

Who Should You Trust as Trustee?

Tales from the Trenches of Trust Administration

By Elaine M. Watrous

Over the past few years I've worked with many people who have lost a loved one to help them understand how big their job is as trustee of a trust and how their new role is not to be undertaken without proper legal & professional guidance. I have come to the conclusion that the very person chosen as trustee is just as important as those chosen as beneficiaries. A trustee has the responsibility of properly administering their loved one's final wishes as spelled out in the trust documents they left behind and is not a task to be taken lightly. The trustee is responsible for collecting, managing and distributing the property ("assets") held by the trust to the people named in the trust ("beneficiaries") *according to the terms of the trust*. This process, trust administration, calls for the utmost in detail and organization that most trustees don't have enough time in a day for, or the training, to do the job properly. Unfortunately, most people are also unaware of the many California requirements of a trustee (which can be overwhelming during a time of grief) unless and until they learn what is required of them.

When the wrong trustee is appointed, that trustee often disregards the serious trouble they can get into if they do not follow set standards and specific instructions because they often carry deep seated emotions with them that clouds their judgment and poses potential harm to the beneficiaries which, in turn, can lead to the very courtroom their loved ones tried to avoid by creating their trust in the first place - the Probate Court.

Having a trust is not just for the elderly or wealthy. In order to avoid probate, we are seeing younger clients every day simply because they own a home, have a business or want to protect their children. Many times clients will name an adult child as their trustee, but that is not always the best choice for a variety of reasons. In those families where everyone gets along and enjoy each other generally do well if the most responsible adult child is appointed as the trustee. On the other hand, in blended families or when siblings have a history of contention, it may be better for a professional fiduciary to serve as the trustee. Too often, I have seen the ugly face of sibling rivalry appear after both parents pass away. In such families, it is not uncommon for adult children to fight over costume jewelry, family photos, or question the actions of their sibling trustee, only to destroy their relationship forever.

A case in my rearview mirror recently drove this point home. A client with cancer came into our office concerned about how her children would get along when she was no longer around. Unfortunately, she went against the attorney's advice to name a neutral third party as trustee and instead named her adult children as co-trustees. After the mother passed away, the bones of contention snapped loud and clear when the siblings ended up in court battling over the mere few thousand dollars left in their mother's account. Needless to say, the kids ended up losing more than money. They lost the opportunity to share fond memories of their mother with each other. In addition, their own children lost the chance for a future relationship with their cousins, bringing the possibility of family reunions to a screeching halt.

Just as important as naming the right trustee is making sure you have your trust documents reviewed on a regular basis. Assets not properly transferred to the trust ("funding the trust") are not protected from the probate court. Likewise, a trustee who has become incompetent or is otherwise unavailable needs to be replaced. Getting a trust is not a once in a lifetime event, rather it requires attention throughout your life to make sure it is current with your situation, your wishes and any changes in the law. If you have a trust that is over two years old or have no

trust at all, it is imperative that you consult with a licensed attorney whose main practice focuses on estate and business planning. Better yet, if you hire an attorney who handles both pre-death documents and post-death administration, it will let your loved ones know who you trusted with your trust and where to go to in their time of need.

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