

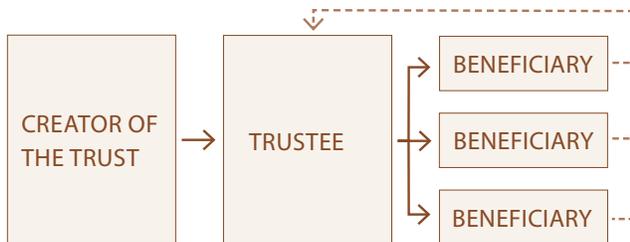


Choosing a Trustee

When you create a trust, you're not only providing for the people and causes you care about – you're establishing a legacy. Who you select to manage your legacy can make a big difference in ensuring your loved ones and values will thrive long after you're gone.

Important Roles in a Trust

There are three parties central to the creation of a trust, each with a unique role to play.



The Creator of the Trust

The creator of the trust (also known as the trustor or grantor) has built a significant amount of assets and wants to ensure that those assets are distributed according to his or her wishes and values. This person does not need to be exceedingly wealthy – a parent with a large life insurance policy may use a trust to preclude having to give his or her children a large sum of cash at once – but he or she must be legally competent when the trust is created.

This person decides how the trust is established: what assets will be transferred, who will serve as trustee, how trust property will be administered and the purpose of the trust. The creator can also dictate if and by whom it may be altered, the powers given to the trustee and when disbursements are to be made. In some cases, the creator of the trust may opt to become a co-trustee to his or her own trust.

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The Trustee

The trustee is responsible for strictly adhering to the terms of the trust set forth in the trust document. He or she holds the legal title, not the equitable title, to the property that is in the trust, thus ensuring that trust assets can be used only for the beneficiaries' benefit.

The trustee has a legal responsibility to act for the benefit of those named in the trust and must be legally competent to accept the trust property. A minor or someone declared legally incompetent cannot be named trustee.

The Beneficiary

The beneficiary is the person or group of people who benefits from the trust and eventually receives some or all of its assets. While the trustee holds the legal title, beneficiaries have the equitable title, meaning the assets can only be used for their benefit as stipulated in the trust document.

The beneficiaries of the trust must be clearly identified or ascertainable. In some trusts, the beneficiaries may be determined by the trustees, as long as the trust names a clear class of beneficiaries, such as charities that provide services to the homeless. Current beneficiaries are entitled to receive current income or principal distributions from the trust either at the discretion of the trustee or as required by the terms of the document. Remainder beneficiaries are those beneficiaries who succeed to the interest of the current beneficiaries. In many cases, the principal of the trust is distributed to remainder beneficiaries, which can be people, institutions or charities.

Qualities to Consider When Choosing a Trustee

There are numerous long-term considerations when naming a trustee. First and foremost, the trustee should be reliable, honest and willing to serve. The trustee should have a solid business acumen and the ability to navigate complex tax issues. Ideally, this person will also have a keen knowledge of trust administration, business savvy to oversee investments (even if the management of investments is handled by an advisor) and a willingness to

study the intent of the trust itself. Taxes, real estate, debts as well as distributions of the trust all should be tasks the trustee is capable of overseeing. If the trust is large or complex, the administration of that trust will require a significant amount of time and attention.

It's also very important the trustee be fair, given that he or she will be dealing with beneficiaries who may have competing interests. The ability to do so diplomatically and impartially is critical. The creator of the trust should select a trustee whom he or she believes will serve in the capacity well and administer the trust assets as if they were his or her own. It is important to recognize that the trustee also can be held personally liable for any mistakes made. Trustees may land in legal trouble if they violate applicable laws, abuse powers or fail to comply with the terms of the trust or carry out any duties as trustee.

How to Select the Right Trustee

Determining the right trustee is critical to the success of the trust. A trustee should be able to administer the trust according to the terms and applicable laws as well as address any concerns of the beneficiaries impartially and fairly. A trustee also will be charged with maintaining proper books and records.

A Court-Appointed Trustee

As the name implies, a court may appoint a trustee to administer a trust, particularly when a minor has received a settlement from a lawsuit. The court also may intervene in other trust situations if the trustee is incompetent or has resigned or died without naming a successor trustee. In this case, the beneficiaries may agree on a trustee; if not, the court will appoint one. Proper planning when creating trusts prevents leaving this critical decision to the courts.

A Family Member

A trusted family member may seem the obvious choice as trustee. Although a family member may understand and care for your affairs and beneficiaries, there are a number of potential pitfalls as well. A relative may not have the

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skills or business acumen to handle the complex issues that surround trust administration. In addition, this role can put him or her at odds with the beneficiaries, who often are also family members.

A Family Friend

Enlisting a family friend can bring many of the same benefits and concerns that come with naming a family member. While the friend may have the business knowledge, he or she may not know the specifics of trust administration or have a firm grasp of how a trust should be administered under applicable laws. It also may be difficult for a family friend to be impartial in dealing with beneficiaries.

A Corporate Trustee

Corporate trustees are regulated and monitored by government agencies and held to a higher standard than individual trustees. They are skilled professionals accustomed to working with trusts and staying current on changing laws. They are also able to handle delicate family dynamics and impartially distribute assets.

A corporate trustee is a permanent institution that can manage the trust for decades, ensuring continuity across generations. The trust continues in place with consistent care and oversight, without need for a successor trustee to be appointed.

A Co-Trustee

In many cases, the best option is not to choose one trustee but two. This allows the personal oversight that comes from naming a family member or friend, but includes the professionalism from naming a corporate trustee. A co-trustee can provide an automatic system of checks and balances and ensure disparate beneficiaries are dealt with equitably. In this scenario, be careful to select co-trustees that can work closely together.

The Fiduciary Responsibilities of the Trustee

In accepting this position, the trustee agrees to accept the fiduciary duties that come with it, such as:

- Maintaining loyalty to the beneficiaries.
- Collecting and protecting the personal assets and have them titled in the trust's name. This means the trustee obtains possession of the assets and keeps them in his or her control for the term of the trust. The trustee is obligated to protect and preserve the assets.
- Being familiar with all terms of the trust and ensure that its provisions are closely followed.
- Keeping funds separate. The trustee is not allowed to co-mingle the trust's assets with his or her own personal funds or the funds of any other trust he or she administers.
- Remaining impartial. In cases in which one beneficiary receives income from the trust and another receives the remainder of the trust at its expiration, the trustee must deal fairly with both competing interests by providing a reasonable income while preserving assets.
- Providing information and accounting to the beneficiaries. An annual report should offer a clear picture of the state of the trust, including its gains, losses, expenses and income. The trustee also should provide reasonable reports at the beneficiaries' requests and allow the beneficiaries to inspect the accounts and other related properties.

The Administrative Responsibilities of the Trustee

In addition to fiduciary responsibilities, a trustee has certain administrative responsibilities he or she must attend to:

- Understanding the beneficiaries' situation and needs
- Receiving and conducting an inventory of the trust assets



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- Collecting income and managing investment assets
- Maintaining records of all income and principal transactions
- Preparing periodic accounting
- Preparing and filing federal and state income tax returns
- Obtaining IRS registration for the trust
- Establishing accounts to facilitate asset management
- Becoming familiar with the requirements of the trust document
- Arranging for the security of all assets
- Monitoring disbursements to maintain benefit entitlements
- Hiring and monitoring service providers
- Maintaining regular communication with the beneficiaries and service providers

When to Consider a Corporate Trustee

A corporate trustee is a company authorized by law to manage trust property. The advantages of a corporate trustee include skill in administering trusts pursuant to their terms and applicable law as well as impartiality in administering those services. When establishing a trust, you should consider a corporate trustee when:

- There are no individuals in whom you have confidence to name as trustee
- The age, health or money management skills of potential candidates are questionable
- There is dissension among the beneficiaries
- The individual trustee is unable or unwilling to impartially referee family disputes
- The estate has complex tax issues
- The trust is large enough to require regular attention

There is a lot to think about when deciding who will manage your affairs when you're gone. Selecting a trustee who understands both the financial requirements of the trust and your personal values can help ensure your legacy will last.