



FIVE COMPELLING REASONS TO USE A CORPORATE FIDUCIARY

Have you considered the potential
benefit of a corporate fiduciary?

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Many important decisions regarding the transfer of your wealth are made when working with an estate planning attorney. However, one of the most critical is often made with little or no regard for the consequences: this is the choice of a successor trustee for your trusts.

For an estate planning attorney, a common response to the question of successor trustee is, “Oh, the kids can handle it. We don’t want to pay any extra money to have someone else serve.” This is not only short-sighted, but can also create significant problems after your death.

It is a given that while you serve as your own trustee during your lifetime, little changes in the way you do business. You still continue to invest and spend your money as you desire. This situation drastically changes when a third-party assumes the duties of trustee after your resignation, incapacity or death. A fiduciary is charged with complying with a variety of laws that dictate how the trustee’s duties must be performed. These include the Duty to Account, Prudent Investor Law and the Uniform Principal and Income Law. Unless your child happens to be a professional fiduciary, chances are that they are going to need expert advice to administer your trust. This leads us to the first compelling reason for choosing a corporate fiduciary:

- 1. Experience.** Corporate trust providers are in the business of administering trusts and estates. Our affiliate, Mariner Trust Company, has the experience to effect the efficient, compliant administration of an estate or trust.

Personal property inventory and auction, real estate appraisal and possible sale, preparation of required personal and fiduciary tax returns, investment management of assets, accounting to beneficiaries, and compliance with legal requirements can all be handled by professionals in the trust company. The average individual trustee would have to separately employ all of these people to achieve the same level of administration, thereby increasing the fees payable out of the estate or trust assets.

2. Unbiased neutrality. Corporate fiduciaries are compelled by law to administer trusts according to their terms. This includes no bias for or against any beneficiary. By having a neutral trustee making discretionary distribution decisions, you can remove any familial pressures from the equation, insuring that your wishes are carried out without regard to past interpersonal reactions. This also removes family pressures on the trustee to make or refrain from making a particular distribution. One way to keep the family history and personalities in place is to name a surviving spouse or other family member as co-trustee of the trust with the corporate fiduciary, the corporate trustee being solely responsible for discretionary distributions to the co-trustee family member.



3. Regulation and oversight. When you name an individual trustee, no one oversees the administration of the trust. The only way the beneficiaries can correct administrative errors or abuses is to sue the trustee for breach of trust. An individual trustee's personal assets may be subject to attachment after a judgment against them. Contrast that with a corporate trustee, who is highly regulated. For example, Mariner Trust Company is examined by the South Dakota Division of Banking. Internal auditors also scrutinize trust administration. Should an error be found, you have access to liability insurance to satisfy any judgment.

4. Sibling rivalry. No matter how well your children get along during your lifetime, it is my experience that the relations change after a death, particularly when you have named one sibling as trustee to make financial decisions for other siblings. An even worse scenario is to name multiple children as co-trustees, then requiring that all decisions regarding trust administration be unanimous. In this scenario, the only way to break a deadlock among co-trustees is to obtain a court order.

5. Continuity. Naming an individual trustee always carries the risk that they will become incapacitated or die during the administration of the trust or estate. This risk can be avoided by naming a corporate fiduciary which lasts in perpetuity.

These are some things to consider when naming a successor trustee for your trusts or a personal representative for your estate. It is a decision that should be made only after careful consideration of the options available. For more information, please contact your wealth advisor.

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