Understanding the Benefits of a Corporate Trustee

Willow Street
A PATHSTONE COMPANY

Understanding the Benefits of a Corporate Trustee

Selecting a trustee is a critical decision in the estate and wealth transfer planning process. This document outlines the factors families may consider when selecting a trustee.

TRUSTEE RESPONSIBILITIES

A trust is a legal entity that owns and manages property for the benefit of a third party. Typically, a person (the *grantor* or *settlor*) contributes property to a trust for the benefit of one or more *beneficiaries*. Every trust requires a *trustee*, the person or entity responsible for managing the trust. A trustee has a fiduciary — i.e., legally enforceable — duty to manage trust assets for the benefit of current and future beneficiaries according to the terms of the trust and the intentions of the grantor.

The three main duties of a trustee are to *invest* trust assets, *distribute* assets to beneficiaries, and *administer* the trust by maintaining books and records, communicating with interested parties, and coordinating tax reporting and financial operations.

Fig 1. Common Trustee Tasks

INVEST	DISTRIBUTE	ADMINISTER
Determine investment policy	Determine grantor's intent	Maintain books & records
Select investment advisors	Communicate with beneficiary	Provide beneficiary accountings
Monitor investment activities	Review distribution requests	Pay bills, taxes, etc.

The role of trustee is complex and requires balancing competing interests and exercising judgment. The trustee must be experienced with investment and asset management, knowledgeable about the intentions of the grantor and the needs of the beneficiaries, cognizant of laws and regulations applicable to the trust, and experienced in bookkeeping and tax reporting. If a trustee lacks the requisite skills in a particular area, he or she may hire professionals to carry out certain tasks and may rely on their expertise. However, trustees may be held liable for any breach of their duties.

The choice of trustee can have far-reaching implications for both planning outcomes and the family's user experience.

TRUSTEE CONSIDERATIONS

EXPERTISE/PROFESSIONALISM

- Individual trustees are usually trusted family members, friends, or advisors of the grantor and have an understanding of the grantor's intentions and values. However, those personal relationships may result in bias or undue pressure on relationships when the trustee is called upon to make difficult decisions. As independent third parties, corporate trustees maintain the professionalism and impartiality often required to make decisions and communicate with interested parties to the trust, including the grantor and beneficiaries.
- Because corporate trustees are in the business of providing trustee services, they typically have extensive knowledge and experience in trust administration, possessing a deep understanding of fiduciary obligations and the potential tax implications of various trustee activities.
- Corporate trustees have efficient access to tax, legal, investment, accounting, and other experts — often in-house — who may help navigate issues affecting trust administration. Individuals may not be aware of the need for expert advice and/or may be concerned with the cost of such services.

RISK MANAGEMENT

- Modern wealth transfer plans often include complex structures that require careful administration to ensure the desired tax treatment. Individuals may be unaware of the liability they assume by serving as trustee and, similarly, families may be unaware of the risk an individual trustee may introduce to the integrity of their trust structure when these duties are not appropriately discharged.
- Corporate trustees often have robust risk management and compliance systems in place and mitigate risk of errors or oversights that may result in additional taxes, claims from beneficiaries, or mismanagement.
- Corporate trustees are registered with and overseen by state or federal regulatory bodies and are regularly examined to ensure compliance with applicable trust company laws and regulations.

CONTINUITY

- Corporate trustees have institutional stability and succession planning, ensuring multigenerational durability and continuity for families. Individuals will ultimately become unable to continue to serve as trustee and necessitate creating a succession plan, which may be burdensome to the family. Individual trustees may also be affected by changes in personal circumstances or relationships.
- The relationship between a corporate trustee and family members may change as the family's needs evolve. Corporate trustees may take on additional roles to support the changing needs of the trust over time, adding or removing professional resources as appropriate. Individuals may also be incorporated as additional powerholders in the structure, though it is important to consider their state of residence.

SITUS

- It is important to consider a trustee's state of residence (if an individual trustee) or state of charter and principal place of business (if a corporate trustee). If a trustee resides in a high-income-tax state, the trust may be subject to that state's income tax according to the state's trust laws. This could result in unintended and undesired state income tax liabilities for the trust. This consideration may also apply to individuals serving as powerholders with a corporate trustee (e.g., trust investment advisor).

- Many corporate trustees, including Willow Street, are located in top-tier trust jurisdictions with modern trust and business laws and a favorable tax environment that support and enhance a family's wealth transfer planning goals.
- Families may benefit from their corporate trustee's jurisdiction while retaining some control through a *directed trust*, which permits the separation of a trustee's duties among multiple powerholders; for instance, a family might engage a corporate trustee to administer the trust and make distribution decisions but name a trusted family member, friend, or independent investment firm to manage trust assets.

ADDITIONAL SERVICES

- Corporate trustees often streamline the administrative tasks associated with trust management, such as maintaining books and records, administering tax reporting and payment, and fiduciary financial statement preparation.
- Many corporate trustees offer additional services either in-house or through an affiliated third-party, including record management and retention, treasury management, bookkeeping and bill pay, compliance, tax reporting and payment coordination, and document execution and signature authority services.

APPROACHES TO ENGAGEMENT

Families are increasingly engaging corporate trustees when establishing a new irrevocable trust, rather than burdening family, friends or trusted advisors with the work and risks associated with serving as a fiduciary. In many cases, families hire an independent corporate trustee to administer the trust in collaboration with trusted individuals. As noted above, several states allow for *directed trusts*, for which investment and distribution decisions can be made by individuals selected by the grantor.

Alternatively, individual trustees may seek assistance from an *agent* for guidance and administrative support. Agent for trustee services are often offered by corporate trustees, including Willow Street.

As individuals age, become incapacitated, or are unwilling or unable to serve as trustee, families often consider transitioning to a corporate trustee. They may initially appoint a corporate trustee as *successor trustee*, who will administer the trust when the individual trustee passes or becomes incapacitated. Appointing a successor trustee in the trust document gives reassurance to the grantor and beneficiaries that trusteeship will continue uninterrupted. In some circumstances, Willow Street may serve as successor trustee for US revocable trusts.

Other families choose to begin with a corporate trustee in lieu of an individual to facilitate orderly trustee succession, building a relationship and effectuating institutional knowledge transfer during the grantor's life. In our experience, families with trust assets under $1M often find that engaging a corporate trustee is not a cost-effective solution.

CONCLUSION

Selecting a trustee is an important and personal decision. Ultimately, the choice will impact the trust's beneficiaries, who will be required to communicate with the trustee and who will be impacted by the stewardship of the trust's assets. In our view, leading practice is to begin with a professional trustee from the outset and enlist trusted persons or independent investment firms to make important decisions around investments and, depending on the terms of the trust, to evaluate and make distributions. Families are encouraged to consult with legal counsel to determine the most suitable arrangement for their needs and circumstances.

Willow Street
A PATHSTONE COMPANY

255 BUFFALO WAY · PO BOX 1905
JACKSON, WY 83001

PHONE 307-733-3327 · FAX 307-733-5037
WILLOWSTREETGROUP.COM