

CHOOSING FIDUCIARIES TO HANDLE YOUR ESTATE

A Private Clients Group Article

The appointment of a Fiduciary is crucial to the successful administration of a trust or an estate. Unfortunately, it is seldom given the attention it deserves. A "Fiduciary" is a person or an institution you choose to entrust with the management of your property. Included among Fiduciaries are Executors and Trustees. An Executor is a person you appoint to settle your estate and to carry out the terms of your Will after your death. A Trustee is a person you appoint to manage property within a trust in accordance with the terms of the trust instrument. Fiduciaries are held to strict standards of loyalty, skill and diligence.

Role of a Fiduciary

Trustees and Executors generally are required to perform various duties involving the distribution and administration of property, which may include some or all of the following:

- Filing current will with the probate court
- Locating, collecting, appraising and safekeeping of all assets
- Determining debts and settling creditors' claims against the estate or trust
- Locating heirs or beneficiaries
- Managing the estate or trust, including record keeping, investment management, collection of dividends and interest
- Developing an income tax plan, preparing the necessary tax returns and paying all taxes
- Preparing a detailed final account for presentation to the probate court
- Distributing the estate or trust corpus

Selecting a Fiduciary

When selecting an Executor or Trustee, you must consider the many responsibilities inherent in the position. With many small estates, the Fiduciary's job may be straightforward and a family member may be fine. However, larger estates can require much more work and knowledge about estate administration. For example, it may make sense to bring in a bank or professional executor as sole or co-fiduciary when:

- Tax planning is needed
- There may be potential dispute over the disposition of the assets
- Investments, business interests or tax considerations require special appraisals or attention
- Money management may be a problem

Types of Fiduciaries

The most common types of Fiduciaries include the following:

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- **Family member.** In almost all instances a family member will be selected as a Guardian of the person for any minor children. However, the financial interests of young children generally are protected by the appointment of a Trustee, which may or may not be the same person as the Guardian.

A family Executor or Trustee may be quite appropriate in the case of smaller and less complicated estates and trusts, particularly where it is expected that the settlement of the Fiduciary will be assisted by a competent trusts and estates attorney.

However, in the larger estates or trust, or in the more complicated situations regardless of size, the family member often will find himself or herself unable to make the delicate judgments and decisions which are required for the protection of the assets. In such cases, if it is desired to have a family representative, the best solution is to appoint the family member as one Fiduciary, and a professionally qualified Co-Fiduciary (either a bank or an individual) as the other. In many respects this is the ideal situation, as the family member can provide the family point of view, and the professionally qualified Fiduciary can handle the administrative, accounting and tax functions.

- **Non-family member.** Occasionally there will be a family friend or a business associate available and willing to act as a fiduciary or as a co-fiduciary with a family member. Assuming that the individual is well acquainted with the process of estate settlement and trust administration, and particularly if he or she is willing to serve without a fee, this can be an ideal arrangement. On the other hand, it is a significant burden to place upon a family friend or associate, and the process exposes them to significant liabilities. For these reasons it is a relatively uncommon choice and generally limited to those who are not only close to the family on a personal level, but also are professionals, such as accountants and financial planners.
- **Trust company or bank.** A trust company or a bank having a trust department can provide all of the administrative and investment services necessary for the efficient settlement of an estate and management of ongoing trusts. The larger trust departments often have specialized groups which can be called upon to handle the management or disposition of unusual properties, such as significant real estate interests, closely held business interests, oil and gas investments and the like.

The fees of a corporate fiduciary are determined by the size of the estate or trust and in almost all instances a percentage schedule is employed.

- **Trusts and estates attorney.** Attorneys who are knowledgeable about the client's purposes in establishing a particular estate plan, the client's family, and the client's financial interests may make a good choice for a fiduciary. Although an attorney may be named as a sole fiduciary, often he/she serves as a co-fiduciary with a surviving spouse or other member of the client's family. If long-term trusts are created for the client's children, those children often become co-Trustees with the attorney when they reach an appropriate age of maturity.

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