

## Chapter 10

### CHOOSING THE EXECUTOR OR TRUSTEE

One of the most important decisions you'll make is picking the person (or persons or institution) to be in charge of your assets after you're gone. That means the executor of your will and the trustee of any trusts you set up. (Another important decision, choosing a guardian for your minor children, is discussed in chapter six; choosing an agent for your power of attorney is discussed in chapter twelve.) The tasks of each of these **fiduciaries** (people who are legally obliged to act in your interests) differ slightly, so we'll discuss the factors you should consider for each separately.

You can choose more than one person to fulfill these duties: co-executors or co-trustees. This is a way to ensure that at least one person has legal or financial expertise and one is close to the family. If you choose this course, be sure to pick people or entities that can work together. You must also choose a successor in case your first choice dies or is unable to serve.

### EXECUTORS

#### Choosing the executor

Who will be the person or institution responsible for administering your estate through probate? Chapter eleven spells out what the executor does, but the most important thing is that you pick someone who is financially responsible, stable, and trustworthy.

The law requires an executor because someone must be responsible for collecting the assets of

the estate, protecting the estate property, preparing an inventory of the property, paying valid claims against the estate (including taxes), representing the estate in claims against others, and, finally, distributing the estate property to the beneficiaries. These last two functions may require liquidating assets; that is, selling items like stocks, bonds, even furniture or a car to have enough cash to pay taxes, creditors or beneficiaries. The will can impose additional duties not required by law on the executor: choosing beneficiaries or distributing personal property, even investing funds.

Sounds like a lot of work, doesn't it? It can be, and some of it can be complicated. However, the executor doesn't necessarily have to shoulder the entire burden. He or she can pay a professional out of the estate assets to take care of most of these functions, especially those requiring legal or financial expertise, but that will reduce the amount that goes to the beneficiaries. Therefore, handling an estate is often a matter of balancing expertise, convenience, cost, and so on.

There's no consensus, even among lawyers, about who makes the best executor; it all depends upon your individual circumstances.

**The case for a paid executor.** One approach is to appoint someone with no potential conflict of interest--that is, someone who doesn't stand to gain from the will. For this reason, many testators avoid naming family members or business partners. This helps avoid will contests from disgruntled relatives who might accuse the executor of cheating. If you have several beneficiaries who don't get along, you may want an outside executor who's independent of all factions. The larger the estate, the more the potential for conflicts, and the more you should consider naming an outside executor. You should also consider the possibilities of conflicts of interest if you have several beneficiaries.

There are sometimes reasons for choosing a paid executor instead of your spouse. Your spouse may be incapacitated by grief, illness, or disability. Nonetheless, he or she as executor will be personally

liable for unpaid estate taxes and fines for late filings, even if he or she has delegated such tasks to a lawyer.

Furthermore, since the executor must gather all the estate assets, your spouse may be faced with the odious duty of retrieving money or property you loaned to other friends.

If you think your spouse may not be up to the job (considering that he or she may also be saddled with sole responsibility for any minor children), you might choose a lawyer or other professionals, even though it means paying a fee. Remember, this is a job that, primarily because of tax procedures, can take more than three years of involvement, though most estates take far less and in any event the first few months are by far the hardest.

For larger estates, it's often advisable to use a lawyer or a bank. A complicated estate that involves temporarily running a business often demands an institutional fiduciary, such as a bank, that can call on the advice of lawyers, tax experts, accountants, investment counselors, even business administrators; it's impartial and immortal.

You might also consider hiring your lawyer as executor if you anticipate a will contest or know that estate is going to require a lot of legal work.

**The case for an unpaid executor.** Most of the time, where there is little possibility of a contest, the fees that lawyers and other paid executors charge may make it too expensive to hire such outsiders. So many people choose a friend or family member who will **waive** (refuse) the executor's fee to which he or she would be entitled--and which comes out of your estate.

For people whose assets amount to less than half a million dollars or so, your spouse or a mature child or children may be your choice. This person will naturally be interested in making sure the probate process goes as quickly and smoothly as possible.

One compromise popular with small business owners is to appoint co-executors, such as one personal friend and one person with business expertise, and specify which executor will be responsible for which duties. Or, to prevent family dissension, your will may provide that all three of your children serve as co-executors. Co-executors can be a good idea if the main beneficiary lives in another state and it would be inconvenient for him or her to make frequent trips to handle clerical details; you could appoint another relative or friend who lives in the same city as the one in which the probate court is located, to handle local details. George Washington appointed seven executors!

**What to look for in an executor.** It's important to be sure the executor is capable of doing the job. Think of the appointment as employment--not a way to reward (or punish) a friend or a relative.

The quality most desirable in an executor is perseverance in dealing with bills (especially the hospital, Medicare, ambulance and doctor charges incurred in a last illness). These often require a lot of paperwork, and payment first, then reimbursement from insurance companies. Pick someone who has the time and inclination to deal with bureaucrats and forms. Also, the executor may have to cope with relatives who may be wondering why it's taking so long to receive their inheritance, or why their bequests are smaller than they expected. This can happen if, for example, the dead person's money was aggressively invested in the stock market, and those stocks nose-dived after he wrote the will.

The executor will probably hire a CPA or lawyer to handle the tax returns--the income tax return for income accrued before your death, and the estate tax return as well as estate income tax return for income taxes incurred after your death. If the estate includes stocks or other investments, the executor may have to hire an investment advisor, particularly if the value of the estate has changed substantially because of changes in the market.

In most estates, no significant legal expertise is required to serve as executor; the issues are all

financial. The executor will generally work with a lawyer to probate the will. Estate fees paid to the lawyer may be set by law (some states specify an hourly rate, some a fee based on a percentage of the estate). The lawyer handles all the court appearances and filings while the executor provides information and input.

The executor cannot be a minor, convicted felon, or a non-U.S. citizen. And, while all states allow nonresidents to act as executors, some require a nonresident to be a primary beneficiary or close relative; others require a surety bond or require that the out-of-state executor engage a resident to act as his or her representative.

Whomever you choose, be sure to provide in your will for a replacement executor in case the original executor dies or is unwilling to act. Otherwise the court will have to choose someone.

What if you also have a living trust? It's generally preferable to name the same person as the executor and the trustee or successor trustee (see below). If you don't want to do this, discuss with your lawyer your reasons. After hearing about the difficulties splitting these jobs among different people might cause, you may change your mind.

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**Sidebar**

**CONSUMER TIP**

What lawyer should the executor hire to help with probate? It's critical to find a lawyer who's competent in estate law, preferably in the probate court that's handling your will. Your executor may be tempted to use your regular lawyer, or a friend or relative who is a lawyer. But if that lawyer primarily handles business transactions, say, or practices in another state, he or she may not be familiar enough with estate law in your area to handle the job efficiently. (end sidebar)

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### Giving the executor more powers

The law defines, and sometimes restricts, the powers of an executor. For this reason, it's often a good idea to specify in your will that your executor will have certain powers beyond those normally granted by state law. What powers should you give the executor? It depends on how much you trust your executor, how much expertise he or she has in legal and financial matters, your state's law, and what your estate consists of. Many lawyers put some or all of the following powers into the boilerplate language of the wills they write for their clients:

- **Power to hire professional help.** You can state, in your will or final instructions letter, that you expect your executor to appoint a competent attorney and other appropriate counselors to speed the process of settling your estate. Besides taking the burden off your executor (especially important if it's your spouse) and bringing expertise to your estate administration, it will also forestall any second-guessing or complaints by relatives or beneficiaries about the money spent on hiring a lawyer or accountant.
- **Power to retain certain kinds of property in the estate.** This is necessary because, state law may mandate that certain kinds of property be sold (e.g., "unproductive assets," which might be interpreted to include, say, the family forest preserve).
- **Power to continue running your business** until a new chief executive is chosen, unless you want it liquidated.
- **Power to mortgage, lease, buy and sell real estate.** This ability is often limited by law, if not

otherwise specified in the will.

- **Power to borrow money**, usually to pay estate debts.
- **Power to take advantage of tax savings** by exercising the various options permissible in tax law, such as filing a joint tax return with your surviving spouse.

If you do decide to appoint an interested person as the sole executor and give that person discretionary powers to determine who gets which assets, it may be wise to include a method for making these discretionary decisions. Drawing for lots or arbitration by a third party can help avoid any abuse of discretion or placing pressure on the executor.

#### Executor's commissions

In most states, an executor who is also a lawyer cannot receive both attorney's fees and an executor's commission. In such cases, it's often to your advantage to use an attorney as executor; otherwise, if your non-lawyer executor must hire an attorney, your estate may pay both the executor commission and the attorney fee. Many attorneys will waive their executor commission and take only the attorney's fees.

You can agree with your executor (either in a contract or by will) to fix an executor fee that's different from (and usually lower than) that imposed by the state.

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#### **Sidebar**

### **RESPONSIBILITIES OF THE EXECUTOR**

- Guiding the will through probate to legal acceptance of its validity, including defending it against will

contests.

- Collecting the assets of the dead person.
- Transferring legacies and gifts to the beneficiaries.
- Evaluating and paying claims against the estate, especially bills and taxes.
- Raising money to pay these claims, often by selling estate assets.
- Preparing and filing a budget and accounting for the court.

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**Sidebar**

### **EXECUTORS, DEATH, AND TAXES**

The executor must notify the IRS of his appointment by sending in Form 56 and applying for a separate taxpayer ID number for the estate, using Form SS-4. He must file Form 706 to pay the estate tax, for estates of gross value of \$675,000 or more, within nine months after the date of death. Often, the executor must file a state estate tax return as well. On the federal estate tax return, there is a credit for state death taxes. That credit is paid directly to the state, a so-called pick-up tax.

Your executor must also file a final income tax return (Form 1040) for you by April 15 of the tax year after the year you died, or obtain an extension. The estate receives a separate tax identification number, and any income to the estate of \$600 or more in one year before the estate is completely settled is subject to income tax. The executor may select a fiscal year, the first day of which may end on the last day of any month no later than 11 months after the month in which the death occurred. The IRS has a number of publications to help guide the nonprofessional executor in paying taxes.

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**Sidebar**

### **BUT I DON'T WANT TO BE AN EXECUTOR!**



If you learn after a relative has died that you're named executor, and you don't want to serve, you should file with the court a document called a **declination**. If the will named a contingent executor (and if the deceased followed our instructions in the sample will, it did), he or she will take over; if none was named, the court will appoint one.

If you are a family member who has been named executor--a surviving spouse, for example--you might find out whether in your case it's advisable to start probate quickly. It may be possible to delay beginning the executor's duties till grief subsides. A competent lawyer can relieve many of the burdens of the executor.

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**Sidebar**

**AN EXECUTOR WHO KNOWS HIS (AND YOUR) BUSINESS**

If you run a business, or are self-employed, consider making your executor or co-executor someone knowledgeable in your field. Sometimes the specialized knowledge of accounting or tax laws applicable to your area of business is easier for a colleague than for your spouse or other relative to master.

Take the example of a self-employed writer. Even in a profession notorious for its practitioners' lack of business acumen, certain specialized knowledge is often required. And some tasks must still continue after the writer is dead: recording copyrights, negotiating contracts for reissues of previously published material, deciding which publisher should (and equally important, should not) get rights to reprint articles, determining which works should be completed by others, figuring out television and

movie rights, deciding what happens to your manuscripts, letters and other materials (perhaps a university or library or historical society would be interested in them)... there are many decisions to be made. Would your executor know how to handle them? If not, appoint a co-executor who does.

When you die, any records that are kept only in your head will go straight into the ground (or the sky, or wherever) with you. Write it all down--and tell your heirs where it's written down (file folder, computer disk, etc.). (end sidebars)

## **TRUSTEES**

### Choosing the trustee

If your will leaves assets to a trust, the executor will transfer those assets to the trustee for distribution to the beneficiaries, or for continued management. While an executor's duties can be onerous, at least they're over within at most a few years. A trustee's duties can continue for generations. And they require expertise in collecting estate assets, investing money, paying bills, filing accountings (quarterly or annual) and managing money for beneficiaries. The trustee consults with your beneficiaries about the size of the checks issued periodically, what expenses will be paid, what withdrawals against principal will be permitted. Obviously, then, it's preferable to choose someone with whom the beneficiaries feel comfortable. Since no individual lives forever, a bank or trust company should ultimately be designated as successor trustee.

What powers should you give the trustee? In general it's a good idea to give wide latitude to the trustee, because the economy changes so quickly. And because the law often limits what kinds of investments a trustee can make, you have to spell out these powers in the trust agreement.

A trust is a binding legal contract, so the trustee--whether a bank or a relative--has a legal obligation to follow your instructions and to manage the trust funds in a reasonable and prudent manner. If the trustee mismanages the funds, any beneficiary can demand an accounting of how the money in the trust has been spent. If any beneficiary doesn't think the trustee acted reasonably, he or she can sue for reimbursement of any ill-gotten proceeds or improper losses, and have the trustee removed from that position. However, the beneficiary will have to show more than, say, that stocks the trustee bought lost money. The dissatisfied beneficiary has to show that investing in those stocks was unreasonable at the time.

The biggest decision to make in designating a trustee is whether to use a family member or a professional. Most, though not all, of the following discussion applies primarily to trusts other than living trusts; those are discussed separately at the end of this chapter.

#### Family members as trustees--pros and cons

Many people choose family members to serve as trustees. They don't charge a fee, and they generally have a personal stake in the trust's success. If the family member is competent to handle the financial matters involved, has the time and interest to do so, and if you're not afraid of family conflicts if one relative is named trustee, using a family member can be a good move for a small to medium sized trust. If you do make a relative a trustee, be sure to consider who the successor will be in the event of death, incapacity, divorce or other family strife.

Many settlors or grantors name co-trustees. Usually the spouse will be a co-trustee, so that when one spouse dies, the other takes over, with a successor co-trustee who's a lawyer or has some specialized legal or financial knowledge. But corporate trustees, while expert, may be too expensive for

moderate estates. Before selecting a trust company, it is advisable to discuss this with a trust officer of the institution.

Often, of course, the beneficiary himself is named as trustee, if the beneficiary is an adult. This is sometimes done when the main reason for the trust is to save taxes. If the trustee's powers are restricted to comply with federal estate tax law limitations, this arrangement may give the trustee/beneficiary control over the trust assets and avoid estate taxes after his death. However, it also subjects him or her to taxes on the income from the trust. Depending on the trust and the powers of the trustee, it might open the trust assets to attack from creditors. And the beneficiary probably won't have the professional familiarity with investments that a trust officer would--though, again, he or she can hire such help.

Here's the downside to choosing family members.

- **Lack of expertise.** Relatives often lack the financial acumen of a professional trust officer, and so must often hire professional help.
- **Mortality.** Trusts can last for many years. Human trustees die; banks don't and if they merge, the new company automatically will succeed to its trust operations.
- **Family conflicts.** Depending on their relationship with the beneficiary, family trustees may have problems with what the beneficiary wants and what's best for him or her. Sibling rivalries may also complicate arrangements in which one brother or sister serves as trustee for others. A professional manager doesn't face such pressures.

An increasingly popular middle course between naming an institutional trustee and naming a family member is choosing a relative as trustee--and hiring a bank or investment company as an

independent investment advisor, rather than naming it as a co-trustee. It has deep pockets and is familiar with the nuances of law and investment financing, but its fee for investment advice may be smaller than the one it charges to serve as a co-trustee. Often, for tax reasons, you would name both your beneficiary and another family member as co-trustees, then have the non-beneficiary co-trustee hire the investment advisor.

### Institutional trustees--pros and cons

Banks are permanent institutions that can manage your trust for decades. They also have professional knowledge of and experience with investment options. They're objective and regulated by law. If you question the honesty or reliability of friends or family members, a bank is the usual preference; and it can handle the investments, tax preparation, management, and accounting.

The disadvantages?

- **Cost.** If you do use a bank or trust company to manage the assets, expect to pay a fee for those services. These institutions sometimes have a minimum fee that makes them costly for a small trust. Ask your trust company for its schedule of fees or discuss it with a trust officer. Find out what services are included and those for which additional fees are charged, including a termination fee. Fees are deductible for income tax purposes, to the extent the income is taxable to the trust or beneficiaries.
- **Conservatism.** Bank investments are generally conservative, with all the advantages and disadvantages that implies. While you, the settlor, can program the kind of investment strategy you want the professional trustee to follow, that can cause problems because of changed circumstances

after your death. For example, an investment in the company that pioneered the brush-and-fluid system for cleaning LP records would have looked like a great investment twenty years ago; the advent of the compact disk changed all that.

- **Impersonality.** While a bank probably won't die, that doesn't mean your beneficiaries will always be dealing with the same person; personnel move around, or move on. As depositors in many banks have learned, the bank itself can change hands. And your beneficiaries will want someone who's willing and able to listen to and discuss their needs and questions; impersonal institutions are sometimes weak in these interpersonal areas. On the other hand, when squabbling relatives are involved, impersonality can be a boon.

If you do choose an institutional trustee, make sure you and your beneficiaries are comfortable with the people they'll be dealing with.

**Consumer tip**-----

### **PICKING THE TRUSTEE IS A FAMILY AFFAIR**

It's crucial that everyone in the family (not just the wage earner) see the fee schedule and other records of any professional trustee you're considering hiring, so they can make an informed decision about who will make the best trustee. If the beneficiaries are old enough, they should be involved as well. After all, when the creator of the trust is enjoying eternal rest, they're the ones who'll have to live with this decision.

In choosing an institutional trustee, co-trustee or investment advisor, your lawyer may be able to give you some names of such companies, and may be willing to accompany you as you make the

rounds, asking the trust officer the hard questions: what are all the possible fees you charge? What is your record of rate of return on trust investments? What is the mechanism for changing the successor trustee? What happens if the person assigned to your trust account leaves the bank or trust company? What if the beneficiary needs emergency cash from the trust? You may be able to judge how responsive the company will be to your beneficiaries by their responses to such questions. The idea is to build a relationship with the bank, so that it serves the beneficiaries' needs. You and the beneficiaries need to get to know the people you'll be working with.

A lot of people are intimidated by banks and large financial institutions, but since you're putting a lot of money in their care, you have a right to demand good service. Your lawyer should help you obtain it. If either your lawyer or the prospective professional trustee isn't responding to your needs, find a replacement. Remember, doing the hard work now will save your children or other beneficiaries much grief later.

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#### Using a lawyer as trustee

If you pick a lawyer, he or she may charge by the usual hourly rate, which may prove less or more expensive than a bank's fee. Some firms have set up investment subsidiaries to handle the trustee business, but there's a possible conflict of interest there. If you choose a lawyer as trustee, ask to see his or her records of performance in investing and managing trust income.

A good rule of thumb: if the trust assets amount to more than a few hundred thousand dollars or has any complicated problems, you should at least explore the option of using a professional trustee.

### Splitting the difference: Co-trustees

Again, there's the possibility of splitting the job among several persons, professional and non. You might pick someone who's good with investments, another who knows taxes, and a third who can talk to the beneficiaries. Usually, the attorney for the trustees can handle the tax problems without being a co-trustee.

Be aware that fiduciary tax returns can be complicated, and the IRS likes to scrutinize them.

You (the settlor) can decide how the multiple trustees will make decisions; be sure to establish some mechanism for resolving disputes. Obviously, too many cooks can spoil the broth, and you shouldn't make someone a trustee just to keep him or her from feeling left out; make sure he or she can be useful.

The co-trustee should be familiar with the nuances of this particular trust. Also, he or she should be sensitive to present or potential conflicts between family members you're considering naming co-trustees, particularly parents and children.

If you designate a family member as trustee, be sure to designate another family member as successor co-trustee to take over after the original family member co-trustee dies or becomes incapacitated.

Warning: in some tax-saving trusts, the IRS prohibits using family members (especially spouses) as co-trustees. That's why you should be sure to have a lawyer's advice in naming a trustee.

### Removing a trustee

Some grantors write in a procedure for removing a trustee if the beneficiaries should become dissatisfied, but that also could let irresponsible beneficiaries circumvent your wishes to have the funds



invested and maintained in a responsible manner. Such decisions depend on your relative confidence in the trustee and the beneficiaries.

Also, if you make it too easy for the grantor or beneficiaries to fire the trustee and step in to replace him or her, you might endanger the trust's tax advantages; the IRS might think that the grantor or beneficiary never really intended to give up control of the funds, but could just fire and hire trustees until one did it the way the real power figure wanted. Solution? Omit removal power or give it to an outsider (your lawyer). And remember that removing a trustee can spark a legal fight, or at least a potentially expensive accounting.

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### **Sidebar**

#### **SHOULD THE GRANTOR OR BENEFICIARY BE A TRUSTEE?**

The grantor of a revocable trust may serve as trustee, but the grantor of an irrevocable trust should never be a trustee as well. Not only will you almost always lose the tax benefits, you're inviting IRS scrutiny. If you want that personal touch, use your spouse.

Should the trustee be a beneficiary? It depends. A beneficiary who is also a trustee may be liable for estate taxes, unless the trust is set up so as to avoid this. A key issue is whether or not to give beneficiaries the authority to make discretionary payments to themselves out of the trust principal or income. Such arrangements may limit the freedom to invest or pay out the trust principal. Generally, beneficiaries who are also trustees can only pay themselves principal for support, health, maintenance, and education based upon an ascertainable standard of living.

This may be a good situation for co-trustees: one can be the beneficiary, whose powers are limited to what the tax law allows; the other a disinterested trustee, maybe an institution, that can make those other decisions without jeopardizing tax advantages. Some states don't allow the sole beneficiary of a trust to be its sole trustee. Check with a lawyer before making a beneficiary a trustee. (end sidebar)

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## **TRUSTEES AND LIVING TRUSTS**

### Choosing a trustee

In virtually all living trusts created primarily for probate avoidance or property management, the creator is also named the trustee. If it's a joint marital living trust, both spouses are frequently co-trustees; when the first spouse dies or becomes unable to act, the survivor becomes sole trustee.

If you depart from this pattern, you need to check with your lawyer. For example, making just one spouse the trustee of a marital living trust can complicate things, as can naming a third party as trustee, which will require keeping separate trust and tax records and controlling the trustee's discretion. At the same time, don't feel as though you must be the trustee; you can designate a relative or friend with more time or knowledge than you, and you can always change your mind later.

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### **Sidebar**

## **TAX-SAVING LIVING TRUSTS**

If you are using the living trust primarily to avoid taxes you should not make yourself the trustee.

Instead, you may want to make the beneficiary the trustee or designate an independent trustee. (end sidebar)

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When you create the trust, besides naming yourself trustee, you should designate a successor trustee. Depending on the trust, the successor trustee distributes the trust assets to your beneficiaries after you die or continues to administer the trust for one or more generations. He or she could also take over management of the trust if you become incapacitated.

Whom should you choose? The successor trustee may be the primary beneficiary of the trust, who has the incentive to handle the transfers promptly and efficiently. However, it can be anyone you trust: a close friend, an adult child, your spouse, your lawyer, an accountant, or a corporate trustee.

A successor doesn't have to live in the same state that you do, but it's usually more convenient if he or she does. You should take into account the amount of time and effort the successor will have to spend and his or her ability to perform the duties of the trustee and to deal with the beneficiaries.

If the successor merely is required to transfer property to the beneficiaries, a copy of the original trust agreement and death certificate of the original trustee should be sufficient for banks, stock brokers, government agencies, and other entities that control the assets to enable them to be transferred to the successor or beneficiaries entitled to receive them. Sometimes, especially when real estate is involved, the successor trustee will have to sign over deeds transferring property from the living trust to the beneficiaries.

However, there are circumstances in which you will want the successor trustee to have more expertise, or at least the ability to hire professional help. For example, if any of your beneficiaries are minors or disabled or the trust is to continue, the successor will have to manage the trust property until they

reach the ages at which you specified the property would be distributed to them or to their **remaindermen** (i.e., those who have a future interest in the trust). This may involve preparing tax returns, investing funds, and so on.

How about naming co-successor trustees? The discussion above can give some guidance here. When children are beneficiaries of the living trust, parents often choose to make them all equal co-beneficiaries, and therefore it makes sense to name them co-successor trustees as well. However, if you fear the children may fail to agree, this can be a bad idea. You may have to choose one child as trustee, or put in a mechanism (such as arbitration) for resolving conflicts between co-successors. In any case, be sure to have a lawyer advise you if you fear such conflicts.

Frequently conflicts or the size or complexity of the trust make an independent trustee necessary, such as a lawyer, or trust company. Since no individual can be certain to serve for the duration of the trust, a trust company should always be designated as ultimate successor trustee. Otherwise, an expensive court proceeding may be necessary to appoint a successor.

You have to specify the successor's powers, which will normally be broadly phrased: the ability to transfer assets to people or institutions, to pay debts and taxes, and to spend trust principal for maintenance, education, support, and health. Be sure to get a lawyer's advice if you feel the need to control the powers of the successor trustee or the beneficiaries; your lawyer can help write into the agreement special rules that will carry out your wishes.

In any event, don't forget to name an alternate successor trustee in case your first choice predeceases you or otherwise is unwilling or unable to serve.

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**Sidebar****DUTIES OF THE SUCCESSOR TRUSTEE**

Usually, the successor trustee will be taking over for the creator of the trust, who may be the original trustee. Therefore, some of the duties are similar to those of an executor. The duties will vary with the nature of the trust property, and also, of course, depending on whether the original trustee has died or become disabled. As successor trustee you should:

- Know the contents of the trust agreement, which should spell out specific duties and instructions.
- Obtain a medical opinion confirming the original trustee's incapacity (if he has become disabled) or
- Obtain a copy of the death certificate (if the original trustee has died). Be sure to make several copies of these documents; the funeral home will obtain duplicate certified copies of death certificates.
- Notify the lawyer who prepared the trust of the original trustee's death or incapacity, and explain that you are now the trustee.
- Inform any banks holding trust assets that you are now trustee.
- Notify all entities that control pensions, insurance, or government benefits.
- Tell the family that you are the successor trustee.
- Send copies of the trust agreement to the beneficiaries.
- Inventory the trust property. (You'll need a list of the property, keys to any dwellings, businesses or storage areas, and the like).
- Take care of business transactions as needed if the original trustee has become incapacitated.
- Collect and pay all bills and taxes.
- Keep accounts of money paid out and income received.
- Hire a lawyer or an accountant to prepare any tax returns, if necessary.
- Distribute the property to beneficiaries, in the order indicated in the trust agreement. Get receipts.

- Make a final accounting record, and send copies to the beneficiaries.

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