Ten Things You Should Know About Using a Corporate Trustee

Does your will or trust include the use of a Corporate Trustee? If you don’t know, check your documents. If they do include one, read through this list and confirm or reconsider the reason, the value and the importance of including a Corporate Trustee in your estate plan.

Name a Corporate Trustee as a trustee of last resort.
Many estate plans do this and it makes sense. It’s impossible to predict whether your first and second trustee choices will be able to serve. You also can’t foresee the circumstances that may ultimately require one. So if your documents include naming a Corporate Trustee when all other options are exhausted, this is a good provision.

Corporate Trustees cost more, so make sure you really need one.
Corporate Trustees have legal responsibilities and important roles to play in managing a trust. The individuals employed by the Corporate Trustee must have advanced knowledge and experience. Naturally, their fees are higher than what a person, especially a family member, might charge. Typical fees range from 1% to 2.5% per year, depending on the trust’s size.

Corporate Trustees have a lot of liability … so their actions reflect that.
They have to deal with trust, estate and tax laws as well as interact with beneficiaries. Their potential liability is high. It’s not uncommon to have disputes between income beneficiaries and remainder beneficiaries. Sometimes the surviving spouse is not related to the children of the deceased spouse. Perhaps a beneficiary is a spendthrift and threatens the longevity of the trust. As a result, they will make decisions cautiously and conservatively.

Corporate Trustees must consider all current, future and potential beneficiaries in the actions they take.
Trusts commonly name a primary beneficiary – often the surviving spouse. Children are the typical remainder beneficiaries. The deceased spouse may have intended for all the money to be used for the surviving spouse, but the Corporate Trustee will also weigh the interests of the remainder beneficiaries. The standard approach is to allow spending at a level that will sustain the principal of the trust beyond the lifetime of the primary beneficiary. As a result, this can make it difficult to dip into the principal. Effectively the beneficiaries lose control and access to the principal. After all, that is often the purpose of including a Corporate Trustee.

Consider using a “Total Return” trust.
Because of the typical conflicts between the income beneficiaries and the remainder beneficiaries, some people choose to use a “Total Return” trust. This is where the income beneficiary is paid a specified percentage of the value of the trust assets each year. That way, the trustee is able to adopt a balanced approach to investing.
Your trust document designates how much flexibility beneficiaries have in selecting and retaining a Corporate Trustee.
You can add provisions to the trust to build in more flexibility for the beneficiaries. Beneficiaries can be co-trustees with a Corporate Trustee. They can also have broad powers to remove and replace them.

Consider how much access to give the beneficiaries to principal.
Many trusts use the phrase “health, education, maintenance and support” to describe how much of the income and/or principal the beneficiary is entitled to. This phrase defines a certain standard of spending in the trust world. To expand that definition, more specific language can be added to allow the beneficiaries to receive distributions of principal for specific purposes — like buying a home or starting a business.

Corporate Trustees will almost always mandate that they manage the investments in addition to fulfilling the trustee duties. But you can include language in your trust to permit an independent investment adviser.
Corporate Trustees assume liability for the performance of the investments. They typically have an investment affiliate who will often make use of proprietary funds or investments. Those investment choices don’t always result in an optimum portfolio. As an alternative, you can add language allowing the beneficiaries to choose an independent investment adviser and relieve the Corporate Trustee of the liability associated with that decision.

Reasons to include provisions for an independent investment adviser.
This language gives more flexibility to beneficiaries and co-trustees. It doesn’t mandate an independent investment adviser; it only allows the option to utilize one. You don’t have to specify who the independent investment adviser will be. However, it makes sense to give some criteria, such as an advisory firm that has been in business at least X years and has at least $XXX,XXX assets under management and has a clean regulatory record.

The right reason for a Corporate Trustee.
Clearly there are many good reasons for utilizing a Corporate Trustee. Some of them are personal and some are the result of the size and complexity of a trust. If you’re unsure whether your estate planning documents include a Corporate Trustee, ask your attorney, CPA or us to help you review them. If you have questions about whether you need a Corporate Trustee, discuss your needs and options with your attorney or us.