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How to choose your trustee

Traditionally, the hot button for estate planning has been the reduction of federal and state death taxes. That tradition has been over for some time, given the increases in the amounts exempt from federal estate tax over the last decade. The 2021 federal exemption stands at \$11.7 million, and married couples may double that with routine estate planning. (Note, however, that under current law the exemption falls roughly in half in 2026, unless Congress acts sooner.)

Freedom from estate and inheritance taxation doesn't mean estate planning is no longer needed, it just means that planners will need to find a new hot button to motivate affluent people to take action. The larger exemption also does not mean that trusts won't be useful in estate planning. A family trust established to provide professional asset management coupled with fiduciary supervision of trust distributions will, for many families, be as valuable today as it was when it did double duty, capturing the value of the federal estate tax exemption as well.

The advantages that trusts offer in sound wealth man-

agement may be squandered if one critical choice is not taken seriously. The decision that all too often gets short shrift is the choice of trustee.

Basic questions

The first step in trustee selection is to analyze the trust for which the trustee will take responsibility. The prospective trustee should ask these questions:

- What are the purposes of the trust?
- Who will be the beneficiaries of the trust?
- What are the dispositive provisions of the trust?
- How long will the trust last?
- What kinds of assets will be held in the trust?
- How large will the trust be?

There are some circumstances in which a trusted individual, even a family member, may be appropriate as trustee. For example, managing a shorter duration trust that holds uncomplicated assets may not be too difficult



If you've decided against a corporate fiduciary

If you've decided to name an individual as your executor or trustee, reflect upon these questions:

- Will the person also be your beneficiary?
- Do you owe this person money?
- Does this person owe you money?
- Does the person have an unusual need for money?
- Can your beneficiaries trust the person?
- Will the person work well with others?
- Will the person have enough free time to handle the job?

As you can see, there is a potential for conflict of interest and other difficulties when one turns to a friend or family member, even one with excellent credentials.

How to choose . . . continued

for someone to take on as an extra job. Larger trusts with longer expected durations will benefit from employing a corporate fiduciary, such as us. This is doubly true for trusts that have competing beneficiaries, whose interests may at times clash, because fiduciary judgment will come into play.

Qualifications

Next, consider the specific characteristics that good trustees should have.

Experience and expertise. The more that a trustee can do, the less need there will be to engage outside experts.

Free of conflict of interest. In general, the trustee should not be a beneficiary, nor should the trustee have an economic stake in the trust assets.

Permanence. The age and health of a proposed trustee must be taken into consideration, unless one is choosing a corporate fiduciary.

Location. Close geographic proximity to the beneficiaries is not required, but it can be helpful in trust administration.

Payment. Trust administration is not expensive, as investment services go, but neither is it free. The trustee should expect to be compensated.

Accountability. Should there be trust maladministration of some sort, can the trust and the beneficiaries be made whole? The answer is "yes" with a corporate fiduciary, but with an individual trustee, in many cases, the answer could be "no."

May we tell you more?

We are well qualified for all the tasks of trusteeship. It is a job that we do every day, with our full attention. We are staffed for it, experienced, and always ready to serve.

When you are ready to take the serious step of including a trust in your long-term financial and wealth management plans, please call upon us to learn more about how we may be of service to you. We look forward to answering all of your questions. □

Core advantages that we bring to the job of trusteeship

There are many important, built-in benefits to choosing a corporate fiduciary, such as us, as your trustee. For example:

- We treat estate and trust administration as a full-time job.
- We have facilities and systems for asset management that individuals lack.
- Trust funds in our care are doubly protected, both by internal audits and regulatory oversight by state or federal officials.
- We have an unlimited life, while an individual may die, become incompetent, or just disappear.
- We bring long experience and group judgment to the job of investment management.
- We will treat beneficiaries impartially, and most beneficiaries will appreciate that.
- We can withstand pressure when a wayward beneficiary asks for more from a trust than was intended.

Smaller RMDs in 2022

Eventually, the tax preferences for retirements savings come to an end. It happens slowly, over the end of one's life, through periodic *required minimum distributions* (RMDs) geared to one's life expectancy.

Two big changes have occurred for RMDs recently. The more important one is that they don't begin until the year one reaches age 72 (formerly the age was 70 ½). The second is that the IRS has updated the actuarial tables for RMDs to reflect our increasing lifespans.

Table 1 below is based upon the IRS' Uniform Lifetime Table for 2022 RMDs. The first column is the age of the taxpayer, the second is the life expectancy at that age, and the third is a percentage equivalent of the life expectancy. As you can see, when a retiree is in his or her 70s it is quite possible that the RMD will be less than the income generated by the retirement savings.

Table 2 compares the factors in the old and new tables for some sample ages. The percentage reduction in the RMD is shown also. Some observations:

- The factor for the first RMD was 27.4 at age 70 in the old table, and it will be 27.4 at age 72 in the new table, a coincidence.
- The RMD from a \$1 million IRA at age 75 was \$43,668 under the old table, and will be \$40,650 under the new table.
- Assume a steady 4% total return on a \$1 million IRA, with RMDs paid at the end of each year. Under the old table, total RMDs paid through age 100 from a \$1 million IRA would have come to \$1.69 million, and there would be \$295,750 left in the account. Under the new table there will be two fewer RMDs by age 100. Total RMDs come to \$1.62 million, and there will be \$333,858 left in the account.
- Under the new table, if the rate of return is boosted to a steady 6%, the RMDs will be paid from income for much longer, the IRA will have an extended period of tax-deferred growth. That \$1 million IRA would pay some \$2.23 million in total RMDs through age 100, with \$606,255 remaining in the account.

The purpose of these changes to RMD rules is to make it less likely that retirees will outlive their money. The RMD is only a minimum; there is no cap on distributions from an IRA during retirement. □

2022 Required Minimum Distribution Table

TABLE 1

Age	Distribution years	Percentage equivalent
72	27.4	3.65%
73	26.5	3.77%
74	25.5	3.92%
75	24.6	4.07%
76	23.7	4.22%
77	22.9	4.37%
78	22	4.55%
79	21.1	4.74%
80	20.2	4.95%
81	19.4	5.15%
82	18.5	5.41%
83	17.7	5.65%
84	16.8	5.95%
85	16	6.25%
86	15.2	6.58%
87	14.4	6.94%
88	13.7	7.30%
89	12.9	7.75%
90	12.2	8.20%
91	11.5	8.70%
92	10.8	9.26%
93	10.1	9.90%
94	9.5	10.53%
95	8.9	11.24%
96	8.4	11.90%
97	7.8	12.82%
98	7.3	13.70%
99	6.8	14.71%
100	6.4	15.63%

Sample changes to the Uniform Lifetime Table

TABLE 2

Age	Old table	New table	Percentage reduction
72	25.6	27.4	6.25%
75	22.9	24.6	7.42%
85	14.8	16	8.11%
95	8.6	8.9	3.49%
100	6.3	6.4	1.59%

Source: IRS; M.A. Co.



When is a grandchild not a grandchild?

In 1980 Peter Bing created six almost identical irrevocable, 40-year trusts. The first trust was for his first future grandchild (Peter had no grandchildren at that time), the second for his second grandchild, and so on. The trusts were initially each funded with \$15,000. The record is silent on additional trust contributions, or how large the trusts were when they terminated in October 2020.

Peter had two children, Mary and Stephen. Mary's two children each were entitled to a trust. Stephen had led a less conventional life. After he had reportedly inherited \$600 million from his grandfather at age 18, Stephen dropped out of college. He reportedly dated supermodels and actresses, including Farrah Fawcett, Sharon Stone, and Elizabeth Hurley. Stephen fathered two children out of wedlock, Damian Hurley with Elizabeth and Kira Kerkorian with Lisa Bonder, and had no other children. He initially denied paternity in both cases, but DNA tests ultimately proved he was the father, ending the dispute. Stephen had no contact with his offspring as children, met Kira when she was an adult, and apparently never met Damian at all.

Peter acknowledged Mary's children to be his grandchildren, but he denied that status to Stephen's children. To make his wishes known to the trustee, on September 18, 2018, Peter signed a written declaration, stating, "when I created the 1980 [Grandchildren's] Trusts, I believed that they would not benefit any person born out of wedlock unless that person had lived for a substantial period of time while a minor as a regular member of the household of the natural parent who is a child of mine. I . . . am executing this Affid[av]it to ensure that my intent in this regard is clear." He claimed that this was his intent when the trusts were created, not simply an attempt to disinherit two of his descendants.

With Peter's declaration in hand, the trustee sought a legal opinion about whether Stephen's children had any legal interests in the trusts. The lower court dismissed Peter's affidavit as "irrelevant" and held that the term "grandchild" was not ambiguous. All four children were grandchildren, and all would inherit.

The California Court of Appeal adopted a narrower rule for evaluating the trustee's request. The trust authorized the trustee to interpret the terms of the trust, and the exercise of that power will be upheld if it is "reasonable." Two elements of evidence led the Court to conclude that the trustee was reasonable to exclude Stephen's children.

First, Peter's declaration in 2018, although not determinative, is relevant, contrary to the lower court's decision. The idea that children born out of wedlock did not have inheritance rights from their biological grandparents was a common understanding of the law in 1980. Second, the California Probate Code is consistent with the trustee's conclusion. A child who never lived with a parent while a child gains no inheritance rights from biological grandparents.

The result is that Mary's two children will share all six trusts. □



Let us help you choose the best options for preserving your wealth.

Our Trust Division is staffed with experienced and knowledgeable advisors to assist you with making the best decisions to manage your assets for your current financial needs, or to prepare you for the next generation.

For more information, call
(844) 350-8512

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