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Consequential Choices: Choosing Trustees Wisely

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Choosing a trustee may be the most important decision a trust creator makes. Your estate planning attorney can draft a sophisticated, carefully tailored trust, but the trustee must bring the document to life and administer it according to its terms.

Trusts are ultimately about human relationships, often created out of love and a desire to steward wealth for the well-being of children and future generations.

The best trustees will exercise sound judgment, communicate effectively, and help beneficiaries flourish. The wrong ones can usher in years of frustration, resentment, or litigation.

So how do you choose wisely?

Start With the Trust.

Before appointing anyone, consider what the trust is designed to do by answering the following questions

Who is the trust designed to benefit?

Think of current and future beneficiaries and how they will interact with the trustee. Will your children be comfortable requesting a distribution from this trustee? Will the trustee be comfortable saying no? And will everyone still be speaking to one another afterward?

What will the trust own?

Managing a portfolio of marketable securities differs greatly from managing real estate, art, co-investment vehicles, or an operating business. Complex or unusual assets call for more expertise, flexibility, and administrative support.

How long will the trust last?

Many modern trusts are designed to last for generations, even indefinitely. A trustee that seems perfect today may not be the right choice 20 years from now. This makes succession planning critical.

Where will the trust be administered?

The trustee's location can determine the governing law, which, in turn, influences administration, privacy, asset protection, and state income taxation. Administering in a favorable jurisdiction such as Delaware can offer real advantages.

How much flexibility will be preserved?

Many people like the benefits of an irrevocable trust considerably more than they like the "irrevocable" part. A well-designed trust preserves flexibility while still respecting the tax and legal rules that let it function as intended.

Understand the Trustee's Role.

A trustee has three jobs:

1. *Investment*. Protect, manage, and invest trust assets.
2. *Administration*. Handle the administration, including recordkeeping, accountings, tax reporting, and other responsibilities.
3. *Distributions.* Make distributions to beneficiaries in accordance with the trust agreement.

A trustee can delegate many administrative and investment functions to qualified professionals, but certain discretionary decision-making (such as when to make distributions) cannot be outsourced.

A trustee also owes beneficiaries fiduciary duties of loyalty and prudence. In plain English, the trustee must act in good faith and put the beneficiaries' interests ahead of the trustee's own, exercising reasonable care, skill, and judgment in administering the trust.

Clearly, this isn't an honorary title.

Who Can Serve?

Trustees generally fall into two categories: individuals and institutions. An individual trustee

might be a family member, friend, business associate, attorney, accountant, financial advisor, or professional independent trustee.

Individual trustees (particularly those with close ties to the family) can bring deep familiarity with the family's history, personalities, and values. This cuts both ways, since they may also introduce biases, grudges, or old family drama.

A corporate trustee is a bank or trust company authorized to serve. Options range from national banks to independent trust companies, including those in the most desirable trust jurisdictions. Families with sufficient complexity may even establish a private trust company.

Corporate trustees offer the potential for continuity, professionalism, and enhanced administrative capabilities, but they also charge fees and have standardized procedures. In exchange, corporate trustees are neutral parties with no lingering opinions about what adult beneficiaries were like as teenagers.

At Gresham, we have partnered with an independent corporate trustee to offer a flexible trust administration solution. Gresham Partners Trust Solutions provides independent fiduciary oversight while allowing the family to continue working with Gresham to manage the trust assets.

Neither trustee option is inherently better than another. The right answer depends on the trust, the assets, and the family.

What Makes a Good Trustee?

For an individual, intelligence and financial sophistication aren't the only important metrics. Ask yourself: Is the person honest, discerning, organized, communicative, accessible, comfortable making difficult decisions, and able to withstand family pressure? Also, consider whether the candidate knows they are being considered and is willing and able to act. Being named trustee shouldn't come as a surprise after the trust creator is gone.

Beware of bad reasons for selecting a trustee:

"He's my oldest child."

"She'll be offended if I don't choose her."

"They'll do it for free."

"My lawyer suggested themself."

None of these are fiduciary qualifications. The question isn't who deserves the title, but who can actually do the job.

You Don't Have to Pick Just One

Finding one person who excels at investing, trust administration, navigating family dynamics, and communicating with beneficiaries is a tall order. Fortunately, trustee selection isn't an all-or-nothing proposition.

A trust can appoint co-trustees: a family member who knows the beneficiaries well, plus a professional fiduciary such as Gresham Partners Trust Solutions for independence and administrative expertise.

Modern trusts can also divide fiduciary roles: an Investment Director to oversee investments, a Distribution Director to handle discretionary distribution decisions, and a Special Trustee to manage a vacation property, art collection, or other specialized assets.

Plan for Change

Perhaps the most important decision isn't who serves as the initial trustee, but who can make later changes. Choosing wisely also requires the trust creator to design a fiduciary structure that can evolve with the family.

People age. Relationships change. Institutions merge. Families move. Trust laws evolve. Occasionally, people disappoint us.

At Gresham, we generally encourage clients to grant the primary beneficiary (once they reach an appropriate age and level of maturity) the ability to remove and replace trustees. The person living with the trust decades from now is usually better positioned than today's trust creator to judge whether a trustee is still a good fit.

You and your family aren't locked into any single fiduciary structure, and you don't have to make the decision alone. Gresham helps clients identify and pressure test candidates, not just on competence, but also temperament, family dynamics, independence, availability, and how a person is likely to interact with beneficiaries over time. We support clients at every step, from collaborating with clients and their attorneys to design the trust structure and evaluate initial fiduciaries to planning for succession and providing access to an independent corporate fiduciary when appropriate.

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