money. It is what the property and money can do for your family and others that you care about.