

A Corporate Trustee is the W.I.S.E. Choice



By: James G. Blase, CPA, J.D., LL.M.

Approximately one-third to one-half of each attorney-client estate planning conference today is devoted to the important topic of the choice of trustee or trustees of a revocable trust to serve during the client's lifetime and after

the client's death. The considerations are vital and vast, which no doubt accounts for the considerable discussion.

As this article will demonstrate, when all of the dialogue is complete, and the pros and cons of the various alternatives have all been discussed, the client will oftentimes determine that the utilization of a corporate trustee or co-trustee (i.e., along with an individual co-trustee or co-trustees) is the wisest choice, for four primary reasons, the first letters of which coincidentally spell out the word WISE.

Wisdom

The wisdom of a corporate trustee simply cannot be overstated. Individual trustees will rarely possess the level of experience required to handle the important substantive and procedural aspects of trust administration.

While outside investment advisors can and should definitely assist an individual trustee with the investments of the trust, a non-corporate trustee invest-

ment advisor's primary expertise lies in the area of investing and preserving assets for retirement, and not in area of investing for heirs after the client's death, when cash flow infusions have ceased. Although one may view this factor as a "distinction without a difference," corporate trustees know better. They know that, subsequent to the death of the client, their primary role should shift from planning to secure the client's retirement needs, to planning to invest the trust assets in a manner which will ensure that all beneficiaries of the trust have been provided for adequately, based upon the stated purposes of the client in the trust document.

Similarly, whereas an individual trustee lacking sufficient experience expending limited trust funds may have a difficult time gauging how much may be expended for the benefit of one or more beneficiaries at any particular stage or stages in life, without risking the exhaustion of the trust corpus before all trust purposes have been accomplished, a corporate trustee will have significant experience making these determinations.

A corporate trustee also possesses the wisdom to deal with an endless variety of beneficiary issues, from suspiciously scrutinizing the demands of a spendthrift child who feels an entitlement to all of the trust assets immediately, despite the client's stated purposes to the contrary in the trust document, at the one extreme, to carefully securing the requirements of a special needs child, at the other.

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Independence

An individual trustee often faces outside pressures which a corporate trustee is normally impervious to. Difficult or conflicting circumstances include, but are not limited to, situations where the trustee is a relative of the trust beneficiary.

A common concern expressed by clients is that no one in their family possesses the requisite investment skills to preserve and grow the trusts assets for the clients' heirs. Although an individual trustee can and should employ outside investment counsel, one concern is that the individual trustee will feel pressured to use a friend or other acquaintance as the investment advisor, even though the latter would not have been the clients' first choice. Utilizing the services of a corporate trustee or co-trustee would eliminate this worrisome issue.

Few family members will want to serve as sole trustee - for very long at least - when the clients' children begin making encroachment and other demands which extend beyond the clients' stated intentions in establishing the trust. Designating a corporation as co-trustee may serve to alleviate this situation, by allowing the family member co-trustee to pronounce the corporate co-trustee as the "bad guy" in enforcing the terms of the trust, thus preserving harmony in the extended family.

The need for an independent corporate trustee is especially acute in situations where disputes involving the trust corpus may arise in the future. These situations include, but are not limited to, situations involving a family business and situations involving a blended family.

Service

In the context of the trustee relationship, the word "service" encompasses not only the administration and investment of the trust assets, but also the ability and willingness to make oneself readily available

to the many and varied needs of the trust's beneficiaries. In most instances it is simply not practical to expect an otherwise already too busy individual trustee to have the time available to administer the trust properly and to be fully attentive to all of the beneficiaries' needs.

Recent changes to the trust laws have increased the administrative duties of the trustee. These changes include potentially greater obligations in investing trust assets, along with much more onerous accounting and reporting responsibilities, including a duty to keep the trust beneficiaries informed about the administration of the trust. Of course, these added responsibilities are in addition to the ongoing requirement of the trustee to file tax returns and to calculate and prepare estimated payments for the trust. Assuming the individual trustee is even cognizant of all of the aforesaid requirements, the obvious question becomes whether the trustee will have sufficient extra time to perform all of these duties fully and properly. The situation becomes even more exasperating if the individual trustee is also serving as legal guardian to the clients' minor children.

The many and varied trustee duties and responsibilities, as well as the potential personal liability associated with not satisfying the same fully and properly, have caused many clients to opt to utilize the services of a corporate fiduciary either as the sole trustee or as co-trustee with an individual co-trustee (or co-trustees). The individual co-trustee's primary responsibility then becomes to direct or advise the corporate co-trustee on beneficiary distribution of income and encroachment on principal decisions, while the corporate co-trustee becomes primarily responsible for all of the other investment, administrative and reporting responsibilities of the trust. Especially if the corporate cotrustee has a significant local presence, this arrangement normally works out quite nicely.

The fact that a corporate trustee normally performs (or at least subcontracts) all of the above services

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“under one roof” has two primary benefits. First, it represents the principal reason why it is normally much cheaper to utilize the services of a corporate trustee or co-trustee than to have the individual trustee employ outside agents to assist him or her in completing all of his or her required tasks.¹ Second, and perhaps more importantly, utilizing all of the available resources of the corporate trustee or co-trustee to complete the work of the trust, as opposed to having the trustee employ outside agents to assist with these duties, helps avoid the all too frequently observed “too many cooks” situation, with its potential damaging effects on the trust and its beneficiaries.

Expertise

Last but not least, a corporate trustee is obviously an expert in the areas of trust administration, investing and reporting, as this is all they do. Whereas concerns will normally arise whether an individual who has been designated to serve as trustee is “equal to the task,” the client need not worry that the trustee will properly fulfill its multiple roles and responsibilities if the expert services of a corporate trustee are utilized.

The corporate trustee’s expertise is beneficial not only in fulfilling its traditional administrative, investment and reporting roles and responsibilities, but also in ensuring the best possible tax positioning for the trust and its beneficiaries. Additionally, corporate trustees typically possess notable expertise in valuing, operating and liquidating closelyheld businesses. They oftentimes also have social workers on staff, in order to assist elderly and other special needs clients and beneficiaries.

The corporate trustee’s considerable expertise can also be very useful to the trust’s beneficiaries and

any individual co-trustees, who will oftentimes be in need of a sounding board in which to run by their ideas with respect to trust investments, sales, etc.

Finally, and arguably most importantly, with all of its expertise in trusts and estate planning, a trust company also makes excellent sense as an investment advisor during the lifetime of the client. Understanding how assets need to be titled and beneficiaries arranged, in order to best minimize taxes and avoid probate, enables the trust company to monitor the client’s estate planning situation “in between meetings” with the estate planning attorney. With estate tax rates as high as 45 percent and probate fees as high as 5 percent, not to mention income tax rates and where they may be headed, many clients simply cannot afford to utilize an investment advisor who is not sensitive to their estate planning situation.

The Wise Choice

Wisdom, independence, service, expertise. This unique combination of qualities, which the corporate trustee or co-trustee possesses, should be considered by every estate planning client who is contemplating the utilization of a trustee as part of his or her estate plan.

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¹Note that corporate trustees normally utilize a trustee fee schedule which they make readily available. Note also that corporate trustee fees are not payable unless and until the corporate trustee actually serves, not merely because it has been designated to serve as successor trustee in the future under an individual’s trust document.