



TRUMPLER WEALTH CONSULTING LLC

12 REASONS TO NEVER USE AN INDIVIDUAL TRUSTEE!

Over the years I have been asked a number of times to serve as an individual trustee, sometimes for family members, and more frequently by clients who believe that my many years of trust experience working for a corporate trustee would make me highly qualified to serve as their personal, individual trustee.

Let me give you the many reasons why I choose to never accept such appointments, and perhaps you will find some element of similarity to your situation as either an estate planning attorney, some other clients' trusted advisor, or someone establishing a new trust.

Individuals should not serve as sole trustees of anyone's trust!

That is a very bold and debatable statement, but it is based upon four decades of working in the trust industry, observing the operation of trusts administered by both individual and corporate trustees, and talking with countless trust beneficiaries.

Let's begin by exploring what is behind that statement.

1. Individual trustees frequently find it difficult to remain unbiased and neutral about beneficiaries and their access to trust assets; they typically don't understand their "gatekeeper" role. Individual trustees are often unwilling or unable to say "no", when that's what the trust requires and the grantor intended. The trustee must balance the needs and desires of conflicting interests, such as the present income beneficiaries and those who receive what is left over for the next generation or perhaps even the generation after that. Individual trustees are not trained, nor are they paid, to make those tough calls and are often subject to enormous personal pressure to say "yes" when the answer should be "no".

2. Individual Trustees seldom have the time necessary to properly administer a trust for someone else. Think about the time it takes to manage your own financial affairs—could you take on the administration of a multi-million dollar trust with contentious beneficiaries as an unpaid hobby for the rest of your life?

3. Individual trustees seldom have the broad range of required expertise. What should a trustee know?

A trustee should have:

- a. an understanding of trust law (GRATs, CRTs, IDITs, generation skipping, dynasty trusts, etc.)
- b. an understanding of the federal and state tax implications of investment and distribution decisions; a trustee can actually cause a trust to lose beneficial tax treatment (such as a special needs trust or a charitable remainder trust) by failing to make certain elections or meet tax law requirements. Determining the tax treatment of a trust, setting up the proper allocation of trust assets in accordance with complex formulae, and providing account statements and tax reporting, require a high level of technical knowledge. Of course, a trustee who fails to achieve a desired tax treatment due to either ignorance or negligence can be subject to personal liability for such losses to the trust.
- c. the ability to administer assets such as:
 - securities including stocks, bonds (taxable and tax-exempt), mutual funds, ETFs, money market instruments
 - hedge funds and alternative investments
 - real estate
 - business interests

4. Individual trustees frequently have not even read the trust, and even fewer still understand the many nuances of trust language created by trust lawyers.

5. They don't understand their potential liability, that is, their personal financial liability that will last for many years for decisions they make today and which may become a newspaper headline if challenged in court. For every decision a trustee makes, there may be some other party who will take issue with that decision, if not presently, possibly many years from now.

6. They do not have a process for making decisions, such as corporate trustees do.

7. They do not document their decisions, leaving them exposed and liable for many years for decisions made today because they are unable to adequately defend themselves.

8. They are not subject to any regulatory or audit oversight; they are accountable to no one.

9. They are not held to the same professional fiduciary standards as a corporate trustee.

10. Individual trustees die! Not just some of them, sometimes. They all eventually die, and there is seldom adequate continuity in the administration of the on-going trust. Successor individual trustees do not provide the continuity that a corporate trustee does.

11. They seldom have the tools necessary for accounting and reporting. They don't

understand that a trust must account separately for the funds available for income beneficiaries from those for the remainder beneficiaries.

12. They seldom have the resources to provide redress to beneficiaries in the case of errors or mismanagement requiring redress. And individual cannot purchase fiduciary liability insurance; no one sells such policies to individuals!

Why do people often name family members or some other individual to be their trustees?

1. — They did not understand or research the role of a trustee, and the benefit of using a professional/corporate trustee.

2. They have heard that corporate trustees charge high fees; they think it will be less expensive to have an individual trustee, but in the long run, this is seldom the case.

3. They have heard that corporate trustees are bureaucratic, arbitrary and unresponsive. This is due in part to the fact that for every decision a trustee makes, someone may be adversely affected, and the corporate trustee gets the blame. But isn't it better to have a corporate trustee blamed, than a family member acting as a trustee? More on this topic below.

4. They don't realize the position in which they are placing their trustees, that is, to say "no" when necessary, and to carry out

their wishes as articulated in the trust provisions.

What is the alternative? Answer: A corporate trustee/co-trustee

The Value of using a Corporate Trustee

A corporate trustee is usually a bank trust department or an independent trust company, and in either event is authorized (chartered) to do business by a federal or state agency.

Issuing authorities carefully screen applications for trust powers before granting them. They investigate the character of those forming the company, and ensure that the new company will have the expertise, systems and process to carry out their fiduciary duties. They routinely examine them to assure the proper operation of the company. And they ensure a sound financial footing as an on-going business which can meet their potential fiduciary liability.

The role and value of a trust officer

Trust officers have many years of experience administering trusts. A trust officer typically has 7 to 10 years of experience before being granted the title of Trust Officer, akin to becoming a partner at a law firm.

The expertise that a trust officer absorbs over those years crosses many disciplines, including:

- state and federal income taxes (specifically as those relate to the highly complex taxation of trusts)
- trust investments, including everything from traditional stocks and bonds, to oil and gas interests, hedge funds, commodities, mutual funds and exchange traded funds, and even royalty interests
- the entirety of trust law, including statutes, regulations, private letter rulings and case law
- financial planning, including budgeting and managing cash flow
- accounting, especially trust accounting, which includes the separate accounting for the beneficiaries who receive current income and those who have an interest in the remaining principal upon the death of current income beneficiaries
- real estate transactions and management, both residential and recreational properties that a trust might hold, as well as commercial properties that the trust receives or acquires
- operating businesses, especially closely-held or family businesses, which could vary from farms, vineyards and agricultural holdings, to a pharmaceutical company or a hotel. A trust may hold such assets, and the trust officer must be qualified to make sound decisions regarding the ongoing administration and eventual disposition of such assets.
- psychology, especially understanding and dealing with family interactions and

conflict. Many trust officers have been trained in facilitating family meetings and counseling multiple generations of wealthy families, ensuring the continuity of the family's wealth, and often more importantly, the legacy left by the patriarch of the family through multiple generations.

- charitable planning and wealth preservation, including helping wealthy families teach younger generations financial literacy and how to preserve wealth and use it for worthwhile purposes. Working with families to develop human, social and intellectual capital as well as merely preserving wealth is an essential, but less well-known function of the trustee.

How Corporate Trustees work

Having worked for very small, independent trust companies, as well as several of the largest in the country, I have seen common practices used by most.

First, trust companies and trust officers are dedicated to their profession; they work hard, have a passion for their career, and care about doing the right thing for the trust and for the families who benefit from the trusts they administer.

- All trust companies have common components in their administration of trusts, often driven by regulatory requirements:
- There can be no conflicts of interest, or even the appearance of conflicts. The trustee's duty is to the trust, not

to the beneficiaries, and certainly not to the trustee.

- Corporate trustees have a trust accounting system which differentiates between income and principal, by maintaining a separate ledger for each. This ensures the maintenance of a separate set of books for the income beneficiaries' interests and those for the remainder beneficiaries.
- A trustee will provide for the custody of trust assets and the efficient trading of securities. Corporate trustees will have a safe and secure custodian and will be accountable for cost effective trading.
- There is a process for everything, and typically a committee approach to managing those processes. For example, most trust companies have a committee which accepts new trusts and reviews requests for discretionary distributions. This committee structure is a good thing, ensuring that no one individual has arbitrary authority over the trust or becomes too closely aligned with one family member or family branch, and that decisions are made collectively, then documented, and finally ratified by the Trust Committee of the Board of Directors.
- There will be an investment committee which oversees all trust investments, or the selection of investment advisors or managers. The

committee will set investment policy and process, and will ensure that every trust has an Investment Policy Statement defining the investment objectives for the trust. The investment committee may also be responsible for overseeing the due diligence that is conducted on outside managers, including monitoring ongoing performance and fees. Trust companies must maintain a lengthy Policies and Procedures manual, which documents everything which is done in the performance of the trustee's duties, down to the minutest details, such as the dual control for the storage of original documents and physical trust assets, such as jewelry, in a safe.

- Trust companies normally have internal auditors, who at least annually review compliance with all of the processes defined in the Policies and Procedures manual.
- Most trust companies have a Chief Fiduciary Officer, who has many years of experience in all aspects of trust administration, and who manages and trains the other trust officers.
- Many trust companies additionally have a compliance officer, who is often an attorney familiar with all of the legal compliance requirements of trusts. Trust companies are subject to regulatory oversight. If a national trust company (it will have the initials

N.A. after its name, for National Association), it will be subject to periodic examinations by the Office of the Comptroller of the Currency; if operating under a state charter, such as Delaware, it will have an annual visit from the office of the state banking commissioner, which has examiners experienced in the administration of trusts. Such regulatory examinations are conducted on the site of the trust company and will take several weeks to several months, depending upon the size of the company, number of accounts, and whether or not the trust company manages investments.

All of the factors listed above serve as an insurance policy for those who create trusts, ensuring that their assets will be administered for their beneficiaries in a sound and prudent manner, and that the terms of their carefully crafted trusts will be carried out. While a corporate trustee charges a fee for its services, the fees must be competitive and reasonable, and are often a bargain compared to the damage an individual trustee could cause. In any event, a conscientious individual trustee will often need to outsource many of the functions outlined above, such as the trust accounting or custody functions, incurring expenses that may exceed the fees a corporate trust would charge.

The many benefits of naming a Corporate Trustee

As will have been seen from the discussion above regarding the role of a trust officer and the functioning of a trust company, many of the benefits of using a corporate trustee are obvious.

1. A corporate trustee doesn't die. There is continuity in the on-going administration of a trust, and this is critically important today when so many trusts are created as "dynasty" trusts, meaning that the trust may continue for many years, even indefinitely. There are always younger trust officers being trained and introduced to existing trusts, and the committee structure ensures a consistent and regulated approach to administration.

2. A corporate trustee's location can give a trust access to the laws of states which are highly beneficial. States such as Delaware, South Dakota, Nevada and Alaska, to name a few, have laws allowing, among other things, dynasty trusts and the ability to trifurcate the functions of a trustee among administration of the trust, (such as custody, reporting, collecting and paying out income), discretionary distribution decisions and the management of the trust's investments. In many cases, only by having a trustee in that state can a trust receive that state's specific benefits, hence the growing proliferation of trust companies in those states, and the growing use of corporate trustees which provide access to those states' laws.

3. A corporate trustee is continuously regulated and audited.

4. A corporate trustee has policies and procedures and committee structures to ensure compliance with processes.

5. A corporate trustee has systems, external resources and custodians, all of which will ensure the proper administration of the trust.

6. Corporate trustees usually have training programs for trust officers, and professional organizations to which they belong provide a forum for the resolution of complex trust administration and compliance issues.

7. A corporate trustee maintains records of every conversation and decision, and can defend every decision in the future against litigants who may challenge such decisions. While such an audit trail is not bullet-proof, it reduces the likelihood of litigation and a major erosion of the trust's assets due to legal and court fees. Litigation against corporate trustees for breach of fiduciary

duty occurs far less often than against individual trustees.

8. A corporate trustee has no biases, and no reason to be more responsive to one beneficiary or class of beneficiaries than another. In fact the corporate trustee understands the need to balance the needs of all beneficiaries and to document how and why decisions have been made. They are not subject to family pressures as an individual trustee is likely to be.

One final recommendation

Notwithstanding all of the foregoing, many families will still want to have an individual involved in the administration of their trust. So why not create a trust with both an individual and corporate trustee as co-trustees? Any good corporate trustee will embrace a family member as a co-trustee and will work with the attorney drafting the trust to help define the respective roles for each.

The Author

Richard Trumpler possesses more than 40 years of experience within the banking and financial services industry. In his capacity as Founder and President of Trumpler Wealth Consulting LLC, he has provided consulting services to banks, trust companies, a Registered Investment Advisor and a CPA firm. Previously, he has served as Chief Operating Officer of New York Private Trust Company, CEO of Concord Wealth Management, Head of Sales, Marketing and Trust Administration at Citigroup in New York City, Executive Vice President of Casco Northern Bank in Portland, Maine, Chairman and CEO of Old Colony Trust Company of South Carolina, and President of Bank of Boston Florida. He is a retired US Navy pilot with the rank of Captain, and currently lives with his wife in Sarasota, Florida.

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