

The right way to select a professional trustee and the role of trust advisors and trust protectors

A senior client was considering naming her children as successor trustee of her trust and asked us if that was a good option. This trustee would be responsible for decisions regarding the senior's finances upon her incapacity and passing. The decision is so critical that, when you start the conversation of selecting a trustee, discussing the options with your attorney is a good first step.

When we investigated our client's situation, we found that one child had filed for bankruptcy and the other was bipolar, a challenge that, for the bipolar child, resulted in compulsive spending, the inability to hold down a job and the need for Social Security Disability benefits.

We discussed naming an institution as trustee and naming a trust protector and a trust advisor.

The resolution was that an institution, rather than an individual, was a better choice as a trustee for the senior citizen client. Even if the client had an adult child with responsible finances as a trustee option, eventually when the siblings grow older, there could be conflicts. Also, the selected institution would be there for a very long time, while there can always be concerns about the life expectancy of an individual trustee. With an institution, there is less chance of a problem, such as the trust being misused. The trust company has a team that specializes in administering trusts with the obligation to report and respect the wishes of its creator. Of course, the trust company will take a salary but so can an individual trustee.

However, if the trust company no longer performs the best services as it used to or does not provide what it promised to do when serving a trustee, we want to have a system of replacement. So when clients select a trust company, we then discuss if they want to have a trust protector. The trust protector's primary role is to fire and replace the trustee if the trust protector determines that the trustee does not provide satisfactory services. The trust protector's role may be extended to other duties such as consenting to trust amendments, adjusting the trust language and tax legislation changes. The resolution was to appoint the nephew, who is an attorney, as trust protector.

The client may also want to appoint a trust advisor for the role of guiding the trustee for investments. Often, when a client appoints a family member as trustee who may not be well versed in investments, the trust advisor can be handling the investments while the trustee will handle all the administrative decisions. Financial advisors/planners cannot serve as trustees, but some can serve as trust advisors. The resolution in our case was to keep the final advisor and request that the trustee keep the investments with the financial advisor, but without officially naming the financial advisor as trust advisor.

If you do prefer an individual as a trustee, that person should understand your finances and investments and understand the obligations to 1) report to the beneficiary and 2) follow the instructions in the trust document. At the very least, the named trustee should be told to seek legal advice when starting to act as a trustee to understand their obligations and duties. We offer a family introductory meeting to get to know future trustees and beneficiaries so that they know that when time comes, we are here to help implement the wishes of the client. It gives peace of mind to everyone.