

FACTORS TO CONSIDER WHEN SELECTING A SUCCESSOR TRUSTEE

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One of the most important decisions you will make in executing a successful estate plan is the selection of a successor trustee. The successor trustee is the person or institution that is legally obliged to carry out your wishes when you are no longer able to do so. The responsibilities are often sensitive, complex and time-consuming.

Many people automatically create a short list of candidates, from family members to trusted friends. This is understandable, if not always the best course of action. This article is intended to help guide you in making the optimal selection for your circumstances.

Duties of the Successor Trustee

The successor trustee is responsible for addressing all legal, tax and family matters to ensure that your trust is managed according to your wishes (the trust), and the State Probate Code.

- Review and understand the terms of the trust
- Understand and take possession of the trust assets including all personal valuables, investment portfolios, real estate holdings, leases and mortgages, business interests, insurance policies, retirement plans, and
- Coordinate and meet with family members and other beneficiaries to determine initial budgetary needs and cash requirements
- Coordinate and understand appraisals and asset valuation techniques
- Develop the initial trust administration action plan
- Develop an investment plan
- Implement a tax plan to help minimize federal and state income and estate taxes
- Coordinate with legal counsel in understanding and carrying out all legal matters
- Prepare detailed accountings

Selecting a Successor Trustee

It is prudent to carefully evaluate your options before choosing a successor trustee. In lieu of appointing a family member or friend, you should consider whether a professional may be a better option, whether it is an attorney, a CPA, an institutional trust department, or a licensed professional fiduciary. If the person chosen is unprepared or unqualified for the job, they may become overwhelmed by the obligation. Consider the following items when you select a successor trustee:

1. Is the individual trustworthy, ethical and able to act independently in carrying out your wishes in a manner that reflects your values and preferences? The trustee has a fiduciary responsibility to:
 - Make objective decisions that reflect the trustor's wishes
 - Ensure the wishes of the trustor with respect to family legacy

- Act with the greatest degree of care and diligence
 - Represent only the interests of the trustor
 - Avoid conflicts of interest
 - Maintain the confidential nature of the trustor's affairs
 - Protect the trustor's rights in any manner necessary
2. Does the successor trustee have experience in handling finances? A trustee is responsible for:
- Holding legal title to trust assets
 - Managing all trust assets
 - Collection of all income to the trust
 - Proper handling of all securities and real estate transactions
3. Does the individual have good accounting and bookkeeping skills? A trustee is required to:
- Maintain accurate books and records for all income, principal and expenses
 - Prepare periodical accountings to the beneficiaries and in some cases to the court
 - Distribute income and principal, as authorized by the trust document
 - Have prepared and filed the federal and state trust income tax returns
 - Terminate the trust as required by the terms of the trust and properly distribute the assets
4. Is the individual compatible with all beneficiaries of the trust and other members of the family? The trustee is responsible for:
- Assuming legal responsibility and liability to see that all transactions are appropriate and in the best interest of all beneficiaries.
 - Applying neutral and independent judgment
 - Exercising discretion in the absence of any conflict of interest
5. Is the individual able to devote sufficient time to the management of the trust, and not be burdened by other obligations? The trustee may need to:
- Act on behalf of the trustor in the event of failing health or incapacity
 - Select an alternate trustee if the successor trustee is unable to act
6. When considering naming a family member:
- A family member or friend may not know who to turn to, where to begin, how to do an accounting, or be familiar with the rules of the State Probate Code.
 - Family members rarely have experience in managing and settling estates
 - The trustor may not have any children or close relatives
 - This may be the only case the family member has ever acted as a trustee
 - An out-of-state family member may not be familiar with all the professionals the trustor already utilizes such as caregivers, investor advisor, realtor, accountant, lawyer, doctor etc.
 - A family member may not have a network of professionals on which to call
 - A family member may have conflicts of interest or be at odds with other family members

Ms. Thornton is a Certified Public Accountant and a Licensed California Professional Fiduciary. Her professional history includes: CPA for Small Business Audit and Tax Division of the Los Angeles office of Arthur Andersen & Co., CFO for a \$40 Million venture capital fund, and over 20 years managing large legal firms. Combining her years of business management experience with her personal experience as trustee for a family trust, Ms. Thornton founded Foster Thornton LLC to provide objective, personalized, executive-level services to individuals, families and small businesses during life's transitions, and especially to protect the assets, interests and dignity of those involved.