How To Choose Your Trustee

A Professional's Guide to Selecting the Right Trustee and Avoiding Family and Financial Disaster

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The Professional Trustee

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INTRODUCTION

If you have a trust or are considering one, you likely care about the legacy you are leaving for your family, friends and causes you care about.

Yet, too often trusts do not produce the results that the grantor wants. Instead, money is misspent, legal fees build, and the beneficiaries are not well supported.

Often that has to do with the complexity of trusts and their administration. Trusts are highly technical legal documents with significant and sometimes counter-intuitive financial and relational implications for the stakeholders involved.

What's more, the typical low level of preparation works to create the deeper challenge of unaligned stakeholder expectations.

If that's all not enough, many of the stakeholders are not their most reasonable selves given the heightened emotions seemingly inherent in the combination of family, money and death.

Considering all the above, trust administration can quickly turn from smooth sailing to rough waters -- with an impending threat of sinking your goal of a positive legacy.

To prevent sinking and to make sure your goals are accomplished, you may want to use care to select who captains your trust through these too-often rough waters.

This is why I have compiled this eBook on How to Choose Your Trustee.

I start with the very first chapter to make clear what's at stake: the cost of choosing the wrong trustee. You should know why the trustee matters. The cost can be significant in terms of both financial loss and, perhaps worse, family harmony. Many families founder due to the storms caused by how the trust is administered.

No two trustees have the same approach on how to steer your trust and your people.

First, different trustees can interpret many key trust provisions differently. They have different values, skills, and temperaments, and how they determine if they're successful with administering your trust, among other considerations.

Further, the trustee often has significant control of the form, substance and frequency of stakeholder communications. As we know from daily life, communications directly impact our expectations and our experience of the process.

Finally, trustees are different people. Even within the same organization, different trustees manage trusts differently.

You want to be clear on what these differences mean for you.

The rest of the book details considerations for selecting the right trustee for your trust by offering insights, discussion points and actionable checklists.

Wishing you smooth sailing with your trust!

Dan Felix
The Professional Trustee
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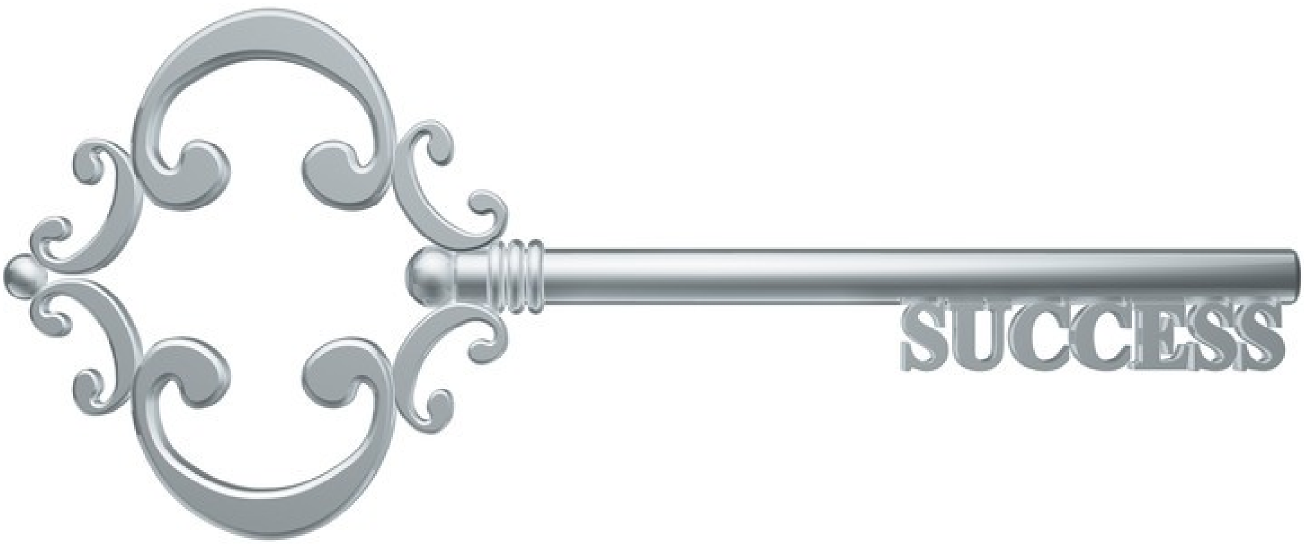

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Surround yourself only with people who are going to lift you higher.

Oprah Winfrey

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How to Choose Your Trustee

The Cost of the Wrong Trustee

How to Choose Your Trustee

The Cost of the Wrong Trustee

It's more than just the fees.

"How much?"

Yes, it's a typical question for any professional service. In my world, I'm often asked about my fees very early in discussions with new families seeking an independent trustee. In fact, sometimes the first question posed is about my fee structure.

This is a fair question. Certainly, when selecting a trustee, one appropriate criterion is the fee.

Generally, individual professional trustees charge on an hourly or flat fee basis. Trustees who aren't individuals, that is, who are corporations, often charge on a percentage of the trust assets under their management, on top of a minimum fee.

In contrast, family members are often expected to serve for no charge – a holdover custom from when families lived close by and their significant sacrifice of time and tranquility was expected in other domains of life as well.

And where there's an option for a family member to serve, the thought could be why should we pay fees, when our son (or sister or cousin or our daughter, the business owner) will serve for free.

The falsehood is that "no fee" is the same as "free."

It's not.

"No fee" can come with a lot of costs.

First and second, "no fee" ignores the question of fit, as well as the truism that often one gets what one pays for.

More significantly, a true pricing comparison needs to include financial components other than trustee fees alone.

One additional financial element is the value of the peace of mind that the trustee will meet professional standards for both technical work as well as the collaboration with your family and your advisors.

Another necessary financial metric is the valuation of the cost of the wrong trustee. In other words, you should determine how many dollars are at risk because of the very real possibility that the wrong trustee won't do the right thing.

How to Choose Your Trustee

The Cost of the Wrong Trustee

Here's a list of some typical costs for choosing the wrong trust trustee. I leave it to you to expand and modify this list for the specifics of your family and situation – and total up the amounts at risk.

The Cost of Squandering your Money. *The most glaring example of squandering is the trustee who confuses the trust's money with his own.*

But there are other examples beyond direct theft:

- ***Not paying taxes****. I've witnessed novice trustees not knowing that taxes were due, incurring penalties and late fees for the trust.*

- ***Not paying for necessary advice.*** *Perhaps this is a variant on being penny wise and pound foolish. Regardless, this cost applies for legal compliance as well as for tax advice and other necessary expertise. Not knowing what they don't know, novice trustees can get into expensive problems.*

Over the years, I've brought in a range of different professionals to support me to get to the right result for the family including:

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- Daily Money Managers, as well as CPA and investment advisors.
- Those who facilitate collaboration, including mediators, family dynamics experts and life coaches.
- Those who value, manage, administer, and sell special assets, such as art, real estate, collections, and firearms, as well as social media and other websites.
- The range of medical and health professionals, starting at the top with the care manager or care advocate

Typically, there is a greater cost -- emotional and relational if not directly financial -- for their work that starts in crisis as compared to in advance of crisis.

Individuals may reasonably differ on the value of maintaining family harmony and so the price of avoiding family fissure. And it's still a cost.

How to Choose Your Trustee

The Cost of the Wrong Trustee

The Cost of Focusing only on your Money.
Paradoxically, the administration of a trust can be more costly where it does not support the objectives, goals and values of the family. According to one study, some 90% of families with ongoing trusts report experiencing this disconnect. Further, at least one probate judge reports that this disconnect is a contributing cause to the increase in trust lawsuits she's seen in the recent past. The cost of a lawsuit in dollars and cents is relatively easy to price: EXPENSIVE. And again, name the price you are willing to invest to insure family harmony.

The Cost of Shutting out your Family.
Some put a value on transparency as an end in itself and also because it's human nature to assume the worst when we don't know. I've seen lawsuits arise when the trustee hasn't keep family members advised. Again, consider the cost of a lawsuit, and the value of family harmony.

The Cost of Thinking They Know Better.
Sometimes others in the trust's circle have important helpful input. What's the cost of not considering that?

There's the example of the corporate trustee that replaced the roof of the beneficiary's home – but without first consulting the beneficiary living in the house on either the timing of the repair work, or the color choice for the roof tile. What was the cost of the beneficiary's self esteem? What was the cost of the beneficiary's sense of control or for the beneficiary's frustration in having the work done on an inconvenient day, or worse, having the wrong colored shingle visible every time she walked in the front door?

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The Cost of Banishing Common Sense and Compassion.
An all-too-common costly mistake is assuming that the love present in a blended family will maintain despite the loss of the grantor, who serves as the glue of the blend.

One scenario out of the many I've seen: The surviving spouse later moves into a relationship with a new significant other, while remaining in the grantor's house, AND one of the grantor's children is serving as both trustee and as ultimate beneficiary of the house. There's an increased risk to both in general anxiety, ill will and fights over repairs and refurbishing.

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The Cost of the Wrong Trustee

The grantor's blind eye that "our family is different" can be especially costly, not just with the blended family. Over the years, I've seen in my office many times the younger son of the grantor, not as straight-and-narrow or successful as his older brother, who is appointed the beneficiary of the trust with that older brother as trustee. My family dynamics friends nod their head in agreement over the significant cost to the younger brother beneficiary not just for enduring the psychological abuse from his righteous brother, but in terms of the squandering of the best, most empowering use of the trust's funds.

The Cost of Conflicts of Interest.
There are even some lawyers who don't understand that the law doesn't prohibit certain conflicts in the trustscape. The two most significant:

- A person is legally permitted to serve as trustee, even where he himself is a co-beneficiary, meaning that he has the power to minimize the distributions to other beneficiaries in favor of himself.
- A corporate trustee who is paid based on the amount of trust assets it holds can maximize those holdings by denying a beneficiary's requests for distributions

Even if the trustees have other reasons to deny the distribution, their beneficiaries will understandably suspect that these trustees have not lived up to their fiduciary duty, because these structural conflicts undermine the appearance of independent and impartial decisions. The cost: sometimes ill will, sometimes a hostile relationship and sometimes a lawsuit.

The Cost of Lack of Preparedness.
Some successor trustees don't begin working for the family until after death or disability. And so they run to catch up to find out about the assets, the family, and the trust documents. In those instances where I'm brought in after the fact, I've found additional costs inevitable from having to fix situations that could have been more efficiently resolved while the grantor was still around. And so, factor in the cost of not helping the trustee get up to speed before the time of crisis. Or alternatively, invest some money in advance.

These are just the start of the costs that you'll find if you dig in around the cost of the wrong trustee. Hopefully you won't find them too late.

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How to Choose Your Trustee

Somebody's Better Than Nobody

Do your due diligence in due time

How to Choose Your Trustee

Somebody's Better Than Nobody

Do your due diligence in due time Do your due diligence in due time

So, you're getting your estate plan done – great! And your estate planner has presented you with several blanks for you to fill in: the names of your fiduciaries, the folks who step in on your behalf when you step out. And you thought the estate planner would do all the heavy lifting! Instead, you have to select the people who will serve as in these odd sounding positions: trustee, holder of power of attorney over property, over your health – and others!

Many people trip over these blank lines, and their planning stalls as a result. It's understandable: we want to name THE RIGHT PERSON. And finding that right person can take some time and effort – including really understanding the tasks that go along with each position and then finding the person who's skills and personality match.

Consider, however, that the right person for now may be the person who will FIND the right person, in the unlikely but horrible possibility that your time comes prematurely.

That's because not having documents can be worse than having the less than ideal person: you get stuck with the default estate plan, your family may be more likely to end up in court and worse.

Appointing a transitional fiduciary may be a prudent temporary fix.

Of course, do what you can to:

- Find out what these jobs entail.
- Inventory the needs for you, your family, your business, etc.
- Develop a profile for your ideal candidate.
- Vet the likely suspects: close friends & family, trusted advisors, pro's.
- Know that serving as fiduciary is a serious, time-consuming responsibility.

Hopefully, you'll have the opportunity to revisit your choice of fiduciary down the road. And if not, your family will know you did the best you could, and won't draw a blank.

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How to Choose Your Trustee

Who Should be In Charge of Your Trust?

How to Choose Your Trustee

Who Should Be In Charge of Your Trust?

Just as every will has an "executor," every trust has a "trustee." These people play similar roles. They are in charge of making sure that, when the time comes, your assets are being managed appropriately, your expenses are taken care of, and that your beneficiaries receive what you wish.

In attending to these technical tasks through your disability and after your death, trustees also help keep the peace in your family – or disrupt it. Many families break up because of a trustee's heavy-handedness. Many lawsuits involve trustees who have done everything "legal," but alienate the survivors.

The trustee's standard of service while performing these many technical and people management tasks is one of "fiduciary." This means simply that the trustee must take on the highest duty the law recognizes, a duty which involves loyalty and being free of legal conflicts. You should make sure your trustee is insured, so there's a fund to cover all the risks.

Who will make a good trustee for you depends on your situation: your family, your assets, and your estate plan as well as your preferences and values. One size does not fit all.

The candidates include both professional trustees and also non-expert family members. Professionals can bring the benefit of experience and technical knowledge. They can help with risk prevention, and they can provide the independence and impartiality that can minimize family disputes, and perhaps even enhance family harmony. They range in their ability and capacity to address the people management issues, including their willingness to provide other solutions if they're rubbing the family the wrong way, such as voluntary resignation. They range in prices and fee structures, including some who look to managing your investments.

Professionals divide into corporate trustees and individual professionals. Corporate trustees, such as trust companies and some banks, offer the advantage of continuity through a possibly immortal corporate life; though there are structures to support trustee continuity when the trustee is a human.

Individual trustees can include your trusted advisors as well as independent specialists. Use of your present advisor can have the advantage of him or her already knowing you and your family, but may sacrifice the check and balance they could otherwise provide. Independent specialists concentrate in the art and science of this sophisticated work.

How to Choose Your Trustee

Who Should Be In Charge of the Trust?

As an alternative to a professional, you can name a family member. Family members typically don't seek reimbursement, despite the significant amount of work that is usually involved. Their other benefit: no one knows and loves your family more than a family member. Vetting the family member to be a trustee involves three different levels of inquiry. First, does the family member have:

- The time
- The aptitude for the specific technical and people tasks as well as
- The integrity to handle the fiduciary responsibilities?
- Do you trust them to get the job done?

The next level of questions might include how they relate to the rest of the family. Does the rest of the family trust them and are they willing to work with the person? Understand also that over time the trust relationship will tend to overshadow the family connection: he'll be known more for what he does as family trustee, than as Uncle Murray.

Further, there are known risks in having any member of a blended family serve, and also with the older, "more successful" brother administering the trust for his younger, less financially adept sibling. Avoid these known pitfalls!

Finally, you – along with that family member and the family as a whole -- may have to work even harder to be prepared. Which raises the question: How prepared do you want to be? For the family and your trustee to figure out this complicated job at the peak of high emotions and personal loss increases the likelihood of financial loss and family trauma. That's an all too common end; sadly ironic given that the trust was created to help and not hurt the family!

The bottom line: consider what you need, what your options are, discuss it with your significant other, with your family, and with your advisors, and with your own trustee candidates – and keep the conversation going. You do enjoy the option to change your mind – at least for now.

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How to Choose Your Trustee

Selectng Your Trustee: Overview

How to Choose Your Trustee

Selecting Your Trustee: Overview

Who will serve as the trustee, whether now or after you can't?

A prudent approach to whom you choose may well consider your specific situation and preferences. And the **consideration of your situation** starts with what tasks do you need done and for what period of time. Compare, for example, a trust that requires simply disbursing one bank account to a single beneficiary to the very different situation of a trust which requires the management of real estate or of a business or of sophisticated investments which are to benefit multiple family members over several generations.

Especially where administration will continue for a period of time, you may be well advised to consider your preferences for three items: **First, what are your preferences for financial management?** Do you want your trustee to be your trust's investment adviser, or do prefer the check and balance of separating those functions into separate advisors? Do you have specific concerns or directions for investment or are you comfortable leaving it to the discretion of the advisor?

Second, what are your preferences for any ongoing involvement with your family? For one big example: who is best suited to manage the unique personalities and dynamics of your family? A family member, an institution or an individual professional?

Third, how much do you want to spend to make sure the tasks are done appropriately? Remember: expense is about both upfront fees as well as loss prevention. This approach may well take into account what's at risk based on the two general truisms which apply: that one gets what one pays for and also that free may cost quite a bit.

In the end, trustees are not one-size-fits-all. Choosing who is appropriate for you deserves care and consideration. After all, the selection of who will be administering your personal concerns after you're gone should give you peace of mind.

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How to Choose Your Trustee

Your Trustee Options

How to Choose Your Trustee

Your Trustee Options

Who will serve as the trustee, whether now or after you are unable to do so yourself?

The range of candidates for handling trust administration includes:

1) A family member: whose strong suit is built-in love and good intentions and low price, and downside may be being already a player in the family drama, inexperience, lack of time, and making costly mistakes;
2) An institution, such as a bank, investment firm or trust company. It's advantages can be corporate expertise and execution and, sometimes investment direction, and downside can be inflexibility, lack of responsiveness, lack of continuity of assigned personnel, and conflict of interest in managing financial wealth
3) An individual acting as a professional trustee. Their value can extend into relationships and flexibility, the human side of trust administration, in addition to his or her experience in taking care of the financial issues; downside can be lack of institutional support and continuity

There may also be the option of sharing the position, as co-trustee's, as well as delegating parts of the work.

A prudent approach to whom you choose may well consider your specific situation – what do you need, and for how long, and at what cost.

The temptation is to default to the family member because of his great love and low or no cost. The greater cost may arise from the novice family member having to make more demanding decisions than their place on the trustee learning curve prepares them. Mistakes as to your trust's finances and your family's well being may cost more than the professional's fee.

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How to Choose Your Trustee

Trustee Tasks and Attributes

How to Choose Your Trustee

Trustee Tasks and Attributes

The foundation tasks of trust administration relate to asset management, investment and distribution. Performing these tasks can include the skills and attributes of being: **loyal, meticulous, intelligent, responsive, trustworthy** and **prudent**.

Also consider how **responsive** and **available** do you want the trustee to be, especially for the calls from you, your beneficiaries and for deadline-specific tasks.

Building on the above foundation is the human work in helping the trust to empower your beneficiaries to lead better lives because of the various financial and legacy assets provided by you, the trust-maker. So while you are appointing a trustee for yourself, the trustee may also serve for your spouse, your children and other beneficiaries. Do the trustee's goals include the development of the independent judgment and prudence of your beneficiaries, or is he indifferent to producing an infantile trust baby?

The skills and attributes for making the relationship work can include being: an **educator, facilitator, and mentor – someone who is high in emotional and human intelligence**.

Another element may be **continuity** – who replaces the trustee and when. The trust itself can set out a succession plan, and sometimes permits someone - the trustee or the trust protector or the beneficiaries - to name a replacement. There is also the sub issue of corporate continuity versus personal continuity – that is, whether the actual living human being you meet is going to continue in that role, be replaced by a co-worker, whom you do not know, as opposed to by someone whom the beneficiaries have helped select & groom.

To what extent is the trustee committed to **excellence**? Is the individual willing to undergo periodic review? Are they open to stepping down if their performance is inadequate?

And then there is **cost**. Are you getting what you pay for? Can free cost a lot?

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How to Choose Your Trustee

Checklist of Trustee Attributes

How to Choose Your Trustee

Checklist of Trustee Attributes

Who will serve as the trustee, whether now or after you are unable to yourself?

Here is a broad checklist, adaptable to your specific situation:

[ ] Ability to navigate and mitigate inter-family issues;
[ ] Endorsement by your present adviser;
[ ] Available & responsive;
[ ] Trustworthy with Integrity;
[ ] Prudent & wise;
[ ] Teacher, mentor, educator;
[ ] Facilitator;
[ ] Affordable –both penny and pound wise;
[ ] Compatibility of values and mission;
[ ] Expertise in needed specific hard and soft skills;
[ ] Ability to facilitate and work with your other trusted advisers;
[ ] Ability to manage your real estate;
[ ] Ability to manage your closely held business;
[ ] Responsiveness and flexibility, including to bureaucratic constraints;
[ ] Depth of assistance in preparing for the transition of trustee from you to them;
[ ] Independence from the pull of various family members;
[ ] Independence from business conflicts;
[ ] Attention desired: flexible human versus institutional;
[ ] Continuity: both personnel and institutionally;
[ ] Insured and bonded.

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How to Choose Your Trustee

Vetting the Family Member

How to Choose Your Trustee

Vetting the Family Member

So, who will serve as the trustee, now or after you are unable to do so yourself?

Many people think that a beloved and trusted family member makes the best trustee. Let's call him Uncle Murray. Uncle Murray gets along with your children, loves them as family should. He is respectable and is doing well in his own business and family.

Why not Uncle Murray? Well, he could be perfect – not to mention: he's willing to serve for free! – on the other hand, he could be a disaster and add to the list of lawsuits against family trustees. Before drafting Uncle Murray, consider a few questions:

Beyond his love, is he the best person to weather the torrent of family dynamics? Is he high in emotional intelligence, an excellent mentor and educator and otherwise ready not be swallowed up by the family's emotional high seas and storms?

Beyond his love for your family, is he also:

Meticulous – to keep records & meet deadlines & comply with legal details
Responsive – to evolving financial & personal needs when the time demands
Prudent & Wise - the old-fashioned virtues haven't gone out of style

Can he be impartial and independent – from the pulls of his own self interest? His family? And, as needed, from unreasonable demands of your children as well?

Is he a learner, a reader and improver striving for greater excellence, or has he not opened a book since college?

Can he work well with your other trusted advisors, or does he have to use his own, or perhaps worse, tends to discount the advice of trained professionals?

How to Choose Your Trustee

Vetting the Family Member

Is he willing to seek out help – be it medical, legal, financial, relational, a successor to himself – if it could assist him in his role?

Is he proficient in "both and" – so he can attend to both the details and the big picture, both the letter of your trust and its spirit, both the demands of the future and the present?

Does he have the time – even if he's dedicated to the path of becoming an excellent trustee, does he really have the time to devote to your kids when they need it?

Does he have any health issues or other distractions?

To err is human: is Uncle Murray insured and bonded – or does he have sufficient personal resources to make good in the event of snafu?

If the answers to the above are all "yes", Murray is your man. Otherwise, consider a professional trustee. Your kids as well as Uncle Murray may be eternally grateful.

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How to Choose Your Trustee

The "both and" Trustee

How to Choose Your Trustee

The “both and” Trustee

So, who will serve as the trustee, now or after you are unable to do so yourself?

One of the foundational trustee attributes, though articulated only more recently, is the ability of the trustee to think and act in the realm of “both and”.

This attribute is also identified as:
- the ability to “hold opposites simultaneously”,
- the skill of “managing polarities” or “balancing paradox” and
- the third way.

It comes down to the same thing: The trustee who has learned “both and” skills is in a more powerful position to appreciate the reality of the many moving parts of your world and to do what you want.

Example one: Would you want a trustee to consider both the letter and the spirit of your wishes in exercising his discretion? As opposed to, say, a trustee who upholds the letter of your trust agreement even if that violates the spirit of what you intended?

Example two: What factors do you want your trustee to consider in making a distribution to your loved one? When you directed the trustee to consider their “welfare”, would you like them to consider both their long as well as short-term welfare? To consider both their financial and personal welfare?

Example three: Do you want the trustee to consider individual distributions with OR without consideration of its emotional and personal effect on the other beneficiaries?

Example four: Do you want the trustee to be sensitive to the different roles that your beneficiaries have in life, business and relation to each other?

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How to Choose Your Trustee

Revisiting Your Choice of Trustee

How to Choose Your Trustee

Revisiting Your Choice of Trustee

So, not too long ago you inserted the names of a few good people in your trust document to fill the role of fiduciary, such as trustee, power of attorney holder, maybe even as trust protector.

It was good to cover those gaps on the unlikely but horrifying possibility of your premature need.

And now you can breathe – and perhaps take the time for next steps. Next steps may be helping to prepare the ones you named to become more knowledgeable about what they're getting into and the skills they'll need to be successful at it. Maybe they need to have some conversations with you and your family.

Next steps may also include your looking more closely into what you really need and want. Remember, it's not just about your family, the trustee is also on the team to take care of you if you're incapacitated!

In vetting out candidates, consider the trustee's approach to the relationship with your family. The tasks of the financial fiduciary focus around things and money. Yet, the impact is personal on the family, because that's who they're spending for!

Ready to go? Resources include your estate planning attorney and other trusted advisors.

The person who serves as your fiduciary makes a difference – and it's your choice!

Dan Felix

The Professional Trustee

Daniel P. Felix is an attorney who serves as an independent, non-corporate trustee. Dan fixes broken trusts by stepping in as an experienced and impartial trustee. And for those who want to engage in the ounce of prevention, Dan serves as successor trustee as well as Executor and Power of Attorney.

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