

# CALAMOS<sup>®</sup>

## WEALTH MANAGEMENT

### You just learned you're the trustee for a loved one's Trust. *Do you accept or decline?*

You're at work, finishing a conference call, and the phone rings: your father, whom you're close to, but who never calls you during the day. He asks if you have a minute. You wave off an approaching colleague and say, "Of course."

You close the conference room door because you can hear the seriousness in your father's voice. You're worried it's going to be bad news about his health—or maybe something about your sister, to whom you haven't spoken in two years.

"I just had an appointment—," your dad says, as you lower yourself into a chair facing out the window. Definitely serious—but there's something else in his voice as well. Relief, maybe. Whatever it is he has to say, he's gotten peaceful about it. You prepare yourself.

"—with the attorney and CPA," he continues. "I've been putting this off too long, but it's done now."

"What's done?" you ask, annoyed at how your thoughts instantly turned to the family lake house: *He hasn't sold it, has he? He wouldn't...*

He says, "My estate plan. Signed and sealed. I named you the trustee. Are you OK with that?"

#### **What are you going to say in that moment?**

If you can relate to that hypothetical scenario, you probably already know what this person is going to say. The recipient of that phone call has tumbled through such a range of emotions in less than a minute's time that in all likelihood he or she is simply going to agree.

If you have been asked to serve as a trustee, you may have found yourself saying: "Of course I will." Or perhaps: "*I'd be honored,*"—yet what you're asking internally is *what does it entail to be a Trustee?*

If this has happened to you, what did you do next? Whom did you call? Your financial advisor? Your attorney or accountant? How much did you dig into

learning about the specific responsibilities—and the personal liability—you might be taking on? Remember, you don't have to accept the appointment of Trustee; if you are unable to serve, the successor trustee listed in the document will become the new trustee.

In my experience, most people who know they've been named trustees don't explore these questions deeply enough until it is time to serve in a fiduciary capacity.

Before touching further on the topic of fiduciary selection, here are a few of my thoughts on why the role of an individual trustee is weightier than people often realize.

#### **Common challenges faced by Individual trustees (typically family members)**

There are as many pitfalls as there are trusts. But these categories cover many of them:

- > **Complexity.** Even the most carefully drafted trusts can result in substantial difficulties, if the grantor doesn't thoroughly understand the circumstances and qualifications of the person he or she chooses to administer the trust and, ultimately, protect his or her legacy. For the trustee, uncertainty and a sense of inadequacy can be disheartening and even debilitating.
- > **Family dynamics.** Appointing a family member to administer a trust can complicate—and may severely challenge—family dynamics. Sometimes, parents regard a specific child as the future steward of the family's wealth; however, giving the responsibility to one child may effectively place him or her in an unwanted parental-like role to siblings.
- > **Relationships**—or lack thereof—with trusted advisors.

Estate planning is a complex area of the law that may transcend the expertise of family members and friends. If the trustee doesn't have any connections with the financial or investment advisory team—it may disrupt the process in place for management of the trust assets.

> **Incapacitation.** Individuals are subject to health-related issues or death, whereas corporations continue regardless of those issues. Looking for a suitable corporate trustee may help avoid delays in trustee succession due to incapacity or death.

> **Risk of litigation.** Legal proceedings can create additional stress for the trustee. Beneficiaries may bring a legal proceeding about the administration of the trust or discretionary distributions. Legal fees and family disputes may be costly and public if there is court involvement.

### Who should serve as fiduciary?

In general, a fiduciary is a person or institution (or both), who manages money or property for another and who must exercise a standard of care in such management imposed by law or contract. In other words, a trustee is subject to a fiduciary duty which is comprised of a duty of loyalty and a duty of prudence.

A grantor needs to be aware of the need to select someone who will manage their money or property according to the standards imposed by applicable law. Therefore, he or she should choose someone who will do so prudently and with utmost good faith and honesty.

### Single or Multiple trustees

The nomination of a fiduciary should involve a number of serious considerations including good judgment and knowledge of simple finance and investment practices. The selected trustee should be informed and capable of understanding and fulfilling his or her fiduciary responsibilities to avoid a great deal of grief down the road. The grantor can select a family member or a corporate trustee.

A trustee can serve individually or jointly with another co-trustee. Successor appointments can take effect at resignation, death or disability of the acting trustee. Depending on the type of trust, the grantor can serve in the role of trustee during his or her lifetime. For instance, most revocable living trusts names the grantor as the

primary trustee with a spouse, or relative as successor trustee.

The nomination of co-trustees can be appropriate and useful under certain circumstances. For example, the appointment of co-trustees may be appropriate where the surviving spouse wants to remain involved in monitoring the assets in a family credit shelter trust but does not want the responsibility of day-to-day management of the trust assets, or where she wants to have someone assist her in the management as she ages.

Co-trustees may also be appropriate where the grantor feels the need to put in place a set of checks and balances on the trustees. Such could be the case where a marital trust (QTIP) is to be established for the benefit of a second spouse and ultimately the children of a prior marriage. Nominating co-trustees to provide checks and balances could also be appropriate when the trust assets will consist of business interests or real estate in which one trustee has an interest but the other does not.

Oftentimes clients will want to nominate multiple children as trustees. While consideration of family involvement can be important in the selection of an appropriate trustee, clients should consider using a corporate trustee to avoid family disputes. Throwing two children who do not trust one another to work together in a co-trusteeship is likely to cause more family strife than would nominating one child to the exclusion of others.

### Individual or Corporate Trustee

There are some advantages of using individual trustees as they possess special perspective on the grantor's intent, family, history and legacy. Each family is unique, and in some situations the individual trustee may be more involved on the unique needs of the beneficiaries based on family history.

Among the advantages of using corporate trustees is the fact that corporate trustees have experience in the administration and investment management of all types of trust assets as well as experience in understanding the provisions of the trust documents. More important yet is the unbiased and objective perspective a corporate trustee possesses. In addition, a corporate trustee is regulated and audited annually.

## Conclusion

Your decision to accept or decline the appointment of trustee will be based on many factors discussed above. Regardless of your initial inclination, given the fiduciary responsibility imposed on the trustee, it will be helpful to discuss the role with various advisors and legal professionals working on the trust.

The selection of who is going to manage the trust and the advantages of involving a corporate trustee should be explored at the outset. Families with specialty assets like oil, gas, real estate, or closely held businesses may decide to name a family member to make decisions on those assets. Families with marketable securities, on the other hand, may prefer to work with a corporate trust for investment management and administration. Regardless of the situation, it is critical to understand the family's unique needs for fiduciary representation not just as they exist today but anticipating the future needs and protecting the wealth for future generations.

Each trust arrangement has its own challenges and so does the process of trustee selection. A team, consisting of various advisors along with an estate planning attorney can be helpful in having detailed discussions about the role of a fiduciary. Ultimately, it is incumbent on the grantor's team to engage in a conversation about the suitability of whether an individual or a corporate trustee should serve in such a powerful capacity and provide the required fiduciary services.

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