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GAME CHANGER!

A PERSONAL TRUST INDUSTRY 'DISRUPTER'

THE CAREER PROFESSIONAL INDIVIDUAL TRUSTEE

By Richard P. Trumpler TEP

I've written much about the roles of a trustee of one's personal trust, considerations for selecting a personal trustee, and about the revolutionary trend toward bi- and tri-furcation of a trustee's duties. Many states have modernized their probate statutes, including the creating of the "dynasty trust" (eliminating the "rule against perpetuities", thereby allowing a trust to continue for many generations without being subject to estate taxes), decanting (essentially, the ability to amend/revise an irrevocable trust), Trust Protectors and Directed Trusts. This modernization has bred many new trust companies with a new business model, that of the Directed Trustee, where the trust company serves only as the administrative trustee, alongside a Directed Trustee assuming fiduciary duty for the management of the trust assets.

A new paradigm?

More recently, I have experienced the evolution of another personal trust industry “disrupter”, the emergence of what I shall call the ***Professional Individual Trustee***. I have written several articles detailing why I believe(d) that one should never select an individual as the trustee of one’s personal trust, such as “12 Reasons to Never Use an Individual Trustee” (<https://www.trumplerwealthconsulting.com/read-and-watch>) which suggests that one’s attorney, accountant, financial advisor or family member would usually be poor choices for the administration of one’s trust.

However, with the emergence of more and more ***Professional Individual Trustees*** (and the inevitable state regulation/licensing of such individuals) I must modify my prohibition, within certain parameters.

Clarifying my prior observations

First, though, why have I expanded my position regarding individual trustees? My primary premise was that individuals most often were unqualified and inexperienced for such a serious and important role, and usually could/would not carry out the terms of the trust objectively. It seemed that a corporate trustee would be a better choice, as they were experienced, had the systems and processes, policies and procedures, were regulated by state or federal regulators, and would strive to carry out the terms of the trust objectively.

Why not a corporate/bank trustee?

Unfortunately, many traditional corporate/bank trust companies have earned, deservedly or not, a reputation over the years, for inflexibility, bureaucracy, unresponsiveness, high turnover, high account loads for trust officers and high fees, not to mention the apparent conflict of interest a bank trustee may have when also managing a trust's assets.

The case for the independent *Professional Individual Trustee*

All of the ***Professional Individual Trustees*** (do I dare create an acronym for them... PITs?) I know are highly qualified individuals with an extensive history in the trust business, most often having had senior roles working for one or more corporate/bank trustees. Some, though not all, also have law degrees. They typically serve only as an administrative trustee, where the trust provides for direction of the asset management, or the PIT exercises his/her statutory authority to delegate the investment function to a third-party financial advisor or asset manager.

Such ***Professional Individual Trustees*** have a number of distinct advantages over corporate/bank trustees and family members or other individual trustees:

- They are **highly responsive**, meaning that they don't have high account loads and are able to return phone calls quickly and make decisions in a timely manner.

- They typically are **highly experienced**, have well defined policies and procedures, and utilize some kind of accounting/reporting system to maintain accurate records.
- They can have **liability insurance**, which a family member trustee cannot obtain, assuring that in the event of a breach of trust, misfeasance or malfeasance by the trustee, there will be resources available to recover from a loss.
- They are **independent and unbiased**, having no personal ties to beneficiaries which would make it difficult to say “no” to improper or unqualified requests for principal distributions.
- They typically charge **lower fees** than their corporate counterparts as they have far less overhead.
- They are typically willing to take much **smaller trusts** than most corporate trustees, and are often willing to take **less attractive trusts** such as Irrevocable Life Insurance Trusts (ILITs) and Special Needs Trusts (SNTs), and some are even willing to take on the personal roles of guardian, power of attorney and health care surrogate.
- There is **long-term relationship continuity**, as there is no “turnover” in the trust officer role; that is, the **Professional Individual Trustee** is not an employee, frequently looking for a higher paying job, but instead does trust administration as a business, a service and a career.

Due diligence in selection of a *Professional Individual Trustee*

That notwithstanding, the same diligence that I've described in other articles on the selection of a trustee should apply equally to the selection of an independent ***Professional Individual Trustee***.

Include the following as a part of your due diligence:

- What is their professional history? Have they worked for a corporate trustee, or perhaps worked as a trusts and estates attorney, drafting wills and trusts?
- Do they know trust law?
- Do they have adequate systems? How often do they report to the beneficiaries?
- In what state do they reside, and are the laws of that state modern or antiquated?
- What are their fees? How do they charge? A fixed flat fee? Hourly rate? Based upon trust size? Minimum fee?
- What is their backup? Is there a succession plan for the inevitability of their demise, if not also for their inability to serve due to physical or mental incapacity?

In conclusion, the proliferation of ***Professional Individual Trustees*** seems to fill an important gap.... (don't all disrupters, like Uber and Airbnb, fill such a gap?). The independent ***Professional Individual Trustee*** falls neatly in between the corporate/bank trustee and the non-professional individual trustee and should be given strong consideration under the right circumstances.