

Trust Connection

Building Lasting Relationships for the Benefit of our Mutual Clients

TRUST NEWS AND INFORMATION FROM YOUR TRUST REPRESENTATIVE OFFICE

Welcome to *Trust Connection*, a regular communication from Valley National Trust Services.



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WHAT'S IN A [TRUSTEE] NAME?

One of the most consequential decisions in your estate planning is who to name as trustee. The trustee's level of knowledge, commitment, ability and skill will have an enormous impact on the intended purpose of your trust. Despite the importance of this decision, it is often given less consideration than the structure of your plan or choice of attorney. Even the most well-drafted estate plan will fail to achieve its purpose if the trustee you select fails to carry out their role properly

What Does a Trustee Do?

The trustee's role is complex, and includes, among many other administrative tasks, the following major duties and responsibilities:

- Inventorying and valuing assets;
- Investing trust funds prudently, as defined by state law and fiduciary principles;
- Accounting for principal and income debits and credits;
- Making discretionary distributions;
- Preparing, executing and filing tax returns;
- Managing unique, non-marketable assets;
- Complying with fiduciary duties, including the duty of loyalty, the duty of impartiality, the duty to inform beneficiaries, etc.; and
- Interpreting complex documents.

Who Can Act As Trustee?

A wide array of people and institutions can act as a trustee, including individuals, such as a spouse, child or friend; professionals such as attorneys, CPAs, or a professional fiduciary; a corporate trustee, in the full-time business of trust and estate administration, or combination of the above.

Considerations for Each Type of Trustee

There are important considerations for each category of trustee.

With respect to individual trustees, they:

- Act as an individual with no charter;
- Are held to the lowest fiduciary standards in a legal action such as the “prudent person” rule;
- Generally, have no defined policies and procedures for consistent, accurate execution;
- Generally, engage in trust administration on a part-time basis, at best, and can be busy with family, other work; and
- Are subject to unavailability, may become incapacitated, or otherwise become unable or unwilling to act.

With respect to professional trustees, they:

- Operate under their professional licenses, and are generally not chartered as a trust company;
- Are held to higher standards due to their fee-based structure and trust expertise;
- May not have formal, written policies and procedures;
- Are not solely focused on trustee practices; and
- Are subject to unavailability, incapacity, or death.

With respect to corporate trustees, they are:

- Overseen by formal regulators at the state and/or federal level; Chartered to act as a trust company by appropriate regulatory body;
- Overseen by courts of competent jurisdiction and are held to the highest fiduciary standards;
- Governed by internal policies and procedures for consistency, accuracy and professional execution;
- Staffed with specialists who are dedicated full-time to the task of trust administration;
- Permanent and consistent and will not become incapacitated or die;
- Independent and unbiased

You may consider it honorable to ask an individual to serve as trustee, or feel it is an honor to be asked to serve as the trustee, but most individuals are unaware of the requirements and the time-consuming, complex matters they will need to address during an emotional time.

For the interest of all parties as you consider drafting a trust, consider any unusual circumstances or extraordinary duties that may be involved with trust

administration and ask yourself: Is my selected trustee the best choice for the role? Is there a clear understanding of the commitment, responsibilities, and potential pitfalls? Do the family members all get along?

Are there historical financial troubles or more than one marriage in the equation? Will the trust endure for many generations to come? Due to the fiduciary requirements associated with acting as a trustee, the odds are that an error or oversight may subject an individual trustee to liability for which they will likely not be insured. These represent only a fraction of the mitigating circumstances that lend themselves to considering a corporate trustee over an individual trustee. Your trusted advisor can review the options with you and help you make an informed decision that will meet the needs of all parties.

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