

## **Retirement & Wealth Management Solutions Series**

### **Considerations for Choosing a Trustee:**

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Selecting suitable trustees and appropriate mechanisms for naming trustees over time is often a part of our estate, retirement and wealth management planning discussions. As trusts can often span decades, they can only be as successful as the named trustees. Fiduciary responsibilities include acting ethically in the best interest of the beneficiary, of course, and include among others:

- Administer and invest the trust property according to the trust document
- Act impartially when dealing with trust property and payments to beneficiaries
- Exercise discretionary powers over distribution of income and principal
- Maintain clear and accurate financial records and report as to tax returns
- Follow up on any legal claims to defend the trust
- Distribute the principal of the trust to the appropriate person or persons upon termination of the trust

**Family Member Trustees:** A family member or close relative or friend are usually used when trusts are structured primarily to transfer assets such as real estate or family business to children. When considering family or friend, make sure to know exactly what the trust document's purpose and specific provision are prior to naming a trustee. Making sure the grantor notifies the individual trustee is essential. Consider whether the trustee has the skills and expertise to administer and manage the trust in an impartial manner. Selecting an investment advisor who is also a fiduciary, is quite important in our view. Consider whether the family member will expect to be paid or compensated. Consider the trustee's residence, as that might cause undue taxation of the trust. (For example, if the trustee is a resident of California or another high-income tax state, the trust will be subject to higher income tax rates).

**Corporate Trustees:** You may name a professional trustee; for example, a bank, a trust company or a neutral professional to serve as trustee. A professional trustee is expected to bring experience, objectivity and extensive resources to help insure the trust is administered according to the trusts terms. Corporate trustees also assume fiduciary responsibility and maintain insurance coverage. Perhaps most of all professional trustees may be more non-judgmental than a family member and do not hold the emotional ties that can become problems when dealing with family members.

**Shared Trustee:** Some families, we have found, prefer a shared relationship or co-trustee, ordinarily a family member and a professional or corporate trustee who serve as a check and a balance for each other. In such cases, look for a mechanism to mediate or arbitrate disputes to deal with any potential conflicts that can arise among family members or co-trustees.

**Tax:** Regardless of choice, we advise in our conversations that consideration be given to tax planning. Optimal locations for trust administration is a planning consideration and taking advantage of certain states trust laws are consideration of trust attorney and ourselves in conversation, including states like Delaware, Nevada, South Dakota or Alaska. *This is meant only for discussion with our Planning clients and does in no way constitute any legal advice, not be construed as such.*

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