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WE OFFER *Peace of Mind*

WEALTH MANAGEMENT

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How to solve the trusteeship puzzle

More and more affluent families are turning to trust-based solutions for family wealth and inheritance management. However, a trust plan is only as good as its trustee. Have you been asked to serve as trustee, perhaps for a parent's trust? Do you plan to ask your child to be your trustee? Although such a course of action may be a natural impulse, it may not be the best approach.

A family member has the advantage of personal understanding of the trust beneficiaries, and that is no small thing. Unfortunately, family members usually lack experience and ability in several other crucial areas.

The case for using a corporate fiduciary

Here are some of the important, practical considerations for choosing the best fiduciary to supervise the implementation of an estate plan, beginning with this job description:

1. Correspond with disgruntled beneficiaries;

2. Manage family drama;

3. Provide accounting to disgruntled beneficiaries;

4. Invest assets (don't lose money or you will hear from disgruntled beneficiaries); and

5. Receive phone calls from disgruntled beneficiaries inquiring when they will receive their inheritance (but remember, it's not about the money).

Not every estate settlement is so contentious, but a wise man once suggested that nothing tests the bonds of siblings like sharing an inheritance.

Resist the first impulse

Very often someone's first thought in selecting an executor or trustee is that either a spouse or adult child can handle the job. It's vital to probe the family dynamics before moving ahead with such a decision. Sample questions might include:

- Do your children communicate regularly?
- How would one child react to his or her sibling receiving compensation for managing and distributing assets?
- Is any child likely to demand an inheritance immediately?

Most people need to be brought up to speed on what fiduciary duties are, how much time and expertise they may require, and the value of having an impartial third party involved in decisions that may not always be popular.

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Individual fiduciaries

The benefit of naming an individual to serve as trustee is chiefly familiarity with the family values, family members, and family dynamics. There is a perception that an individual will be less costly or may even waive fees for serving as trustee. Unfortunately, most individuals will need to hire experienced professionals to help in the discharge of their fiduciary duties, so the total cost of administration may actually be higher with an individual in charge.

Corporate fiduciaries

Corporate fiduciaries (such as us) bring experience, expertise, professionalism, and objectivity to the jobs of trusteeship and estate settlement. Continuity of service is another advantage. Although there may be employee turnover, and the banking industry has experienced a series of acquisitions and mergers, a trust division doesn't take vacations, get sick, or move out of state. Corporate fiduciaries are regulated and bonded.

Sample questions that should be asked when interviewing a prospective trustee include:

- What services will be performed?
- What services will *not* be performed?
- Are distribution requests handled by an individual, or by a committee?
- How long does it usually take to decide on a request for a discretionary distribution?
- At what asset level would the trustee terminate the trust and distribute the assets outright?
- Will any specific language need to be included in the trust document?
- Has the organization performed capably in both bull and bear markets?
- What fees will be charged? Do the fees include investment management costs, or will they be an additional expense?
- Will recordkeeping be provided at no additional cost?
- If conflicts develop between the beneficiaries, how will they be resolved? Will all the beneficiaries respect the decisions of the trustee?

For those who can't make up their minds, it may be possible to have multiple fiduciaries—a sort of "best of both worlds." However, someone needs to be in charge, and that should be made plain in the estate plan. Don't overlook the importance of planning for the selection of a successor trustee, perhaps through the appointment of a trust protector.

The choice is yours

We invite you to learn more about our capabilities as trustee for your family. You may designate us to serve as sole trustee, or as cotrustee along with family members. Call us to discuss the possibilities.

Amateur trustees—watch out for these five traps

There are many ways for a trustee to fail to meet the obligations of sound trust management.

Faulty records. There's much more to trust accounting than balancing checking accounts and keeping track of portfolio statements. Income, asset values, and distributions must be reported to the beneficiaries on a regular basis. "Beneficiaries" refers not only to those who receive current trust income, but also to those who will receive the assets when the trust terminates. We suggest a team approach, including a trust attorney, a tax professional and an investment manager. *Note: We are pleased to serve as agent for a trustee.*

Failure to diversify. Laws governing the prudent investment of trust assets vary from state to state. In general, concentration of assets should be avoided. According to many experts, a red flag should go up when any one holding accounts for more than 10% of a trust. Problems with that holding could lead to lawsuits by disgruntled beneficiaries against the trustee. On the other hand, the person who creates a trust may override the diversification requirements. For example, shares in a family business could be exempted from the diversification mandate.

Biased distributions. One of the most important benefits of trust-based wealth management is delivery of financial resources to multiple generations, today and in the future. The trouble is finding the appropriate balance between current and future interests is not easy. For example, trustees need to document reasons for allowing or denying invasion of a trust for particular beneficiaries. What's more, the investment strategy chosen for a trust may inadvertently favor some beneficiaries over others. When a family member is a trustee, the issue of bias can become quite emotional.

Expecting a payday. Trustees should be paid, but beneficiaries don't always see it that way. When the trustee is a family member with an interest in the trust, the payment issues can be especially sensitive. Compensation matters should be settled before the trustee assumes the duties of trust management.

False sense of safety. Some amateur trustees assume that, given their relationships to the family and trust beneficiaries, their work won't be scrutinized closely. Not so. The role of trustee has potentially unlimited liability. Trustees may be called to account for their investment choices, as well as for the quality of their fiduciary judgments about trust distributions.

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Timing is Important for QCDs

Dear Trust Officer—

I took my Required Minimum Distribution (RMD) from my IRA earlier this year. Now I have learned about Qualified Charitable Distributions (QCDs) from IRAs, which will satisfy the RMD mandate but won't be included in my taxable income. Can I do a QCD now to offset my taxable RMD?

—Belated philanthropist

Dear Belated—

Sorry, that won't work. Although you can do a QCD after your Required Minimum Distribution, it will be an additional distribution; it won't affect the taxation of what you've already received from your IRA. As a general rule, you should do your QCD transfers early in the tax year, then take the balance of your Required Minimum Distribution later, as you require the funds. That approach maximizes tax deferral in your IRA.

Qualified Charitable Distributions from IRAs have been permitted since 2006. Taxpayers who are older than 70½ have been granted this tax-saving strategy. The annual limit for QCDs was fixed at $100,000, but the SECURE Act 2.0 added inflation adjustments to it. For the 2024 tax year, the limit is $105,000. Few retirees are likely to bump into that limit while satisfying their RMDs with a QCD. An 80-year-old retiree would need an IRA worth $2,121,000 to have an RMD of $105,000.

Other points to keep in mind about Qualified Charitable Distributions:

- The transfer must be directly from the IRA to the qualified charity. Transfers to donor-advised funds and private foundations are not eligible.
- The QCD must be completed within the calendar year—that is, by December 31. You cannot make a QCD for a prior tax year.
- Roth IRAs are generally not eligible for QCDs because Roth IRA distributions are normally already free of income tax.
- Itemizing deductions is not needed for the QCD; it is fully available for those who take the standard deduction. In fact, this is one of its benefits.
- No benefit may be received from the charity in exchange for the QCD.
- Married couples may each have a $105,000 QCD, but only if they each have their own IRA.
- The restriction that prevented taxpayers who are 70½ or older from making an IRA contribution has been eliminated (but earned income such as wages is still required). A taxpayer who takes a deduction for an IRA contribution will owe an income tax on a QCD to the extent of that deduction. In other words, if you are still contributing to an IRA, a QCD may not be right for you.
- QCDs may be done from inherited IRAs.
- QCDs are not yet permitted from employer retirement plans, such as 401(k) or 403(b) plans. However, it is possible to arrange for a tax-free direct transfer from an employer plan to an IRA
rollover, and then to do the QCD from the IRA.

Managing your retirement income and resources in a tax-efficient manner is not a simple undertaking. Typically, a holding in an IRA will need to be sold to create the cash for an RMD. When an asset is sold to raise the cash for a distribution, that may have an effect on the asset allocation and the risk profile of the IRA. This is an area in which our experience and expertise may provide you with an important benefit. We would be pleased to be of service. ☐

The case of the lost will

Having a will is an important step for every responsible person who owns property. Making certain that the will is available after one's death is the next important step, because a will won't do much good if it can't be found. If the signed copy of a will cannot be located, it may be presumed that it was revoked by being destroyed. However, the presumption can be overcome, as shown in this recent case.

As Patricia Lynch-Carbaugh aged, she had trouble keeping her household. She was estranged from her two sons. Patricia had a will executed by attorney Donna Wilson in 2018 and enrolled in a "maintenance program" that allowed for updating her estate planning documents at no additional cost. Patricia updated those plans three times, the last time being in July 2020. She paid for the maintenance program through August 2021, but Patricia died in March 2021.

That final update to the will included a specific disinheritance of the sons "for reasons personal to [Lynch-Carbaugh] and known to them." After Patricia died, her executor was unable to locate the final will in the mess that her house had become. There was evidence of rodent infestation, and important papers were littered all over the home. The disarray was documented with photographic evidence. The executor produced a copy of the last will for probate.

The estranged sons objected, pointing out the presumption that, when a will cannot be located, it has been revoked by the testator through destruction. True, ruled the court, but the presumption may be overcome by clear and convincing evidence. Here, the condition of the house provided an explanation for the failure to locate the document. Given her subscription to the maintenance program for her estate planning documents, it was unlikely that Patricia would have revoked her will without consulting the attorney she had prepaid for such services. There was no such consultation, nor any other indication from others that Patricia had entertained second thoughts about the July 2020 draft of the will.

The sons were evidently hoping that if the will were tossed, they would inherit Patricia's estate by intestacy. But the court observed that "the explicit exclusions of her sons in her will indicated a clear desire that her estate not pass by intestacy; indeed, her lawyer testified that she was consistent that she wanted charities to inherit her estate." Taken as a whole, the evidence overcame the presumption, and the sons lost.

This story seems to have a happy ending, given that the testator's wishes were apparently followed. The better course is to leave nothing to chance; to store the will in a safe place, and to tell the executor exactly where to find it (and the keys or combination to the lockbox, as appropriate) when the time comes to implement the will.

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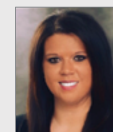

Janine Otis
Trust Officer

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