

How to choose the right trustee

By Matthew Tilghman-Havens

When setting up a trust, most likely you intend for your legacy to live on for multiple generations. There are many checklists available that offer advice to help find the correct trustee to oversee such a trust. While helpful, they don't go far enough. A checklist can be a great place to start, but here are two areas you should consider in greater depth. It is your legacy after all.

What kind of trustee may lead to a better outcome in light of the relationships between the trust creator, the beneficiaries and the trustee? Often person creating a trust (a grantor) chooses a family member simply because he or she is someone who is known and trusted. While that existing relationship makes sense to consider, it is equally important to consider the relationship between the trustee and the people who will benefit from the trust. Rather than only seeking someone you trust, why not name someone the beneficiaries trust and can rely on through the years? Consider not only your current relationship, but how that relationship could evolve when you are no longer around and one person controls money for the other.

For example, an older brother has been appointed trustee for trusts created by his parents to benefit his younger brother. While the older brother may be perfectly competent to do the job, does he really want it? And will the younger brother feel comfortable approaching his older brother and admitting he is running low on money this month? Or does he want to disclose that he needs funds for an embarrassing medical procedure? Putting siblings in this position may damage the relationship, turning it into one of trustee and beneficiary. Often the parents are not around to see this relationship evolve. Even in families where everyone gets along well currently, adding this dynamic to a relationship will reconfigure it. Any grantor needs to seriously consider that.

In addition, a good relationship between the trustee and the beneficiaries doesn't mean the relationship must be long-established before the trust is created. One main purpose of a trust is to provide ongoing expression of your intent. Even if a trustee never knew you or your family, a well-drafted trust agreement allows the trustee to understand your goals and intent. For a trustee, the terms of the trust must supersede any pre-existing relationship the trustee has with the beneficiaries, so that familiarity may be less impactful than you thought.

What will it cost to compensate a trustee? Serving as trustee may appear to be an easy job, requiring little expense. Perhaps a grantor would be tempted to appoint a family member to serve and fill that role for free. But there is more to it. First, the grantor is selecting someone to steward the fruits of his or her life's work. A trust is the definitive written record of how you want your beneficiaries to be treated and how your lifetime's earnings should be spent. In that context, it should be worth finding the best trustee, not the cheapest. If that does turn out to be a family member, and considering all he or she does as a trustee, that family member should be paid. Also, further consider the costs that will be incurred by the trust if an incompetent trustee is named. Having helped with families who made a mistake on their selection of trustee, I have observed that they often wish they would have spent more up front to do it right.

In summary, spend some time thinking about this in depth. Talk with all your advisors and ask questions. Walk through scenarios and envision how they would play out. Put yourself in the beneficiary's shoes.

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