8 Reasons to Consider a Corporate Trustee

by Matthew Blattmachr, CFP®

One of the many decisions that clients are faced with when creating a trust is "who will be the trustee(s) and should I use an individual or an institution?" This seemingly simple decision is one of the most important when establishing a trust.

While the trust outlines your wishes, wants, directions, and desires, you must be confident that the person or entity tasked with carrying out these decisions will act in the desired manner. Many individuals do not fully understand the fiduciary duty that is carried with being a trustee nor do they wish to dedicate the considerable personal time required to properly manage the trust affairs. Inadequate knowledge or failure to attend to trust matters could result in harm to your beneficiaries, expensive lawsuits, and, ultimately, a failure to achieve your intended results.

In many instances, a professional corporate trustee can add considerable value to your trust goals. Here are some of the many reasons you should consider a professional institutional trustee:

1. Individual trustees may find it difficult to say no. An individual trustee will likely have a long and close history with the trust beneficiaries. While this can add a helpful element to the relationship, it can also sometimes cause critical issues. Individual trustees may often find it difficult to say no when necessary, such as when required by the trust document.

They might find it hard to balance the desires of conflicting interests, such as telling a beneficiary that she can't have a distribution to invest in a friend's business, because the trust was set up to fund her education. Individual trustees are not trained to have these difficult conversations and are put under enormous pressure to say "yes" when the answer should be "no".

2. Lack of Time and Expertise. A corporate trustee dedicates its full attention to fiduciary services. Whereas individual trustees typically do not have the time or expertise required to properly administer a trust.

Think about the time it takes to manage your own finances. Could you take on the administration of a multi-million dollar trust with battling beneficiaries as an unpaid hobby for the foreseeable future? Each of us have other duties and concerns to which we must attend and it can be difficult to prioritize trust matters when it is not your full-time profession.

3. Cost. Corporate trustees can actually reduce the overall trust administration costs. A corporate trustee will have a team of qualified people to properly administer the trust. Each member of the team will have specialized knowledge ranging from legal to investments and insurance to counseling. An individual trustee will likely have to hire professionals (attorneys, accountants, investment advisors, and other agents) to do many of the tasks that a corporate trustee is already doing for other clients. Purchasing these services on a piecemeal basis can result in higher fees.

4. Expertise Required. A trustee should have an understanding of both trust law, federal and state trust tax rules as well as many other areas of fiduciary standards of care. These rules are often voluminous and not necessarily logical. Without this knowledge and awareness, a trustee could cause unintentional harm to the trust and its beneficiaries, such as causing it to lose beneficial tax treatment status (as in the case of a special needs trust) by failing to meet tax law requirements. Even if an individual understands and is aware of today's legal requirements, as we all know, the rules are constantly changing. These changes require continuing education to remain aware of the rules and requirements.

5. Individual Trustees are not subject to any regulatory or audit oversight. In many ways, they are not accountable to anyone. A corporate trustee is periodically examined and reviewed by independent auditors and either state or federal banking regulators. Additionally, as professionals, they carry appropriate liability insurance and bonds.

Individual trustees typically do not realize the standard of care and potential liability that comes with acting as a fiduciary, thus increasing the likelihood that they will breach their fiduciary duty. Additionally, if they are unaware of the seriousness of their position they will likely not purchase liability insurance, which can be expensive. If an unfortunate situation arose where trust beneficiaries were to sue the individual trustee, it is probable that the individual trustee would not have proper insurance. In this situation, any resulting judgment would need to be satisfied from the individual trustee's personal assets. If the trustee could not pay the damages, there might not be a way to satisfy the judgment.

6. A fiduciary position carries with it many requirements including the duty of loyalty and the duty to report to beneficiaries. Individual trustees typically don't have the tools necessary to properly account to beneficiaries. They may not understand that certain trusts must account separately for the funds available to income beneficiaries and those funds available to the remainder beneficiaries. This could result in unequal shares or distribution of assets.

7. Longevity. There is a good chance that trusts are created when performing estate planning and when one is thinking about how to provide for loved ones upon their passing. This planning requires one to consider their own mortality. While it is not an enjoyable task, when considering one's own mortality, it might be wise to consider the mortality of those around them, particularly trusted people that would be considered for appointment as individual trustees.

During their appointment, individual trustees could become disabled and will, unfortunately, eventually be unable to serve due to age, health, or death. Who will continue the trust administration upon their passing? There is seldom adequate continuity in the administration of the ongoing trust when this event occurs which can leaves gaps in trust performance. A corporate trust company does not depend on any one person's health or longevity to continue with trust administration.

8. Best of Both Worlds. Individual trustees can add great value to a trust relationship, such as their intimate knowledge of the beneficiaries and the family. With enough time, a corporate trustee can accomplish the same and can offer many additional advantages. A final point to consider is getting the "best of both worlds" by using a trustee committee. This committee can consist of an individual, or multiple individuals, and a corporate trustee. This committee will be in charge of all trust administration matters and can benefit from the knowledge of all those involved, while enjoying the benefits of longevity and cost savings.

Talk to a Trust Expert

Have a question about an advanced planning technique? Ready to talk to a Trust Officer? Our seasoned experts are just a phone call away.

(888) 544-6775

expert@peaktrust.com