Factors to Consider When Choosing a Trustee

By Dennis F. Gorman, Esq., CPA

A Trustee's duties include, among other things, prudent investing, carrying out the express terms of the Trust, maintaining a relationship with the beneficiaries, providing annual accounts to the beneficiaries, and tax compliance. Trustees owe a fiduciary duty to the beneficiaries and are therefore subject to potential liabilities to the beneficiaries for failing to carry out such duties appropriately. Trustee liability may also exist to third parties, for example, tort exposure, environmental contamination, etc.

Institutional Trustees typically refuse to hold real estate or closely held family business stock in Trust due to the "hands on" nature and liability exposure of such investments. Trust loans to beneficiaries are usually not permitted. Marketable securities are generally the required investment option. Non-institutional Trustees are often willing and able to accommodate these situations. In some cases, beneficiaries have special requirements, e.g., special needs trusts. Whether or not the Trustee organization is adequately equipped to deal with such unique situations should be considered.

In choosing a Trustee for your family Trust, one should consider several factors: investment capabilities; flexibility in the exercise of Trustee powers vis-à-vis the beneficiaries; continuity of the Trustee contact person; convenience and access by the beneficiaries to the Trustee; and fees, both stated and hidden.

Most institutional Trustees will only use their own investment management platform and, in many cases, will attempt to invest a substantial portion of the Trust funds in their own proprietary investments. Other Trustees may offer the flexibility of using your own investment advisor to handle your investments while having the Trustee handle the back office responsibilities, i.e., taxes, mailing checks, and beneficiary relations.

Often, family members are not suitable Trustees for longer term Trusts, i.e., ones which do not immediately distribute out the remaining assets upon an event such as the death of the parent. The family member Trustee may have an inherent conflict of interest with the beneficiaries (when the Trustee is also a beneficiary). Sometimes, if the familial relations are poor and the family members simply cannot get along, this creates an untenable arrangement. Trust "spendthrift protections" may be weakened where a Trustee is also a beneficiary. Finally, more often than not, investment capabilities of family members are lacking. While the family member Trustee option is probably the lowest cost option, as the old saying goes "you get what you pay for."

CONCLUSION

When seeking a Trustee to carry out your wishes under a family Trust, you must consider the nature of the Trust assets, the needs of the beneficiaries, and the capabilities and flexibility of the potential Trustees to ensure a good fit.

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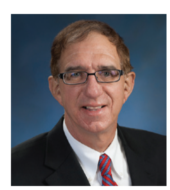

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