



Choosing a Trustee: A Key Decision for Your Legacy

with Felicia Chang, *Director of Wealth Strategy*



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When you think about your legacy, you may envision the people you love, the wealth you've built over your lifetime, and your long-term impact on successive generations.

We caught up with our Director of Wealth Strategy, **Felicia Chang**, to ask about a critical part of legacy design: choosing a trustee. Felicia has advised many ultra-high-net-worth families about this pivotal decision; we've asked her to share her insights and ideas.

Felicia, set the stage for us. What are the primary responsibilities of a trustee?

A trustee is tasked with carrying out the grantor's wishes and directions as stated in the underlying trust documents. These responsibilities typically encompass three main areas: (1) administering the trust; (2) overseeing the trust's investments; and (3) managing distributions from the trust.

On a practical level, these duties may include managing trust property to make sure they are productive, keeping accurate records, filing tax returns and paying taxes on time, furnishing information to beneficiaries, accountants, attorneys, and other professional advisors, discussing investment decisions with the trust's financial advisors and communicating regularly with the parties named in the trust.

Typically, a trustee performs these activities after a grantor's death. However, if a grantor is incapacitated, a trustee can assume responsibilities before a person's death.

It's important to note that serving as a trustee is potentially a long-term commitment. A trustee is responsible for carrying out the wishes of a grantor until the trust's purposes have been met and its assets have been completely distributed. Depending on the type of trust and its intended duration, a trustee may serve for years and sometimes for decades or longer. For complex trusts, the role of trustee can be akin to a full-time job, particularly in the first six to 12 months of a trust's administration.

It sounds like there's more to this decision than people might anticipate. Have you encountered any common misconceptions?

Yes. With the best of intentions, some people name their best friend as trustee, or their parents or siblings. Often, the person named as trustee will greet the request as an honor.

However, the responsibilities and legal risks inherent in being a trustee are significant. As a result, the decision requires more deliberation than simply conferring special recognition on a treasured friend or trusted family member.

Tell us more. What are some of the factors to weigh?

I often counsel people, "Don't simply be guided by someone's intellect." Of course, you want to select a trustee whom you esteem and trust to carry out your wishes. But there are a host of practical considerations, as well.

The first of these factors is the **nature of your assets**. Whether your balance sheet consists of an operating business, commercial or residential real estate, or securities,

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it would be prudent to select a trustee who has familiarity and substantive knowledge of those types of assets.

A second factor is **availability**. You might be tempted to select a sibling or trusted friend as trustee. But if that person has a demanding career or family commitments, or lives far away, you might be straddling that person with a sizable burden. Serving as trustee can be very time-intensive: locating and organizing financial and tax records, meeting with the attorney, accountant, and investment advisor, marshalling assets, obtaining appraisals for trust assets, settling the estate or visiting a property, and making distributions to the beneficiaries as provided under the terms of the trust. All of these activities require considerable focus and time.

A third factor is **people skills**. Your trustee will be tasked with making complex decisions and serving as the representative of your wishes as stated in the trust. The role can involve saying “no” a lot—sometimes because a beneficiary’s request is not consistent with your wishes or simply because it is not allowed by the trust. A trustee needs to be empathetic, diplomatic, and disciplined, with the fortitude to uphold the provisions of the trust.

Finally, consider the **relationship** between the designated trustee and beneficiaries. Remember, the trustee will be the person making the distribution decisions, e.g., how much and when a beneficiary receives funds from the trust. In other words, the trustee is the person to whom the beneficiary asks for money from the trust. If you name a family member as trustee, consider the resulting power dynamics of that family relationship. Putting one family member in the position to repeatedly deny distribution requests from a beneficiary may not only harm that relationship but may impact the greater family harmony (and make for a very awkward Thanksgiving).

My intent is not to dissuade anyone from naming family members as trustees, because often that remains the best and most appropriate option. But the process of naming trustees should include some thoughtful considerations.

What if I don't want to burden a family member or friend? What are my other options?

In terms of individual trustees, you might consider your CPA or attorney—someone who knows you well and who may already have a relationship with your beneficiaries.

Alternatively, you could engage a private fiduciary—an individual who provides a fee-based service as a professional trustee.

Or you could look to a corporate trustee—typically, a bank or financial institution with a trust department, specially designated to administer client trusts.

Importantly, the selection of trustee is not confined to a single option. You can name co-trustees—a private fiduciary to work

Types of Trustees

Individual Trustee: Typically, a family member, trusted friend, attorney, or CPA. Someone who does not serve as a trustee professionally but has a fiduciary duty to carry out the wishes of the grantor, as directed in the trust instrument.

Professional Fiduciary: An individual who serves as a trustee in his or her profession. Often, your attorney can recommend a professional fiduciary.

Corporate Trustee: Typically, a bank or trust company that administers a trust.

alongside your individual trustee, for example. Or a corporate trustee who works in tandem with your individual trustee.

These dual structures can potentially provide your beneficiaries with the best of both worlds—the familiarity of a trusted friend or family member, bolstered by the resources and professional oversight of an entity or professional who specializes in trust administration.

How are the fees different associated with each option?

Professional and corporate fiduciaries will usually have a published fee schedule, typically based on the value of the trust’s assets. If there are co-trustees, the fees will be divided between the trustees, usually as they decide among themselves.

There is a broader range of fees generally charged by an individual trustee. Individual trustees may charge nothing, an hourly rate or also a percentage based on the value of the trust’s assets. I always recommend an individual trustee seek legal counsel to determine the appropriate amount of fees to charge.

You might be tempted to select a friend or family member as trustee as the most cost-effective option for your heirs. However, cost is just one factor to consider.

Ultimately, you don't want to be “penny wise and pound foolish.” If you designate someone who is not equipped for the challenges of acting as trustee—in experience, temperament, or financial savvy—you may be jeopardizing the success of your trust and the welfare of your beneficiaries.

How are investment decisions made on behalf of a trust?

The trust’s investment portfolio is held with an investment adviser, such as Westmount. The investment adviser is tasked with managing the assets in keeping with the trust’s Investment Policy Statement. As a fiduciary, a trustee must manage the assets as a “prudent investor,” using reasonable skill, care, and caution in making investment decisions and

acting in the best interest of the beneficiaries. The trustee also owes a duty of impartiality to different classes of beneficiaries and cannot make investment decisions that favor one class of beneficiaries over another class of beneficiaries. Part of a trustee's role, therefore, is to review investment performance and speak regularly with an investment adviser to stay abreast of market conditions and returns.

You mentioned that there are legal risks in serving as a trustee. What do they entail?

A trustee is responsible for the timely filing of tax returns on behalf of the trust and remitting the correct amount of tax. If a trustee is negligent, either because the tax return was not filed or an incorrect amount of tax was paid, the trustee can be personally liable for the underpayment, including associated interest and penalties. This risk can be mitigated through engaging attorneys and accountants to prepare the tax returns and advising on other aspects of trust administration. In addition, individual trustees might consider purchasing Trustee Errors and Omissions insurance, which offer coverage to protect a trustee from lawsuits related to the handling and management of trusts. Without this coverage, a trustee may have to pay out of pocket to defend themselves in a lawsuit and cover other legal costs, which can be financially devastating.

Do you have any final guidance for selecting a trustee?

Whether we like to admit it or not, all families have their unique dynamics and sometimes communication challenges. It is important to recognize that the family dynamics you've observed during your lifetime are likely to continue over the life of the trust. If your children have a harmonious relationship, they may be able to function well as co-trustees. If, however, their relationship has been contentious, that acrimony may only intensify. In fact, challenged relationships often become more strained after the parents – often the peacekeepers- have passed away. It may be wise, in that instance, to select a neutral trustee who will not be perceived by the beneficiaries as “taking sides.”

I also suggest that you periodically review your trust to ensure that the named trustees are still the appropriate persons you trust to carry out your wishes and directions. Over time, relationships change, and people move or pass away. Ideally, you would name a trustee with significant integrity and experience, but with projected longevity to outlive you.

Finally, I recommend naming at least two, but preferably three, successor trustees, who can serve if the original trustee dies or is incapacitated. In that way, you minimize the chance of a vacancy in the office of trustee, which may require court intervention. Avoiding disruptions in any transition will increase the likelihood that your wishes will continue to be carried out as you envisioned, cementing your legacy and honoring your intentions.

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