



THE WHITE PAPER

Your Retirement Planning Newsletter

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Do You Need a Corporate Fiduciary?

Individuals often assume that a family member is the best choice to serve as trustee and executor of their estate. In addition to perceiving this option as less costly, many believe that a family member is in the best position to understand the family's unique needs. Yet, in the final analysis, it is often determined that a corporate fiduciary is the more effective choice, especially for estates with trusts and/or estates that have complex family and asset issues.

The Role of the Fiduciary

Although the terms *trustee* and *executor* can be used interchangeably as "fiduciary," each role carries unique responsibilities. A trustee has legal title to assets placed in trust and is obligated to serve the best interests of the trust's beneficiaries. An executor must inventory the estate, pay all taxes and debts owed by the estate, and distribute assets according to the terms of the decedent's will.

Given the breadth of a fiduciary's duties and the potential exposure to personal liability associated with those duties, one should consider several factors in selecting a trustee and/or executor.

Technical expertise -- The fiduciary must develop the trust's asset allocation so that there is sufficient income for current interests and principal growth for future interests. A family member lacking investment expertise who does not delegate investment responsibility risks personal liability.

Similarly, administering a trust or estate is an exacting, complex, and time-consuming job requiring expertise in tax issues, asset valuation, trust accounting, cash management, business succession, and many related issues.

Impartiality -- A fiduciary may face numerous conflicts of interest in the administration of a trust or estate, often placing a family member between the proverbial "rock and a hard place."

By contrast, a corporate fiduciary should be an impartial third party, able to carry out the wishes of the grantor or decedent of the estate without familial pressures. In this regard, the fiduciary's independence is central to its role.

Permanence -- Most trusts last for generations and so-called "dynasty trusts" can theoretically last forever. A corporate fiduciary can provide continuity of administration that a family member cannot. Although the personnel involved may change, the underlying corporate entity continues.

Accountability -- Any interested party to a trust or estate can sue the fiduciary for its actions or inactions. Many individuals faced with potential litigation choose not to accept appointment as a fiduciary. A corporate fiduciary generally carries insurance as a cost of doing business and otherwise has the financial resources to make a claimant whole.

Cost -- Depending upon the complexity of the assets and administration, naming a corporate fiduciary may be more efficient and less costly in the long run. For instance, if a family fiduciary has no expertise in investments, real estate, tax accounting, or other critical aspects of the fiduciary's role, he or she will need to hire experts for those tasks and coordinate their efforts. A corporate fiduciary already possesses most or all of this organizational structure. It will typically staff tax and investment experts, along with personnel experienced in trust administration and estate settlement. In addition, corporate fiduciaries often have strategic partnerships with specialists in real estate and closely held business interests. Since a corporate fiduciary is responsible for all of these duties, coordination is built in.

The Best of Both Worlds

In many cases, a combination of family members and corporate fiduciaries offers the best solution. Most corporate fiduciaries welcome the opportunity to have a family trustee with intimate background on family issues. The co-trustees may share the duties nearly equally, or the trust documents may be drafted to capitalize on the skills of each trustee individually.

This communication is not intended to be legal advice and should not be treated as such. Each individual's situation is different. You should contact your legal professional to discuss your personal situation.

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